



Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada

Final Report

Evaluation of Indian Moneys, Estates and Treaty Annuities

Project Number: 1570-7/11003

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Evaluation, Performance Measurement,
and Review Branch
Audit and Evaluation Sector



Canada 

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List of Acronyms

AANDC	Aboriginal Affairs and Northern Development Canada
AFN	Assembly of First Nations
BCR	Band Council Resolution
CLCA	Comprehensive Land Claim Agreement
CRF	Consolidated Revenue Funds
DPR	Departmental Performance Report
EPMRB	Evaluation, Performance Measurement and Review Branch
ERS	Estate Reporting System
FNOGMMA	<i>First Nations Oil and Gas and Moneys Management Act</i>
HQ	Headquarters
IMETA	Indian Moneys, Estates and Treaty Annuities
PCD	Per Capita Distribution
RCMP	Royal Canadian Mounted Police
TAPE	Treaty Annuities Payment Experience
TFMS	Trust Fund Management System
TPS	Treaty Payment System

Executive Summary

Indian Moneys, Estates and Treaty Annuities (IMETA) is the only remaining component of Managing Individual Affairs portfolio that had not been previously identified for evaluation and was included in the Department's evaluation plan for 2012–13 to improve coverage. IMETA components included in this evaluation are defined below:

Band Moneys are capital and revenue moneys that are generated from reserve land and held in trust on behalf of First Nations by the Government of Canada in its Consolidated Revenue Fund. The Indian Moneys program reviews expenditure requests submitted by band councils to ensure due diligence, eligibility under the *Indian Act* and that proposed expenditures will benefit the band and its members.

Living Estates, involves the administration of assets of minors and dependant adults that are living on reserve. Upon the identification a dependent adult by provincial authorities, the Department identifies a third-party administrator or, where one cannot be identified, acts as the administrator of last resort.

Decedent Estates provides for the administration of the estates of deceased First Nation individuals who were ordinarily resident on reserve. Upon notification of death, the Department identifies a third-party administrator or, where one cannot be identified, acts as the administrator of last resort. The Decedent Estates program also offers information and capacity development initiatives such as will preparation kits and workshops.

Treaty Annuities are payments made to First Nations to honour obligations set out in historical treaties. The treaties provide for an annual cash payment, ordinarily distributed at treaty events or by individual cheque. The Treaty Annuities Payment Experience enables volunteers (primarily Aboriginal Affairs and Northern Development Canada (AANDC) employees at Headquarters) to assist with regional treaty events.

As demonstrated by the program descriptions above, Band Moneys, Living Estates, Decedent Estates and Treaty Annuities vary drastically in target population, administration and outputs. As a result, each component was treated separately in a dedicated section of this report. Key findings, conclusions and recommendations relating to each area are presented below.

- ***Note: This evaluation does not cover estates management for minors, adoptees or missing persons. Additionally, it does not cover the management of suspense accounts, which are created when cash receipts cannot be directly credited to a First Nation or individual account.***

Band Moneys

The evaluation found that the relevance of Band Moneys is primarily driven by high usage of Band Moneys; a lack of workable alternatives that would allow First Nations to access their revenue and capital outside the *Indian Act*; and legislation and obligations in the *Indian Act*.

The evaluation observed that the close linkage between Band Moneys and the *Indian Act* has resulted in an administration design focussed on ensuring compliance. It appears that the evolving needs of First Nations, such as the desire to invest Band Moneys in emerging economic opportunities are restrained by administrative processes designed to serve the administrative and legislative responsibilities of the Department. The rigidity of the Band Moneys program is reflected in the lack of alignment with federal and departmental priorities relating to improved transparency, self-sufficiency and economic development.

According to the findings, Band Moneys has been successful in ensuring departmental responsibilities in the *Indian Act* have been achieved, and the processes in place contribute to improved decision making and good governance in First Nations. However, the impact of expenditures on members cannot be determined through existing reporting.

Findings suggest that program responses to the May 2010 Audit of Trust Accounts has contributed to improvements in efficiency and economy, but concluded that further improvements could be achieved through training and increased communication. Additionally, the implementation of a viable alternative to Band Moneys could result in significant reductions in departmental administration costs. Transitioning the top twenty bands (in terms of expenditures and transactions) to a Band Moneys alternative would also reduce the amount of interest paid by the Government of Canada.

Specific recommendations relating to Band Moneys include the following:

Recommendation # 1:

- **Explore the development of a workable alternative to Band Moneys that would provide First Nations access to funds in the Consolidated Revenue Funds outside the constraints of the *Indian Act* and present proposed alternative to the Strategic Policy Committee.**

Recommendation # 2:

- **Any changes to Band Moneys and alternatives be designed to increase the transparency of Band Moneys expenditures to members, better support access to capital for economic development and promote greater self-sufficiency.**

Recommendation # 3:

- **That AANDC revise the Manual for the Administration of Band Moneys to reflect current policy and modern practices.**

Recommendation # 4:

- **Facilitate a discussion with First Nations on how to report back to members in a clear and useful manner on Band Moneys expenditures.**

Living Estates

Living Estates continues to be relevant as it supports the fulfillment of federal obligations to protect vulnerable individuals under its jurisdiction. While some problems have been encountered in confirming jurisdiction over dependent adults, findings reveal that the program has successfully identified administrators in each case. A lack of data makes it impossible to confirm the achievement of other outcomes on a national scale as it is only possible to assess impacts where the Department is acting as the administrator, or in regions where monitoring of non-departmental administrators is taking place.

There is wide variation in the delivery of Living Estates across the country. This is partly due to differing perspectives on the “administrator of last resort” policy. Some regions are concerned that the policy exposes vulnerable individuals and the Minister to increased risk because of a lack of monitoring of non-departmental administrators. As a result, these regions have adapted the program delivery to address their concerns. British Columbia has also taken steps to develop ties with the provincial public trustee, re-engineer processes, eliminate backlog, provide training and workshops to First Nations and monitor non-departmental administrators. The evaluation concluded that improvements in efficiency and economy could be achieved on a national scale through the sharing of lessons learned and best practices between regions and with Headquarters (HQ). Better use of the Estates Reporting System would also result in improved performance measurement.

Specific recommendations relating to Living Estates include the following:

Recommendation # 5:

- **Develop policies and procedures for Living Estates to identify dependent adults and confirm AANDC jurisdiction.**

Recommendation # 6:

- **Examine the appropriateness of the “administrator of last resort” policy for Living Estates.**

Recommendation # 7:

- **Examine IMETA HQ’s relationship with regions in order to provide more consistent and timely support for the administration of Living Estates.**

Recommendation # 8:

- **Ensure a standard approach to data entry into the Estates Reporting System in order to generate more reliable data for program management.**

Decedent Estates

The Decedent Estates program continues to be relevant due to federal obligations towards First Nations, the need for estates services and capacity building and the Crown's interest in reserve land. The evaluation revealed that Decedent Estates has achieved some success protecting and securing assets, but was unable to conclude on the achievement of other outcomes due to data shortages and inconsistencies. Contributing to the lack of performance data is the “administrator of last resort” policy, which does not support the monitoring of third-party administrators.

Capacity development of First Nations was identified by some as the single most effective way to improve program effectiveness and efficiency, however, the evaluation revealed an inconsistent approach to First Nation training and low participation in training sessions. Sharing of lessons learned and best practices, such as the Minimum Value Policy from British Columbia, between regions was advanced as a strategy to improve efficiency and economy. Further analysis of efficiency and economy was not possible due to incomplete and/or inaccurate data in the Estates Reporting System.

Specific recommendations relating to Decedent Estates include the following:

Recommendation # 9:

- **Revisit the policy of securing assets in Decedent Estates to identify and mitigate risks such as addressing delays in the notification of death and possible policy conflicts with existing cultural practices.**

Recommendation # 10:

- **Develop a strategic approach to capacity development to increase effectiveness and efficiency of Decedent Estates with appropriate measurements to monitor success.**

Recommendation # 11:

- **Examine the appropriateness of the “administrator of last resort” policy in the administration of Decedent Estates.**

Recommendation # 12:

- **Explore the feasibility of adopting and implementing the British Columbia Minimum Value Policy for Decedent Estates on a national scale.**

Treaty Annuities

Treaty annuity payments are driven by the continued need for Canada to honour treaties and the high demand for treaty events and payments. The findings reveal that the treaty annuities payment program has been successful in distributing the majority of annuity payments owed. However, the evaluation found that the Treaty Annuities Payment Experience did not adequately respond to regional delivery needs. Overall, while AANDC staff believe that the treaty annuity payment process establishes trust, and contributes to good relations between Canada and First Nations, it is not known at this time if First Nations share the same perspective.

Similar to the Estates programs, the evaluation concluded that improvements to efficiency and economy could be achieved by sharing and implementing best practices to reduce costs associated with the delivery of treaty annuities and improved data.

Specific recommendations relating to Treaty Annuities include the following:

Recommendation # 13:

- **Revisit and revise as appropriate the Treaty Annuities Payment Experience to better serve regional needs.**

Recommendation # 14:

- **Explore options for dealing with resource shortages during the treaty payment season, including making participation in treaty events mandatory to regular duties of all Individual Affairs staff.**

Recommendation # 15:

- **Refine the Treaty Payment System (TPS) data collection in order to facilitate more effective program management and synchronize the TPS with the Estates Reporting System in order to improve the reliability of the data overall.**

Recommendation # 16:

- **Coordinate regular forums among Indian Moneys, Estates and Treaty Annuities regional and HQ staff to provide opportunities for information exchange, sharing of best practices and lessons learned.**

Management Response / Action Plan

Evaluation of Indian Moneys, Estates and Treaty Annuities

Project #: 1570-7/11003

A working group comprised of representatives from the Resolution and Individual Affairs (RIA) Sector and the Regional Operations (RO) Sector will be convened in spring 2013 to respond to evaluation findings and ensure that the regional perspective is considered in implementing the Action Plan.

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
1. Explore the development of a workable alternative to Band Moneys that would provide First Nations access to funds in the CRF outside the constraints of the <i>Indian Act</i> and present proposed alternative to the Strategic Policy Committee.	After exploring options regarding Indian Moneys, RIA has drafted an optional policy allowing for the transfer of all of a First Nation's current and future capital moneys pursuant to Section 64(1)(k) of the <i>Indian Act</i> . The policy will be finalized in 2013.	Director IMETA (RIA)	December 2013
2. Any changes to Band Moneys and alternatives, be designed to increase the transparency of Band moneys expenditures to members, better supports access to capital for economic development and promote greater self-sufficiency.	The new 64(1)(k) policy will include requirements that trust arrangements provide for reporting to membership on the management of the trust.	Director IMETA (RIA)	December 2013
3. That AANDC revise the Manual for the Administration of Band Moneys to reflect current policy and modern practices.	The new 64(1)(k) policy will include a requirement that trust arrangements have guidelines on capital encroachment. IMETA will ensure that policies, directives and procedures are aligned with the <i>Indian Act</i> .	Director IMETA (RIA)	December 2013
4. Facilitate a discussion with First Nations on how to report back to members in a clear and useful manner on Band Moneys expenditures.	The new 64(1)(k) policy will include requirements that trust arrangements include provisions regarding accountability and reporting to the membership for moneys expended out of the trust.	Director IMETA (RIA)	December 2013

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
<p>5. Develop policies and procedures for Living Estates to identify dependent adults and confirm AANDC jurisdiction.</p>	<p>The Manual for the Administration of Property Pursuant to Section 51 of the <i>Indian Act</i> was updated and circulated in August 2012. The new edition clarifies how to determine and confirm AANDC jurisdiction.</p> <p>RIA, in collaboration with regions, will pursue the development of information sharing agreements with provinces and territories with a view to clarifying jurisdictional issues and identifying dependent adults who are subject to the Minister's legislative authority.</p> <p>The joint RIA-RO working group will establish a community of practice on living and decedent estates to identify implementation strategies to support the application of policies and procedures outlined in the manual on an ongoing basis. The community of practice will also be mandated to explore alternatives to the estates regime with a view to improve services to clients. Online options will be explored such as using GC Pedia, video conferencing and other available technologies.</p>	<p>Director IMETA (RIA)</p>	<p>Completed</p> <p>March 2014</p> <p>March 2014</p>

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
6. Examine the appropriateness of the "administrator of last resort" policy for Living Estates.	<p>The new edition of the Manual for the Administration of Property Pursuant to Section 51 of the <i>Indian Act</i> provides clearer direction with respect to AANDC's responsibility to monitor the administration of property of a dependent adult when a non-departmental administrator is appointed.</p> <p>The joint RIA-RO working group will assess the effectiveness and appropriateness of the policy and develop implementation strategies to guide regional officers.</p> <p>The working group will also review existing agreements between various regions (Manitoba, British Columbia and Northwest Territories) and their respective Provincial Public Guardians and Trustees as well as other potential alternatives. The working group will explore the cost-effectiveness and feasibility of encouraging the development of similar agreements or alternatives nationally</p>	Director IMETA (RIA)	<p>Completed</p> <p>March 2014</p> <p>March 2014</p>
7. Examine IMETA HQ's relationship with regions in order to provide more consistent and timely support for the administration of Living Estates.	<p>Establish monthly training and information teleconferences between IMETA and regions focused on specific topics.</p> <p>The joint RIA-RO working group will review the management systems and procedures in place in each region, identify best practices and draw upon this analysis to propose additional strategies to resolve the communication gap between regions and IMETA. Timely and consistent communications will then be supported and maintained through the community of practice on living and decedent estates on an ongoing basis.</p>	Director IMETA (RIA)	<p>June 2013</p> <p>March 2014</p>

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
8. Ensure a standard approach to data entry into the Estates Reporting System in order to generate more reliable data for program management.	<p>IMETA is currently working with the Indian Registration System (IRS) re-development team with a view to preparing the Estates Reporting System for integration in the new IRS system.</p> <p>The joint RIA-RO working group will identify areas requiring enhancements to enable regional officers and AANDC managers to use the Estates Reporting System as an effective case management, reporting and monitoring tool. The working group will mandate the community of practice on living and decedent estates to explore strategies to encourage a national standard approach to data entry.</p>	Director IMETA (RIA)	Ongoing March 2014
9. Revisit the policy of securing assets in Decedent Estates to identify and mitigate risks such as addressing delays in the notification of death and possible policy conflicts with existing cultural practices.	The joint RIA-RO working group will develop strategies to mitigate the risks related to delays of notification of death and other impediments to securing assets.	Director IMETA (RIA)	March 2014
10. Develop a strategic approach to capacity development to increase effectiveness and efficiency of Decedent Estates with appropriate measurements to monitor success.	The joint RIA-RO working group will draw upon current examples of capacity building initiatives, such as the Memorandum of Understanding with the Mohawk Council of Akwesasne, and will workshops, to explore the feasibility of developing a sustainable and accessible approach to capacity development for estates management in First Nations communities nationally.	Director IMETA (RIA)	December 2013
11. Examine the appropriateness of the “administrator of last resort” policy in the administration of Decedent Estates.	The joint RIA-RO working group will engage with Land and Economic Development to assess the appropriateness of the “administrator of last resort policy” and explore strategies to ensure the proper legal distribution of the reserve land assets of an estate.	Director IMETA (RIA)	March 2014

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
12. Explore the feasibility of adopting and implementing the British Columbia Minimum Value Policy for Decedent Estates on a national scale.	<p>Finalize and implement the British Columbia Minimal Value Estates and Expedited Section 50 Sale policies for Decedent Estates on a national scale.</p> <p>Other tools identified by and based on best regional practices are currently undergoing a risk analysis. The joint RIA-RO working group will review the outcome of this analysis and recommend strategies for implementation.</p>	Director IMETA (RIA)	<p>Completed</p> <p>March 2014</p>
13. Revisit and revise as appropriate the Treaty Annuities Payment Experience to better serve regional needs.	<p>Since they are better placed to recruit individuals to meet their needs, regional offices will be responsible for managing the Treaty Annuity Payment Experience. A letter to the regional directors general was sent on October 19, 2012, to advise the regions that RIA will no longer be involved in the Treaty Annuities Payment Experience.</p>	Director IMETA (RIA)	Completed
14. Explore options for dealing with resource shortages during the treaty payment season, including making participation in treaty events mandatory to regular duties of all Individual Affairs staff.	<p>A workshop with regions and other sectors was held in January 2012 to identify current issues with respect to the effective delivery of treaty annuities to First Nations individuals.</p> <p>The joint RIA-RO working group will review and confirm key issues identified and recommend sustainable solutions as well as explore alternatives to the current service delivery model.</p>	Director IMETA (RIA)	March 2014
15. Refine the TPS data collection in order to facilitate more effective program management and synchronize the TPS with the Estates Reporting System in order to improve the reliability of the data overall.	<p>IMETA has begun engaging the IRS re-development team with a view to preparing the TPS for integration in the new IRS integrated platform.</p> <p>The joint RIA-RO working group will identify necessary improvements to better support service delivery in the regions and support management in their reporting requirements.</p>	Director IMETA (RIA)	<p>Ongoing</p> <p>March 2014</p>

Recommendation	Actions	Responsible Manager (Title / Branch)	Planned Implementation and Completion Dates
16. Coordinate regular forums among Indian Moneys, Estates and Treaty Annuities regional and headquarters staff to provide opportunities for information exchange, sharing of best practices and lessons learned.	The joint RIA-RO working group will recommend approaches to improve the communications between IMETA and the regions. The community of practice on treaty annuity payments will be mandated to foster and maintain sustainable, timely and consistent communications. It will also promote the sharing of best practices with a view to developing standardized approaches to the administration of treaty annuity payments.	Director IMETA (RIA)	March 2014

Recommendations

In light of the analyses and findings, it is recommended that Aboriginal Affairs and Northern Development Canada support the implementation of the following recommendations:

Recommendation # 1: Explore the development of a workable alternative to Band Moneys that would provide First Nations access to funds in the Consolidated Revenue Fund outside the constraints of the *Indian Act* and present proposed alternative to the Strategic Policy Committee.

Recommendation # 2: Any changes to Band Moneys and alternatives be designed to increase the transparency of Band Moneys expenditures to members, better support access to capital for economic development and promote greater self-sufficiency.

Recommendation # 3: That AANDC revise the Manual for the Administration of Band Moneys to reflect current policy and modern practices.

Recommendation # 4: Facilitate a discussion with First Nations on how to report back to members in a clear and useful manner on Band Moneys expenditures.

Recommendation # 5: Develop policies and procedures for Living Estates to identify dependent adults and confirm AANDC jurisdiction.

Recommendation # 6: Examine the appropriateness of the “administrator of last resort” policy for Living Estates.

Recommendation # 7: Examine IMETA HQ’s relationship with regions in order to provide more consistent and timely support for the administration of Living Estates.

Recommendation # 8: Ensure a standard approach to data entry into the Estates Reporting System in order to generate more reliable data for program management.

Recommendation # 9: Revisit the policy of securing assets in Decedent Estates to identify and mitigate risks such as addressing delays in the notification of death and possible policy conflicts with existing cultural practices.

Recommendation # 10: Develop a strategic approach to capacity development to increase effectiveness and efficiency of Decedent Estates with appropriate measurements to monitor success.

Recommendation # 11: Examine the appropriateness of the “administrator of last resort” policy in the administration of Decedent Estates.

Recommendation # 12: Explore the feasibility of adopting and implementing the British Columbia Minimum Value Policy for Decedent Estates on a national scale.

Recommendation # 13: Revisit and revise as appropriate the Treaty Annuities Payment Experience to better serve regional needs.

Recommendation # 14: Explore options for dealing with resource shortages during the treaty payment season, including making participation in treaty events mandatory to regular duties of all Individual Affairs staff.

Recommendation # 15: Refine the Treaty Payment System data collection in order to facilitate more effective program management and synchronize the Treaty Payment System with the Estates Reporting System in order to improve the reliability of the data overall.

Recommendation # 16: Coordinate regular forums among Indian Moneys, Estates and Treaty Annuities regional and Headquarters staff to provide opportunities for information exchange, sharing of best practices and lessons learned.

I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee

Original signed by:

Michel Burrowes

Director, Evaluation, Performance Measurement and Review Branch

I approve the above Management Response / Action Plan

Original signed by:

Andrew Saranchuk
A/Assistant Deputy Minister
Resolution and Individual Affairs

The Management Response / Action Plan for the Evaluation of Indian Moneys, Estates and Treaty Annuities were approved by the Evaluation, Performance Measurement and Review Committee on April 25, 2013.

1. Introduction

1.1. Overview

The Evaluation of the Indian Moneys, Estates and Treaty Annuities (IMETA) was included in the Department's evaluation plan for 2012–13 to improve evaluation coverage of the Managing Individual Affairs program activity. Managing Individual Affairs is responsible for the following:

- Provisions of the *Indian Act* concerning the administration of IMETA.
- Registration and band membership.
- Administering the moneys management portion of the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA).
- Overseeing federal obligations outlined in the Indian Residential Schools Settlement Agreement implemented on September 19, 2007, and other federal initiatives that address the impact of residential schools on Aboriginal people in Canada.¹

An evaluation of FNOGMMA and Registration Administration were completed in September 2010. An evaluability assessment of the Residential School Resolution conducted in 2009 concluded that an evaluation was not required under the Treasury Board Evaluation Policy; there was no precedent to evaluate court-ordered settlements; and there was already significant monitoring through bi-annual reporting to Treasury Board and the court. As a result, there are no further evaluation commitments for the Residential School Resolution.

As shown above, IMETA is the only component of Managing Individual Affairs that has not been previously evaluated. The *Indian Act* defines **Indian Moneys** as "all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands". For the purposes of this evaluation, Indian Moneys includes individual moneys, band moneys and moneys held in suspense accounts² each of which is further defined below:

Individual Moneys involves the creation and maintenance of individual accounts for per capita distributions and estates management. **Living Estates**, more commonly referred to as a "trusteeship", involves the administration of assets of minors and dependant adults that are living on reserve. Upon the identification a dependent adult by provincial authorities, the Department identifies a third-party administrator or, where one cannot be identified, acts as the administrator of last resort. In this evaluation, the term "dependent adult" is used instead of "mentally incompetent" as defined in the *Indian Act*.

Decedent Estates provides for the administration of the estates of deceased First Nation individuals who were ordinarily resident on a reserve. Upon notification of death, the Department identifies a third-party administrator or, where one cannot be identified, acts as the

¹ Aboriginal Affairs and Northern Development Canada, "Strategic Outcomes and Program Activity Descriptions", accessed at: <http://www.ainc-inac.gc.ca/ai/arp/fin/desc-eng.asp>, May 4, 2011.

² Aboriginal Affairs and Northern Development Canada, "Manual for the Administration of Band Moneys", 2009, pg. 4.

administrator of last resort. The Decedent Estates program also offers information and capacity development initiatives such as will preparation kits and workshops.

Treaty Annuities are also considered individual moneys as payments are made to individual band members. The Treaty Annuities Program administers the payment of annuities under various treaties signed by First Nations (Robinson-Huron, Robinson-Superior and numbered treaties 1 to 11) with the Crown. The treaties provide for an annual annuity payment to be paid in cash, ordinarily distributed at treaty events or by individual cheque. The Treaty Annuities Payment Experience (TAPE) program is a component, which enables volunteers (primarily Aboriginal Affairs and Northern Development Canada (AANDC) employees) to assist with regional treaty events.

Band Moneys are capital and revenue moneys held in separate interest-bearing accounts under the name of a particular First Nation³. Band Moneys are generated from reserve land that belongs collectively to the band. The Indian Moneys program reviews expenditure requests submitted by band councils to ensure due diligence, eligibility under the *Indian Act* and that proposed expenditures will benefit the band and its members.

Suspense Accounts are created when cash receipts cannot be directly credited to a First Nation or individual account. Each region has one band moneys suspense account. Moneys placed in suspense accounts may include receipts for unidentified First Nations or persons, receipts for moneys under litigation and amounts received for unapproved or expired leases⁴. Regional offices monitor suspense accounts to ensure appropriate bands or individual accounts are credited⁵.

As demonstrated by the descriptions above, Band Moneys, Living Estates, Decedent Estates and Treaty Annuities vary drastically in target population, administration and outputs. As a result, each component is treated in separate sections of this report.

The evaluation of IMETA was carried out primarily by the Evaluation, Performance Measurement and Review Branch (EPMRB). Castlemain Management Consulting was engaged to complete the literature review for Living and Decedent Estates and to conduct a study of alternatives to Band Moneys.

³ Aboriginal Affairs and Northern Development Canada, “Manual for the Administration of Band Moneys”, Indian Moneys, Estates and Treaty Annuities Directorate, 2009, pg. 6.

⁴ Aboriginal Affairs and Northern Development Canada, “Manual for the Administration of Band Moneys”, Indian Moneys, Estates and Treaty Annuities Directorate, 2009, pg. 6.

⁵ Aboriginal Affairs and Northern Development Canada, “Audit of Trust Accounts”, Audit and Assurance Services Branch, May 2010.

1.2. Program Resources

Table 1.1 shows costs for IMETA for the evaluation period from 2006-07 to 2010-11.

Table 1.1 Indian Moneys, Estates and Treaty Annuities – Costs for 2006-07 to 2010-11

	Actuals	2006-07	2007-08	2008-09	2009-10	2010-11	Total
Band Moneys	Vote 1 (Operations and Maintenance) (\$)	952,323	958,980	1,015,836	1,522,875	572,000	5,022,014
	Vote 10 (Grants and contributions) (\$)	-	-	172,000	456,000	506,000	1,134,000
	Total for Band Moneys (\$)	952,323	958,980	1,187,836	1,978,875	1,078,000	6,156,014
Living and Decedent Estates	Vote 1 (Operations and Maintenance) (\$)	1,143,091	1,405,765	1,764,020	1,891,553	3,380,512	9,584,941
	Vote 10 (Grants and contributions) (\$)	145,886	135,886	60,886	275,900	290,900	909,458
	Total for Estates (\$)	1,288,977	1,541,651	1,824,906	2,167,453	3,671,412	10,494,399
Treaty Annuities	Vote 1 (Operations and Maintenance) (\$)	328,193	425,861	544,742	723,996	1,146,850	3,169,642
	Vote 10 (Grants and Contributions) (\$)	-	-	-	-	-	-
	Total for Treaty Annuities (\$)	328,193	425,861	544,742	723,996	1,146,850	3,169,642
Total		2,569,493	2,926,492	3,557,484	4,870,324	5,896,262	19,820,055

At the writing of the final report, a separate cost breakdown for the delivery of Living and Decedent Estates was not available. Of note is that costs for Band Moneys have stayed relatively stable and that both the Estates and Treaty Annuities programs have seen marked increases in costs – two times and 3.5 times respectively.

An additional cost for Band Moneys that is not captured in the table above is the interest paid. The average annual balance for Band Moneys for the duration of the evaluation was approximately \$1,022,698,294.⁶ As the Government of Canada holds the funds and does not invest them, it must pay interest on this balance. In 2011-12, approximately \$27,938,826 was paid in interest for Band Moneys.⁷

⁶ Government of Canada, *Public Accounts of Canada*, 2006-2011, accessed at: <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html>, June 27, 2012.

⁷ Data extracted from the TFMS database, June 2012.

2. Evaluation Methodology

2.1. Evaluation Scope and Timing

This evaluation looked at Indian Moneys, which includes Band Moneys, Living and Decedent Estates and Treaty Annuities. The evaluation examined activities undertaken over a five-year period between fiscal years 2006-2007 through 2010-2011. The Terms of Reference were submitted to the Evaluation, Performance Measurement and Review Committee on June 20, 2011. The modifications required by the Committee were reflected in the methodology report, approved by the Committee on September 23, 2011. Research was conducted between October 2011 and April 2012.

This evaluation does not cover individual moneys and programming related to minors, adoptees or missing persons. Nor does it cover the management of suspense accounts.

2.2. Evaluation Issues and Questions

In line with the Terms of Reference, this evaluation focused on the following issues:

Relevance: including continued need for IMETA, alignment with federal roles and responsibilities and federal and departmental priorities

Performance: including the extent to which IMETA has achieved expected results and demonstrated efficiency and economy. The evaluation also looked at lessons learned and alternatives.

2.3. Evaluation Methodology

2.3.1 Data sources

The findings and recommendations in this report are based on an analysis of the following data sources:

- *Literature reviews:* Literature reviews were conducted for each component of IMETA and contributed largely to the examination of relevance. Materials reviewed included special studies, audits, evaluations, reports on plans and priorities and other information pertaining to the origins, purpose, expected results and continued need of IMETA. Government of Canada documents such as the Speech from the Throne, budget documents, official announcements, agreements and joint initiatives were also reviewed to determine program alignment with federal and departmental priorities. The literature review also sought out available information on similar programs and activities in the private and public sectors in provinces, territories and abroad to inform the analysis of best practices and alternatives.

- *Document review*: A review of documents generated by each program component allowed for the preparation of individual program profiles and contributed to the analysis of effectiveness, efficiency and economy. Examples of documents reviewed include program manuals, year-end reports, program files, information systems, and other analysis or special studies conducted by the programs.
- *Key Informant Interviews*: A total of 54 interviews were conducted in person or over the phone to solicit individual perspectives on the relevance and performance of IMETA and to contribute to case studies described below. Thirty-seven interviews were with IMETA staff at Headquarters (HQ) and in the regions. Eight interviews were conducted with AANDC staff whose work touches on IMETA. Seven interviews with external experts were conducted for Band Moneys and Living and Decedent Estates and focussed largely on best practices and possible alternatives. Two interviews were conducted with First Nations that had a high volume of Band Moneys transactions. Table 2.1 provides a breakdown of the interviews conducted for each component:

Table 2.1 Breakdown of Number of Interviews and Interview Participants by IMETA Component

IMETA Component	Interview Participants	# of Interviews
BAND MONEYS	IMETA staff from HQ, Alberta and Saskatchewan	5
	Other AANDC staff knowledgeable of Band Moneys, including a departmental historian and representatives from Lands and Environmental Management and Corporate Accounting and Reporting Services	4
	External experts, mainly lawyers and financial managers, that have worked extensively with First Nations setting up private trust funds	3
	First Nations that have extensive experience with Band Moneys transactions	2
	TOTAL FOR BAND MONEYS	14
ESTATES (Living and Decedent)	IMETA staff from HQ, Northwest Territories, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia	20
	AANDC representative from Application and Database Development	1
	External experts (personnel at Wikwimekong First Nation and the Mohawk Council of Akwesasne and Professors of Law from the University of Montreal)	4
	TOTAL FOR ESTATES	25
TREATY ANNUITIES	IMETA staff from HQ, Saskatchewan, Manitoba and Ontario	10
	TOTAL FOR TREATY ANNUITIES	10
ALL	IMETA management at HQ and in Saskatchewan	2
	AANDC representatives from Legal Services	3
	TOTAL FOR ALL	5
TOTAL NUMBER OF INTERVIEWS		54

Tailored interview guides were prepared for HQ and regional IMETA staff, managers, other AANDC staff, First Nations and external experts. Interview responses were transcribed and analyzed to identify common themes or ideas in responses. Evidence from interviews presented in this report were based on statements from multiple individuals and do not represent the views of one individual.

- *Case studies:* A number of case studies were completed to look for efficiencies in program delivery across the country and contributed greatly to the development of the program profiles. The Living Estates case study examined program design and delivery and the identification of best practices in all regions. The Decedent Estates case studies reviewed AANDC initiatives to promote the administration of estates by First Nation communities. One Treaty Annuities case study focused on the identification of best practices in Saskatchewan, Ontario, Manitoba and the Northwest Territories. A second case study was completed to better understand the TAPE program.
- *Study on Alternatives to Indian Moneys:* This study identified examples of First Nations trust funds and lessons learned regarding their structure and use. The study looked at different models for trust funds, factors for successful trust management, features of trust fund agreements, qualities of First Nations, which are successfully managing their trust funds and the impact of trust funds on communities. This study contributed to the discussion of best practices and alternatives to Band Moneys.

2.3.2. *Source limitations*

The methodologies identified above have limitations that must be noted so that the strength of the findings and recommendations of this report can be properly situated.

Document Review: Data available in the Trust Fund Management System (TFMS) is excellent and allowed for significant quantitative analysis to support findings. However, the national information systems for Living and Decedent Estates (Estates Reporting System) and Treaty Annuities (Treaty Payment System) are outdated, poorly designed and contain gaps in information making them unreliable. As a result, many of the findings related to estates and treaty annuities rely on qualitative lines of evidence or quantitative data from one or two regions. Reliable national-level data and gender-specific data are rare.

Furthermore, current reporting of delivery costs is not separated out by individual program component. The need for this information was identified early in the project, but program representatives reported difficulties obtaining costs by component because budgets are assigned to a cluster of activities and resources are shared. Partial information representing the delivery costs for one year or one region was obtained and is presented in the report, however, partial information must be considered as illustrative of a trend and not definitive.

Key Informant Interviews: For Living and Decedent Estates, interviews with IMETA staff were conducted in all regions in order to understand the impact of different approaches to program delivery. For Band Moneys and Treaty Annuities, the strategy was to conduct interviews with IMETA staff in the regions that have the greatest activity; for Band Moneys this was Alberta and

Saskatchewan, and for Treaty Annuities interviews with regional staff were scheduled in Saskatchewan, Manitoba and Ontario. As a result, the findings related to Band Moneys and Treaty Annuities do not represent a national picture.

The limited involvement of First Nations individuals and organizations in the key informant interviews is also viewed as a weakness in this analysis. Two First Nations were interviewed for Band Moneys, but it was deemed inappropriate to contact bereaving heirs to inquire about their experiences with AANDC Decedent Estates programming or dependent adults regarding Living Estates. For Treaty Annuities, the perspectives of Treaty First Nations were not obtained.

Finally, the discussion of alternatives and best practices relating to Estates could have been enhanced by interviews with Provincial Public Trustees.

2.4. Roles, Responsibilities and Quality Assurance

The Terms of Reference and Methodology Report were developed by EP MRB with input from IMETA representatives in the National Capital Region. EP MRB planned the evaluation, defined methodologies, created evaluation tools, completed literature reviews, scheduled and conducted interviews, designed case studies, reviewed reports, analyzed findings, drafted preliminary findings and recommendations, prepared technical and final reports and reported on progress to Working Group and Management. Castlemain Management Consulting was engaged to complete the Estates literature review and conduct a study of alternatives to Indian Moneys.

A Working Group with representatives from EP MRB and IMETA staff from HQ and the regions was formed to provide advice and guidance on program profiles, logic models, methodologies, evaluation questions, regional visits, preliminary findings and the draft final report. The preliminary findings were also presented to the Directors General Policy Coordination Committee on May 17, 2012.

3. Band Moneys

3.1. Program Profile

This section provides an overview of Band Moneys, including the origins and current functioning of the program, objectives, management, stakeholders, beneficiaries and resources.

3.1.1 Background and description

Throughout the 18th and early 19th centuries, the Indian Department was under military control and Indian policy was primarily geared to maintaining Indians as military allies or keeping the peace. Early activities included negotiating treaties, paying annuities and the management of funds from the sale of ceded lands. Band Moneys emerged in the early 1800s from the need for accurate record keeping to manage the money generated from the sale, rent, or lease of Indian lands, property and renewable and non-renewable resources, and the accrual of interest.⁸

In the early 19th century, Indian and Band Moneys were invested in England. These funds were later transferred to Canada and invested in various securities such as Provincial Bonds, Municipal Loan Fund Bonds and Grand River Navigation Company stock. The Government preferred that the principal be invested and the interest earned would provide a source of revenue for bands.⁹ By Order in Council passed in 1861, the Province of Upper Canada assumed control over these securities from the Imperial Crown and thereafter Indian and Band Moneys were credited to accounts and held in a “Trust Fund”.¹⁰

The concept of preserving the principal for future generations was introduced in 1839. So important was the preservation of capital that it was also common practice to require the repayment of capital for some expenses with interest. This practice was made official in 1938 – loans could be made to Indian bands for purchase of farm implements, machinery and livestock, fishing and other equipment, grain seed and materials for handicrafts. Sums were paid out of band funds with an interest rate of five percent.¹¹

Despite federal interest in protecting capital, by the late 19th century band capital and revenue moneys were being used to support the growing expenses of the Indian Department and the federal government’s “civilization program”, which can be traced to an 1826 inquiry into the affairs of the Indian Department. This inquiry recommended settling Indians on farms and substituting farming implements and farm stock for the annual presents. Over time, the statutory principles governing the use of capital were frequently amended, continually expanding the list of purposes for which they could be expended.¹² An amendment to the *Indian Act* in 1918 allowed expenditure of band money without band consent. Over time, moneys were used to

⁸ Joan Holmes and Associates Inc. *The Management of Indian Trust Funds, Volumes I and II*. Report for Assessment & Historical Research Directorate, Aboriginal Affairs and Northern Development Canada, 2009, 6.

⁹ Joan Holmes and Associates Inc., *The Management of Indian Trust Funds*, 9.

¹⁰ *Ibid.*, 88

¹¹ *Ibid.*, 118

¹² *Ibid.*, 63

support capital projects, education (including residential schools), the purchase of agricultural implements, salaries for Indian Department officials, and the purchase of goods.

Under the 1951 *Indian Act*, the Minister could no longer authorize capital and revenue expenditures without the consent of Band Council, however, the Minister remained responsible for determining whether proposed expenditures were permitted under the *Indian Act* and were to the benefit of band members. There has been no evolution to sections of the *Indian Act* pertaining to Band Moneys since 1951.

The *Indian Act* defines Indian moneys as “all moneys collected, received or held by Her Majesty for the use and benefit of Indian or Bands”. As title to reserve lands rests with the Crown, all moneys derived from reserve land activities must be collected by the Department and deposited ‘in trust’ for the benefit of the First Nation for which such lands were set aside.

Band Moneys under Section 62 of the *Indian Act* are referred in two categories as:

1. *Capital moneys* – derived from the sale of surrendered lands or the sale of the capital assets of a First Nation. These moneys include royalties, bonus payments and other proceeds from the sale of timber, oil, gas, gravel or any other non-renewable resource.
2. *Revenue moneys* – all Indian moneys other than capital moneys. They are derived from a variety of sources, including, but not limited to, the interest earned on band capital and revenue moneys, fine moneys, proceeds from the sale of renewable resources (e.g., crops), leasing activities (e.g., cottages, agricultural purposes) and other commercial ventures.

Band capital and revenue moneys are considered public moneys, not appropriated by Parliament, and are held by the Crown within the Consolidated Revenue Fund (CRF) on behalf of First Nations. Funds are administered by the Minister of AANDC pursuant to sections 18(2), 28(2), 35(1), 37(1), 38(1), 39, 61 to 69 and 104 of the *Indian Act*. The CRF is the single fund used to receive all moneys collected by Canada.

Band capital and revenue moneys earn a rate of return (interest rate) set by the Governor in Council through an Order in Council. Interest rates are based on Government of Canada bonds having a maturity of ten years or over, using the weekly yields published by the Bank of Canada. Based on the month-end balances in the First Nation's account, interest is calculated quarterly, compounded semi-annually and deposited every six months (April and October) into the First Nation's revenue account.

It is relatively easy for bands to access revenue moneys compared to capital moneys. Under Section 66 of the *Indian Act*, subject to consent of the Band Council¹³, revenue moneys may be spent for any purpose that will promote the general progress and welfare of the band or any member of the band (66(1)) or to assist sick, disabled, aged or destitute Indians and for the burial

¹³ If a First Nation receives Section 69 authority over its revenue moneys, it assumes full responsibility for all revenue expenditures that are requested by the band council (but not authority to collect revenue). This includes determining whether any given expenditure will be for the general progress and welfare of the First Nation and its members.

of deceased indigent members of the band (66(2)). Furthermore, revenue moneys may be spent for a number of reasons, without consent of the band council, including the destruction of insects or pests, to address the potential spread of disease, to provide for premise inspections, to prevent overcrowding of housing, to provide sanitary conditions and to construct and maintain boundary fences. However, spending without band council consent is rarely, if ever, exercised.

In addition, under Section 69 of the *Indian Act*, bands may gain control over the management and expenditure of their revenue moneys. To do this, they must obtain consent from their membership through a Band Council Resolution (BCR) and submit it to AANDC for review. If all conditions are met, and AANDC approves, an Order in Council is prepared for signature by the Governor General.

The expenditure of capital moneys is more strictly controlled under Section 64(1) of the *Indian Act*. Permitted expenditures of capital moneys as defined in Section 64(1) of the *Indian Act* includes items such as: per capita distributions, construction and maintenance of roads, bridges, water courses and boundary fences; the purchase of additional reserve land or interest in land on behalf of a band member; purchase of livestock and farm equipment; construction and maintenance of permanent improvements and works; providing loans; land and property management expenses; construction and financing of housing; and any other purpose approved by the Minister.

Approval of expenditures under sections 64, 66 and 69 has been largely delegated to the regions, however, capital expenditures under Section 64 (1) (d) and (k) must be approved by the Minister. There is no provision in the *Indian Act* that gives First Nations control over their capital revenues similar to those in Section 69, which gives band control over their revenue moneys. First Nations may gain control over their capital moneys through FNOGMMA, however, to date, no First Nation has been successful in the process for reasons explained later in the report.

The process to access capital and revenue moneys held in the CRF is as follows:

1. **Formal request:** First Nations submit a formal request to spend capital or revenue funds held in the CRF through a BCR.
2. **Departmental assessment:** An initial review of the BCR examines the benefit to members by looking at: proposed costs, impact on account balance and alternative sources of income; socio-economic impacts such as dependence on existing programs and services such as social assistance; possible environmental impacts; legal and other implications; and the annual operating budget where applicable.

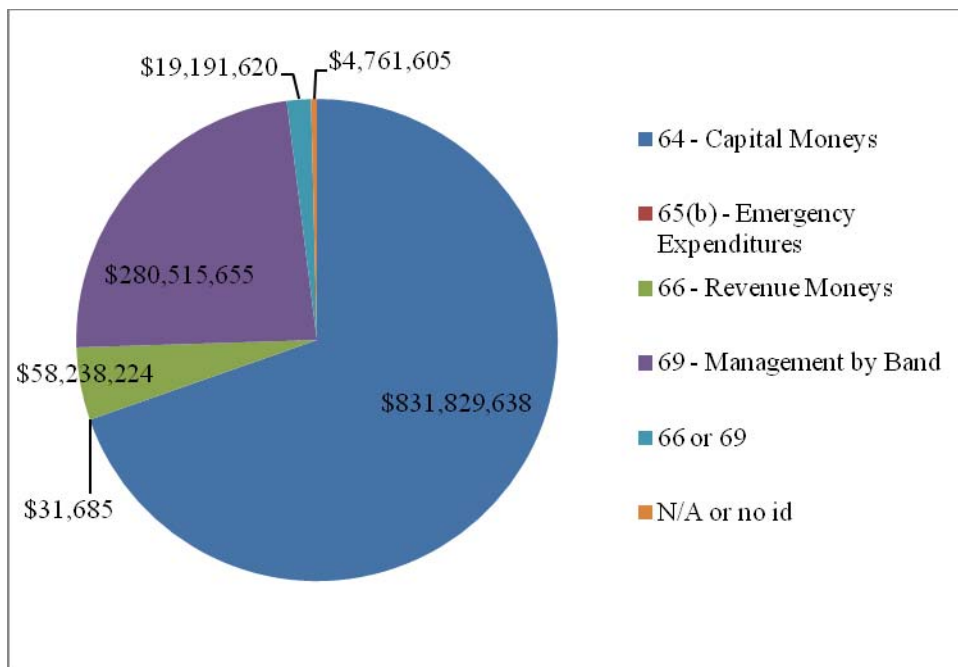
Supporting documentation must be provided for capital expenditures under Section 64 and revenue expenditures under Section 66 to enable departmental officials to make an informed decision on the merits of an expenditure request. Requirements depend on the specific purpose and nature of the request.

If the review and assessment are satisfactory, departmental staff must then prepare the appropriate approval documentation with their recommendation for full, partial or conditional approval.

3. **Release of Band Moneys:** Once approval has been given, required information is then recorded in the TFMS and made available for the creation of a Payment Obligation Certificate and management approval.

An analysis of the types of expenditures by section of the *Indian Act* between 2006-07 and 2010-11 reveals that revenue expenditures under Section 66 represent five percent of total expenditures and Section 69 revenue expenditures account for 23 percent of total expenditures. As shown in figure 3.1 below, the majority, or 69 percent, of total expenditures pertain to capital expenditures under Section 64 of the *Indian Act*.

Figure 3.1 Total amount of payment transactions by section of the *Indian Act* between 2006-07 and 2010-11.¹⁴



3.1.2. Objectives and expected outcomes

The immediate outcome identified through the document review and interviews is that Band Moneys capital and revenue expenditures are approved according to the provisions prescribed in the *Indian Act*. The intermediate outcome is that Band Moneys expenditures benefit bands and their current and future members.

¹⁴ Data from the TFMS database, June 2012.

3.1.3. Program management

The IMETA Directorate of the Individual Affairs Branch of the Resolution and Individual Affairs Sector carries out a number of functions related to Band Moneys, however, other areas of AANDC also support or contribute to moneys management activities.

Most administrative and operational responsibilities for the day to day administration of band and individual moneys under the *Indian Act* have been assigned to the regional offices. Regional director generals are responsible for approval of requests for revenue expenditures under sections 66 and 69 of the *Indian Act* and approval of requests for capital expenditures (with the exception of those falling under paragraphs 64(1)(d) and (k) of the *Indian Act*, which remains exclusive for Ministerial approval)¹⁵.

Regional Band Moneys officers consult and provide advice to First Nations on varying aspects of the administration of Band Moneys. In addition, they analyse expenditure requests, review annual Band Moneys budgets, make recommendations regarding expenditure requests, prepare submissions for granting Section 69 authority to First Nations and review annual audited financial statements.

HQ develops national directives, policies and procedures and training materials related to the administration of Band Moneys. It provides functional advice and training to regions on the implementation of policies and procedures. IMETA HQ also works with sectoral partners and with regions to review expenditure requests, which fall under sections 64(1)(d) and (k) and on recommendations from regions for a First Nation to obtain Section 69 authority over its revenue moneys.

3.1.4 Key stakeholders and beneficiaries

First Nation Communities and Individuals

The primary beneficiaries of Band Moneys are bands with funds held in trust and their members. Bands are responsible for preparing expenditure requests and required documentation for submission to AANDC, making expenditures on behalf of their members and reporting back to AANDC.

Lands Branch, Lands and Economic Development Sector

Funds are generated through the sale of renewable resources and non-renewable resources (sand, gravel, timber) and transactions (leases, permits, rights of way), which are administered by the Lands and Economic Development Sector. Regional and district Lands staff ensure the collection of all moneys prescribed in agreements. These funds are then deposited into the CRF and administered by AANDC pursuant to the *Indian Act*.

¹⁵ Section 64(1) (d) of the *Indian Act* says the Minister may authorize the expenditure of capital moneys with the consent of the council to purchase land for use by the band as a reserve or as an addition to reserve. Section 64(1) (k) of the *Indian Act* says the Minister may authorize the expenditure of capital moneys with the consent of the council for any other purpose that in the opinion of the Minister is for the benefit of the band.

Indian Oil and Gas Canada

The *Indian Oil and Gas Act* and regulations provide the authority for Indian Oil and Gas Canada to manage oil and gas resources on First Nation lands. Under this legislation, Indian Oil and Gas Canada assists First Nations in negotiating, issuing and managing oil and gas resources (permits, leases, agreements). It also verifies oil and gas production and provides forecasts of projected royalties. Resulting revenues from oil and gas royalties, bonuses, etc., are deposited into the CRF to the credit of applicable First Nations and are administered by AANDC pursuant to the *Indian Act*.

Corporate Accounting and Material Management Branch, Chief Financial Officer

The Chief Financial Officer is responsible for corporate accounting and financial administration. It manages and maintains the TFMS and is primarily responsible for the maintenance and coordination of semi-annual deposits of interest into revenue accounts and account policy and procedures.

Legal Services Unit, AANDC

Legal Services and the Department of Justice provide advice on how expenditures could directly or indirectly affect the Minister's fiduciary obligations in relation to the overall administration of Band Moneys.

3.2. Findings – Relevance

There are three measures of relevance: continued need, alignment with federal roles and responsibilities and alignment with federal and departmental priorities. The evaluation found that the relevance of Band Moneys is primarily driven by high usage of Band Moneys; a lack of workable alternatives that would allow First Nations to access their revenue and capital outside the *Indian Act*, and; legislation and obligations in the *Indian Act*.

The close linkage between Band Moneys and the *Indian Act* has resulted in an administration design focussed on ensuring compliance. As a result, the evolving needs of First Nations, such as the desire to invest Band Moneys in emerging economic opportunities are constrained by administrative processes designed according to the requirements of the *Indian Act*. The rigidity of Band Moneys is also reflected in its lack of alignment with federal and departmental priorities.

Finding # 1: Continuing need is confirmed by the high volume of Band Moneys transactions and difficulties gaining access to Band Moneys through other mechanisms.

Between 2006-07 and 2010-11, there were a total of 5019 payment transactions involving the expenditure of \$1.2 billion in Band Moneys.

Table 3.2 Total Number and Amount of Payment Transactions by Region for 2006-07 to 2010-11¹⁶

Region	Number of Bands in Region with Payments	Number of Payment Transactions	Total Amount of Payment Transactions
Northwest Territories	1	3	\$243,100.00
Atlantic	11	78	\$4,509,344.15
Quebec	7	39	\$10,413,356.66
Ontario	36	167	\$26,087,759.10
Manitoba	10	26	\$1,289,822.30
Saskatchewan	55	1297	\$130,422,953.47
Alberta	39	2841	\$953,394,114.40
Yukon	3	5	\$3,554.61
British Columbia	106	563	\$74,452,467.13
Total	268	5019	\$1,200,816,471.82

As the Oil and Gas Sector accounts for a significant percentage of capital moneys, the majority of funds are held by bands in Alberta and Saskatchewan. Table 3.2 shows that Alberta and Saskatchewan were the source of most payment transactions and expenditures. Alberta accounted for 57 percent of total payment transactions and 79 percent of total expenditures. Saskatchewan accounted for 26 percent of total payment transactions and 11 percent of total expenditures. Further, 17 of the top 20 bands in terms of the number of payment transactions and expenditures are from Alberta.

Since the passing of the 1951 *Indian Act*, First Nations have continuously petitioned for more control over their capital moneys.¹⁷ However, to date, available opt-in legislation, which provides an alternative to Band Moneys, has been difficult to implement. FNOGMMA is federal opt-in legislation that was designed in cooperation with First Nations. It came into force in 2006 to provide an alternative to the *Indian Oil and Gas Act* and sections 64 and 66 of the *Indian Act* (i.e., the sections pertaining to the expenditure of Band Moneys). First Nations that opt-in gain control over oil and gas development and/or control of their trust moneys.

Expected outcomes for FNOGMMA are improved economic development, greater utilization and increased value of community land and resources, increased First Nation authority and control over lands and resources and increased flexibility to react to economic opportunities and community needs. However, to date no First Nation has been successful in the process.

An evaluation of FNOGMMA conducted in 2010 found that the program was too rigorous and difficult for the participating First Nations. Identified barriers and concerns relating to the implementation of FNOGMMA include lack of an enforcement mechanism, loss of federal fiduciary responsibilities, environmental liability, the complexity of oil and gas regime and lack

¹⁶ *Ibid.*

¹⁷ Joan Holmes and Associates Inc., *The Management of Indian Trust Funds*, 11.

of community capacity. Furthermore, the current FNOGMMA budget does not allocate enough dedicated financial resources to the moneys management component of the program.

First Nations can also gain access to Band Moneys through the settlement of Comprehensive Land Claim Agreements (CLCAs), which are modern-day treaties that give Aboriginal signatory groups access to the land and resources. However, CLCAs are complex agreements that redefine a First Nation's relationship with the Crown and the negotiation of CLCAs is costly and time consuming.^{18,19}

The only way First Nations have been successful in gaining full access to capital moneys has been through court-ordered transfers. Two Alberta First Nations, Samson and Ermineskin, obtained transfers of all present and future capital moneys through terms and conditions set out in a court order. The decision to transfer capital moneys from the Government of Canada to these First Nations was made at their request. Each sought a separate federal court order that prescribed the criteria they were required to meet before the Minister would allow for the transfer of funds. Samson had \$350 million transferred outside the CRF in 2006 and Ermineskin received \$240 million in 2011. Today, funds generated from reserve lands for Samson and Ermineskin are collected by the Department, but then are transferred to a trust set up by the bands. While litigation has resulted in a positive outcome for these two First Nations, legal settlements are costly, time consuming and do not represent a desirable alternative to Band Moneys.

In short, current alternatives to access Band Moneys are difficult to implement, too costly, or involve lengthy processes. As long as First Nations have no other workable options for accessing Band Moneys held in trust by the Government of Canada, the Band Moneys program continues to be relevant.

Finding # 2: Band Moneys is rooted in legislation and court decisions as a result, the program has not adapted well to emerging federal and departmental priorities.

There are a number of pieces of legislation, which outline the role of the federal government and the Minister of AANDC in relation to Band Moneys. The Canadian *Constitution Act, 1867* defines the division of power in Canada and establishes federal government jurisdiction over First Nations people living on and off reserve. Section 91(24) of the *Constitution Act* prescribes that the Minister has exclusive authority over Indians and lands reserved for Indians. As a result, all title to reserve lands rests with the Crown and all moneys derived from reserve land activities are payable to the Crown. The *Financial Administration Act* requires these moneys to be deposited into the CRF and directs the record keeping of all moneys, including those deemed Band Moneys.

¹⁸ AANDC, "Comprehensive Claims," accessed at: <http://www.aadnc-aandc.gc.ca/eng/1100100030577>, June 2012.

¹⁹ AANDC, "Fiscal Arrangements for Aboriginal Self-Government in Canada," accessed at: <http://www.aadnc-aandc.gc.ca/eng/1328631622465>, June 2012.

The *Indian Oil and Gas Act* defines the management of moneys generated from oil and gas. Moneys are collected by Indian Oil and Gas Canada on behalf of First Nations and deposited into either capital accounts (royalty and bonus) or revenue accounts (rents and access fees) in the CRF. These moneys are accessed like other Band Moneys, pursuant to the provisions of the *Indian Act*.

The program design and delivery has also been shaped over time by court cases and legal advice and opinions. The results of legal decisions have been incorporated into policies and procedures to reduce the incidence of future litigation and risks associated with the Minister's exercise of discretion over the administration of Band Moneys. The close linkage between Band Moneys, legislation and legal decisions has resulted in an administration design focussed on ensuring compliance with the *Indian Act*. As a result, the evolving needs of First Nations cannot be easily integrated into program design. Ties to the *Indian Act* also limits adaptation of Band Moneys to reflect changes in the federal vision and priorities relating to First Nations. This is discussed further below.

At the Crown-First Nations Gathering in January 2012, the Prime Minister highlighted the following federal priorities: 1) improved governance; 2) increased Aboriginal participation in the economy; 3) empowerment of individuals; and 4) sustainable communities. These priorities complement the June 2011 Joint Action Plan between the Minister of AANDC and the Chief of the Assembly of First Nations in which joint commitments were agreed to in the following four areas: 1) Education; 2) Accountability, transparency, capacity and good governance; 3) Economic development; and 4) Negotiation and Implementation. The current operation of the Band Moneys regime needs to better support federal priorities relating to governance, economic development and sustainable communities.

The Government of Canada and the Assembly of First Nations have indicated their support and interest in improving governance through increased transparency. Bill C-27 entitled *An Act to enhance the financial accountability and transparency of First Nations*, which was introduced in November 2011, demonstrates the federal government's commitment towards this issue. The Act requires the preparation and public disclosure of audited consolidated financial statements and compensation provided to Chief and Council.

Although the annual Band Moneys reporting process is in line with the Year End Reporting Handbook and Indian Moneys Regulations, findings detailed under the performance section for Band Moneys reveal some weaknesses in reporting on results back to band members. Reporting is provided to AANDC and is focused on expenditures, not impacts on community members and therefore does not permit an analysis of the impact of Band Moneys expenditures on community well-being.

There is no requirement to make reporting on Band Moneys expenditures available to band members – it is left to the band to decide. For bands that are open and transparent, members have access to Band Moneys expenditure information. Interviews revealed that some bands are very open and consult with community members before budget meetings and after the funds are spent. Members of less open bands would not be able to easily access information. If members want access to audited financial statements, they must contact the band and if that is unsuccessful,

members can make a request to AANDC. The inconsistencies and difficulties accessing information about Band Moneys expenditures are inconsistent with calls for greater transparency and accountability.

Economic development is a clear priority for both the federal government and First Nations. The 2009 Federal Framework for Aboriginal Economic Development and the 2012 Budget emphasized the need for “expanding opportunities for Aboriginal peoples to fully participate in the economy”. The discussion guide for the New Federal Framework identified a number of barriers to economic development, including inability to access capital, legislative and regulatory barriers and limited access to lands and resources. Band Moneys impacts all these issues. Capital and revenue moneys represent a source of funds that could be used for economic development. Given the importance of economic development to the future of First Nations, Band Moneys could permit quicker access to funds to allow for a more timely response to emerging opportunities.

While quick access the Band Moneys has been achieved for revenue expenditures, which account for approximately 30 percent of total expenditures, the remaining 70 percent of capital expenditures fall under Section 64 of the *Indian Act*, which have stricter controls. For Section 69 Bands that have control over the management and expenditure of revenue moneys, funds can be accessed relatively quickly as AANDC provides an approval process with the regional offices, which have authority to approve revenue expenditures. Turn-around times for revenue expenditures for bands without Section 69 authority are also generally processed within established timeframes making revenue moneys readily available for economic development purposes.

However, under the *Indian Act*, more restrictions are placed on expenditures of capital moneys. The expenditures permitted with capital moneys outlined in sections 64(1)(a)-(j) do not relate specifically to economic development but are more administrative in nature to support a band’s day-to-day governance and operations. To use Band Moneys for economic development purposes, bands must use Section 64(1)(k), which requires ministerial approval and involves a lengthy assessment and approval process. Any delays or impediments to accessing capital moneys may translate into missed economic development opportunities and as such, the current process does not align with the priorities of both the federal government and First Nations.

The current design of the Band Moneys program appears to be contrary to the departmental objective of facilitating greater self-sufficiency for First Nations. The concept of self-sufficiency is captured in the departmental vision as follows:

“Our vision is a future in which First Nations, Inuit, Métis and northern communities are healthy, safe, self-sufficient and prosperous – a Canada where people make their own decisions, manage their own affairs and make strong contributions to the country as a whole.”

The current Moneys Management Framework under the Department’s Program Activity Architecture provides AANDC a control framework over expenditures, which appears to be at odds with this vision.

The lack of alignment with the needs of First Nations and the lack of adaptability to changing priorities suggest that perhaps Indian Moneys should be moved out of the *Indian Act*. As a result, alternatives should be explored and these alternatives should address the shortcomings of the existing program.

Recommendation # 1:

- **Explore the development of a workable alternative to Band Moneys that would provide First Nations access to funds in the Consolidated Revenue Funds outside the constraints of the *Indian Act* and present proposed alternative to the Strategic Policy Committee.**

Recommendation # 2:

- **Any changes to Band Moneys and alternatives be designed to increase the transparency of Band Moneys expenditures to members, better support access to capital for economic development and promote greater self-sufficiency.**

3.3. Findings – Performance

The evaluation identified two outcomes. The first outcome was that Band Moneys expenditures are made according to the *Indian Act* and the second outcome was that approved expenditures benefit current and future members (by promoting due diligence in expenditure decisions and preserving capital for future generations).

According to the findings, the first outcome, although focused internally on fulfilling departmental responsibilities in the *Indian Act*, has been achieved. In reference to the second outcome, while it appears that some processes and requirements for accessing Band Moneys do promote evidence-based decision making, thereby contributing to good-governance, the impact of expenditures on members cannot be determined through existing reporting. In addition, the preservation of capital may not be occurring at a level that will yield sufficient benefit for future generations.

Findings suggest that efficiency and economy could be improved through training and increased communication. However, the most significant impact could come from the implementation of a viable alternative to Band Moneys. Two possible alternatives are outlined in Section 3.3.3 along with suggestions regarding the essential features of a private trust, which could replace Band Moneys in both alternatives.

3.3.1 Effectiveness

Finding # 3: Band Moneys capital and revenue expenditures are approved according to the provisions prescribed under the *Indian Act* and information requirements aids decision making of First Nations.

The immediate outcome that Band Moneys expenditures are approved according to provisions in the *Indian Act* has been achieved. AANDC staff interviewed were unanimous in the assertion that the primary purpose of Band Moneys was to execute ministerial responsibilities related to Band Moneys as outlined in the *Indian Act*. The Manual for the Administration of Band Moneys, which outlines processes and procedures, is updated regularly and half of the IMETA staff interviewed indicated they follow the guide closely.

The 2010 Audit of Trust Accounts found that “controls were in place designed to ensure accurate and timely processing of trust account receipts and disbursements in accordance with all acts and departmental guidelines”.²⁰ The Individual Affairs Branch has addressed all recommendations from this audit in the Management Response and Action Plan. The Audit resulted in modifications to the TFMS to prompt Band Moneys Officers to insert information before being permitted to proceed to the next screen. This is expected to ensure that expenditure data needed for decision making is tracked appropriately.

Interviews and the document review confirm that the departmental assessment of BCRs promotes due diligence in decision making and contributes to good governance. IMETA staff conduct an assessment of the financial, socio-economic, environmental and legal considerations for each BCR; they review account balances to help preserve the capital balance for future generations; they ensure proposed expenditures comply with expenditures deemed beneficial under the *Indian Act*; and they require reporting back on expenditures to the Department.

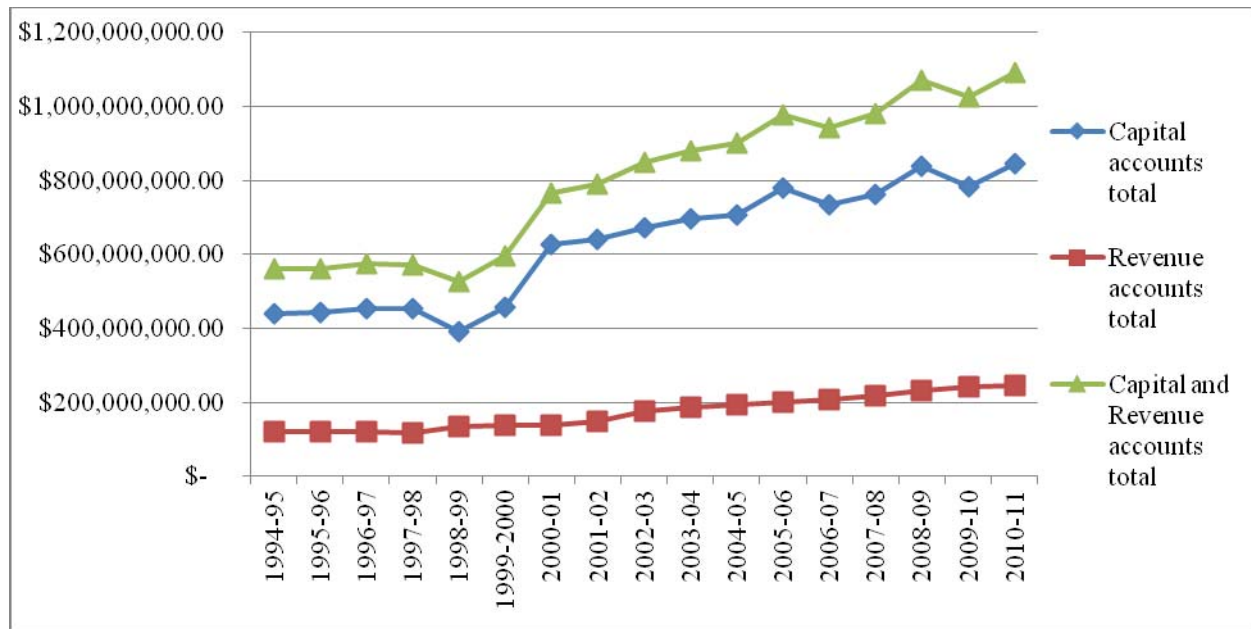
The information requirements are reasonable and provide useful information to bands for expenditure decisions. However, the extent to which they contribute to a permanent impact on good governance or the promotion of an understanding of the importance of checks and balances is unknown. Finally, despite the success in achieving this immediate outcome, it is important to note that this outcome is focused more on the needs of the Department (i.e., fulfillment of the *Indian Act*) than the needs of bands and their membership. A Performance Measurement Strategy would contribute to the identification and articulation of outcomes that are externally focused on the needs of First Nations.

Finding # 4: There has been a positive growth in capital and revenue balances over time.

Band Moneys has been successful in preserving some capital moneys for the use of future generations. This is reflected in Figure 3.3 below, which shows positive growth in both capital and revenue balances between 1994-95 and 2010-11.

²⁰ AANDC. (2010). *Audit of Trust Accounts Internal Audit Report*. Accessed at: <http://www.aadnc-aandc.gc.ca/eng/1321564482345>, August 10, 2012.

Figure 3.3 Total amounts in Band Moneys capital accounts, revenue accounts and both accounts together between 1994-95 and 2010-11.²¹

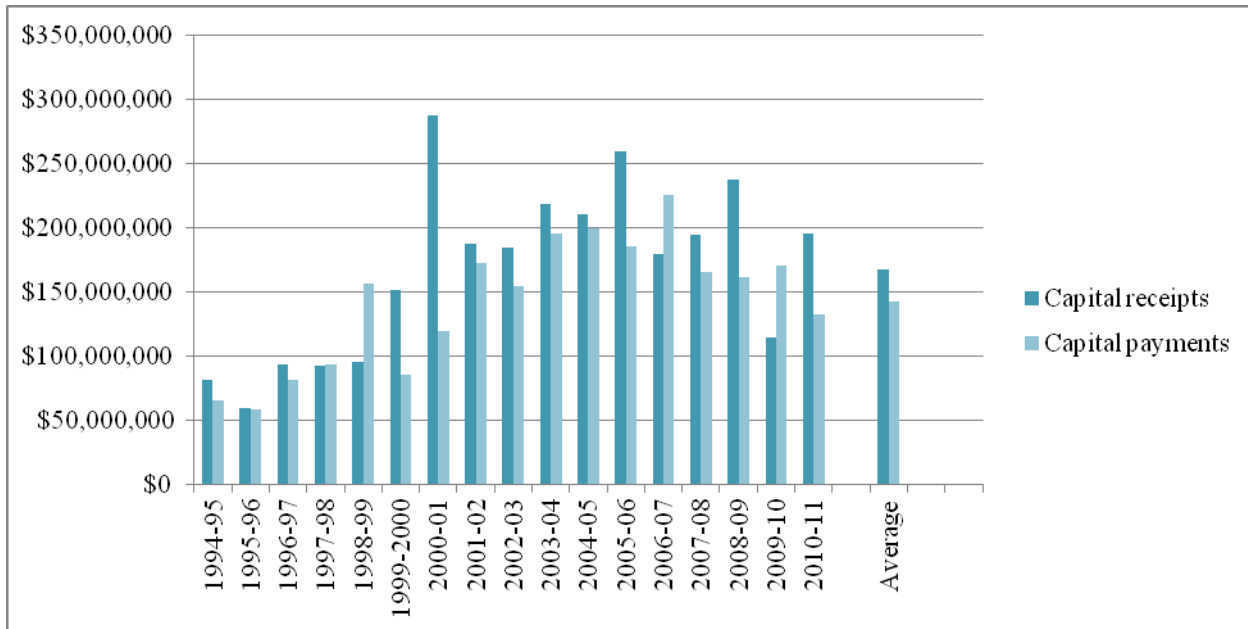


While capital accounts are growing, Figure 3.4 below shows that most capital moneys are being spent. Between 1994-95 and 2010-11, capital payments amounted to an average of 85 percent of capital receipts.²² For the duration of the evaluation from 2006-07 to 2010-11, payments accounted for an average of 93 percent of capital revenues.

²¹Government of Canada, *Public Accounts of Canada*, 1994-2011. This analysis excludes a court-ordered transfer of \$350 million to Samson Cree Nation in 2005-06.

²² Government of Canada, *Public Accounts of Canada*, 1994-2011. This calculation excludes a court-ordered transfer of \$350 million to Samson Cree Nation in 2005-06.

Figure 3.4 Total receipts and payment amounts in Band Moneys capital accounts between 1994-95 and 2010-11, as well as the average for the time period.²³



In other words, between 2006-07 and 2010-11, an average of seven percent of total capital payments was saved. The balance are capital expenditures focussed on permanent works or capital projects such as roads, bridges and houses, or business ventures and projects with approximately 40 percent of expenditures directed towards non-permanent works.

Recommendation # 3:

- **That AANDC revise the Manual for the Administration of Band Moneys to reflect current policy and modern practices.**

Interviews and the document review provide anecdotal evidence that Band Moneys expenditures benefit bands and their members. Band Moneys contributes to the financial health of a First Nation and supplements funding for key community priorities in infrastructure, education, housing and social programs. Some bands with small account balances will spend money to help membership meet minimum living standards such as funerals, wakes and elder expenses for heat and hydro. First Nations interviewed remarked that Band Moneys provides funding for priority projects and services where no other source of funding exists.

²³ Government of Canada, *Public Accounts of Canada*, 1994-2011. This analysis excludes a court-ordered transfer of \$350 million to Samson Cree Nation in 2005-06.

IMETA staff interviewed observed that the impacts of some projects on current and future members are often difficult to assess. Three out of six Band Moneys officers interviewed identified two areas that are particularly challenging when determining benefit: administration expenses and Per Capita Distribution (PCDs). They commented that it is difficult to link expenditures on the salary of a band officer or individual payments to community members to measurable benefits in the community.

Some interviewees argued that PCDs should not be permitted at all as they do not benefit the community nor future generations. Two external experts felt PCDs do not have a lasting positive impact on a community and should not be permitted in trust fund agreements or if they are, they should be used in very limited circumstances.

IMETA staff recognises that the moneys belong to the band and it is the duly elected Chief and Band Council that have discretion over how it is spent. As a result, arguments in support of expenditures are rarely challenged. In Saskatchewan, the few expenditure requests that were refused were cases in which the benefit to community members was clearly not shown (i.e., funds being sought for salaries for Chief and Council; proper documentation had not been provided, or the band had withdrawn the request).

The Band Moneys program operates on the principle of shared responsibility with First Nations. The Department's role is to ensure the expenditure request is for an authorized purpose (as per the *Indian Act*) and after the release of the funds, the First Nation is accountable to their membership for those expenditures.

IMETA regional staff indicate that they review the audited financial statements of First Nations to verify expenditures, but report that the required level of detail in the statements make it difficult to distinguish amongst the expenditures. The annual audited financial statements only show that money was spent and do not provide an accounting of receipts and expenditures related to specific projects. Although training has been provided on how to review the financial statements, officers struggle with this complex task.

Recommendation # 4:

- **Facilitate a discussion with First Nations on how to report back to members in a clear and useful manner on Band Moneys expenditures.**

3.3.2 Efficiency and economy

An Audit of Trust Accounts, which examined the adequacy and effectiveness of departmental controls over the management of trust accounts was completed in May 2010. The audit recommended improvements in controls for the processing of receipts and disbursements. IMETA has responded to audit recommendations through the Management Action Plan, so this section of the report will focus on additional findings from the evaluation.

Finding # 5: Both internal and external factors contribute to delays in the approval of expenditures.

Both First Nations interviewed noted delays in accessing their funds. They indicated that current timelines for accessing funds are generally acceptable; however, in certain circumstances delays can have a significant impact on the community. In one instance, funds for a housing construction project were finally approved in September after the construction season had passed. It was also mentioned that normal processing times are also limiting as they do not permit the use of funds in crisis situations, for example, to respond to flooding after a heavy rainfall or to respond quickly to an emerging economic opportunity.

The Document Review revealed that when information needed to complete the departmental assessment was not immediately provided by the First Nation, it can cause significant delays. For example, information collected on completed BCRs for Treaty 6 East in Alberta for 2010-11 showed that 11 BCRs with significant delays from 36-325 days were stalled due to incomplete or incorrect information from the First Nation.

Reasons for the delays identified by program staff through the interviews included a lack of band capacity to provide supporting documents. Weaknesses in First Nation financial management capacity were echoed by external experts.

Section 64(1)(k) expenditures are typically associated with lengthy approval processes within the Department because they require ministerial sign-off. Between 2006-07 and 2010-11, the average completion time for a 64(1)(k) BCR, from receipt of BCR in the region to ministerial approval ranged from 114 working days in 2010-11 to 183 working days in 2006-07; the average was 119 working days. It is worth noting that the higher average completion time in 2006-07 may be associated with a higher volume of BCRs for that year (40) and, conversely, the lower average completion time in 2010-11 may be associated with a smaller number of BCRs (7).

To improve the turn-around times for Section 64(1)(k) expenditures, Indian Moneys, Estates and Treaty Annuities could explore the feasibility and desirability of acceptable thresholds for delegating ministerial approval for 64(1)(k) expenditures based on an assessment of the level of risk.

3.3.3 *Alternative delivery models*

Finding # 6: Two options were identified as possible alternatives to Band Moneys, however, there are inherent implementation challenges in each of them.

In terms of expenditures by band, between 2006-07 and 2010-11, four bands account for 40 percent of total expenditures. The top 20 bands in terms of expenditures are responsible for 77 percent of total expenditures and 29 percent of the total number of payment transactions.²⁴ Transitioning these bands to a workable alternative to Band Moneys could result in significant reductions in the number of transactions, thereby reducing departmental administration costs. In addition, as bands transition to these alternatives, the balance of funds held in the CRF would be

²⁴ *Ibid.*

reduced and interest payments on the balance would be similarly reduced. Two alternatives identified through key informant interviews are outlined below:

1. *Modified First Nations Oil and Gas and Moneys Management Act*

FNOGMMA supports self-sufficiency as it allows First Nations to assume direct control of oil and gas exploration, exploitation and revenue collection and management currently carried out by Indian Oil and Gas Canada. In addition, the legislation can provide First Nations with legal authority to manage the investment and expenditure of capital and revenue trust moneys held in the CRF. Unfortunately, as described earlier, no band has successfully completed the FNOGMMA process.

A modified FNOGMMA would identify and address existing barriers to the implementation of the Moneys Management portion of FNOGMMA, such as the bonding and the double majority voting requirements. As a result, First Nations would have a workable alternative to Band Moneys that provides the independence and flexibility to control Band Moneys that they have been demanding.

2. *Enhanced use of Section 64(1)(k)*

As explained earlier, capital expenditures are controlled by Section 64(1) of the *Indian Act*. Section 64(1)(k) covers expenditures not explicitly mentioned in other sections and requires approval of the Minister. The proposal for an enhanced use of Section 64(1)(k) would allow the Minister could use his/her authority under Section 64(1)(k) to give First Nations control over their capital funds in the same way that they are able to gain control of revenue funds through Section 69.

Through the enhanced use of Section 64(1)(k), the Crown would continue to receive funds, but then every month, they would flow through to a private trust set up by the band. As in the requirements for granting Section 69 authority, a policy would be created to establish safeguards such as voting thresholds and a community vote to release Canada from all future liability.

The enhanced Section 64(1)(k) would lead to simplified processes in which funds would come in to the Department and immediately go out again, which would contribute to cost savings on administration. The Government of Canada, however, cannot escape the payment of all interest because the *Financial Administration Act* requires that in a flow-through situation, the Government of Canada must still pay interest on funds even if they are held for only one day.

Both the modified FNOGMMA and the enhanced use of Section 64(1)(k) would require the creation of a private trust to which Band Moneys would be transferred. A trust is a separate legal entity, created through a written trust document. It is a legal agreement where the First Nation, known as the 'settlor', agrees with a person or entity, known as the 'trustee', to hold and deal with property, for the benefit of the First Nation and its members, known as 'beneficiaries'. The trust relationship is a relationship between these three parties.

The study of alternatives to Band Moneys revealed that a successful private First Nations trusts had the following features²⁵: Community members were engaged in planning so the use and structure of the trust reflected community priorities. Permitted expenditures were based on community needs, priorities and financial objectives identified through the planning process. As a result, First Nation governments avoided using newly generated wealth to meet shorter-term operational obligations (that for the rest of society are paid from the collection of taxes and other revenues) as this can lead to an unbalanced and short-term approach that could “short-circuit” investment, wealth creation and its retention. Accountability, reporting and capacity to manage the trust were also essential features of successful trusts.

²⁵ Aboriginal Financial Officers Association of Canada. (2011). *Effective Creation and Management of Trust Structures*. Presentation at the Nation AFOA Trust Workshop. Vancouver: British Columbia.

4.1. Program Profile

At some point in life, individuals may become incapable of caring for themselves and making daily decisions necessary to live. This state of incapacity resulting from mental illness, drug addiction or other medical event leaves these individuals dependent on others to provide the necessities of life. As a result, they are extremely vulnerable to potential abuse and exploitation. The purpose of Living Estates is to protect “mentally incompetent” individuals by identifying trustworthy individuals or organizations to manage their financial affairs indefinitely or until such time they recover from their state of dependency.

This section provides a brief description of Living Estates, including an overview of the origins and current functioning of the program, objectives, management, stakeholders and beneficiaries. Please note that Living Estates will be interchangeably referred to as “program,” “program activities” or “trusteeships.”

4.1.1 Background and description

Living Estates management is rooted in the historical evolution of relations between Aboriginal people and Europeans. In an attempt to civilize and assimilate Aboriginal people, the colonial power created reserves.

The *Indian Act* adopted in 1876 comprised all laws and regulations concerning Indians but did not contain any specific clauses on Indian minors or dependent adults. The 1880 amendment of the *Indian Act* gave the Superintendent General of Indian Affairs the authority to appoint a guardian for minors and an administrator.²⁷ In 1886, the addition of a new clause enabled the Superintendent General to appoint and remove a guardian for Indian minors.²⁸ A further amendment adopted in 1924 gave the Superintendent General the authority to appoint administrators for the estates of deceased and “insane” Indians.

In 1951, the Government of Canada overhauled the *Indian Act* significantly. The key elements of the old laws remained intact, the sections dealing with estates and the transfer of property were simplified to reduce conflicts with provincial legislation. In addition, Section 51 relating to “mentally incompetent Indians” and Section 52 on the guardianship of minors were added to the *Indian Act*.²⁹

²⁶ It is important to note that the evaluation covers the period of 2006-2011. At the time of writing this evaluation (2012), private member's bill C-428 was introduced by Rob Clarke. The Bill proposes to repeal certain sections of the *Indian Act*, including certain powers of the Minister with respect to the administration of estates and wills. The Bill is currently under consideration by Parliament. As such, the Department remains responsible for the administration of estates for First Nations individuals ordinarily resident on reserve and the findings of the evaluation should be read in that context.

²⁷ Leslie, John F. from Public History Inc. AANDC. *The Historical Development of the Indian Act from Colonial Days to 1951 – Volume I*. Prepared for the Claims and Historical Research Centre. 3rd edition 2007, p. 69.

²⁸ *Indian Acts, 1858–1975*, p. 113

²⁹ *Indian Acts and Amendments, 1868–1975*. An Indexed Collection, p. 316.

Section 51 of the *Indian Act*³⁰ provides the Minister of AANDC with the sole authority to manage the property of registered Indians who are deemed to be “mentally incompetent”. The Act defines the “mentally incompetent Indian” as an Indian who, pursuant to the laws of the province in which he/she resides, has been found to be “mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons.” AANDC is not involved in deciding whether or not an adult has become incapable of managing their own financial affairs. Each province/territory has its own method of determining mental incompetence.

When a registered Indian adult who is ordinarily resident on reserve is found, under provincial law, to be incapable of managing his or her own financial affairs by reason of mental incapacity, AANDC becomes responsible for ensuring that the adult’s property and financial affairs are managed for his or her benefit. The Minister has the authority to manage all of the dependant adult’s property both on and off reserve. In exercising the Minister’s authority, the Department is to take an inventory of the property, including cash, bonds, personal effects, vehicles and any interest in land.

The Department’s authority with respect to dependant adults is limited to financial and property management only. An administrator appointed pursuant the *Indian Act* cannot make health care or other non-financial decisions on behalf of the dependant adult. Departmental guidance encourages the identification and appointment of a non-departmental administrator (usually a family member or friend) to manage some or all of the adult’s property and financial affairs. Where no such third party can be found, AANDC acts as the administrator of last resort. It is estimated that AANDC administers the financial affairs of approximately 700 persons.

Manitoba, the Northwest Territories and Ontario have agreements with the provincial/territorial governments to manage living estates. The provincial and territorial agreements were the result of an analysis by the regional offices that concluded the public trustee is better suited for managing living estates. In Manitoba and the Northwest Territories, the public trustee is appointed administrator after the AANDC regional office is notified of the incapacity by the province/territory and after the federal government confirms its jurisdiction. Assets are administered in accordance with the provincial and territorial rules in effect. Departmental funds for these agreements come directly from the region.

The Government of Canada’s agreement with the Public Trustee of Manitoba (March 31, 2012, to March 31, 2015) provides that \$1,200 per year be paid to Manitoba for each dependent adult. The agreement also provides for a maximum of \$800 per file to cover travel costs for the protection of assets. However, the evaluation team was unable to separate out payments to the province from other program expenses to determine the total annual costs paid over the past five years. As noted earlier, operating costs are allocated for a cluster of activities and separating them out by program is difficult.

³⁰ *Indian Act* (R.S.C., 1985, c. I-5). Accessed at: <http://lois-laws.justice.gc.ca/eng/acts/I-5>, May 8, 2012.

The agreement between the Government of Canada and the Public Trustee of the Northwest Territories provides that \$1,500 be paid yearly for each estate under AANDC jurisdiction administered by the territory. The agreement also provides for a maximum of \$5,000 per individual to cover assessment costs. Moreover, the Government of Canada pays travel costs and incidentals incurred for the administration of an estate if previously approved by the Department or incurred at the Department's request; costs are based on Treasury Board rates.

About 20 years ago, an informal agreement was reached between the Ontario regional office and Ontario's Public Guardian and Trustee, which administers most of the files. The AANDC regional office follows up only when it receives a complaint. However, in 2010–11, the public trustee informed the regional office that it would not take any new cases and that it wanted to transfer all active files to the AANDC regional office.

In the case where AANDC assumes responsibility for the administration of a living estate, the Department maintains control indefinitely or until it is notified by the province of a change in the status of the individual. The Department deposits payments into the individuals' accounts, authorizes the payment of rent and other bills, arranges for the purchase of personal items and processes income tax returns.

The Department does not have the authority to investigate claims of physical or financial abuse of a vulnerable adult, as such claims are the responsibility of the provinces. If family or friends suspect that there may be physical or financial abuse or neglect of a vulnerable adult, the Public Guardian of the province is contacted, as the Public Guardian has wide-ranging legal authority to investigate possible physical or financial abuse and take action to protect the vulnerable adult. The Department may terminate an administration where abuse has been reported.

4.1.2 Objectives and expected outcomes

Expected outcomes considered in this evaluation were identified by the evaluators based on available program documentation and interviews and were approved by program managers. Immediate outcomes are that dependent adults are identified and assets are protected, administrators are appointed and funds are available for the use and benefit of dependant adults. The intermediate outcome is that appointed administrators fulfill their obligations by managing and protecting the assets of dependent adults for their benefit.

4.1.3 Program management

The Indian Moneys, Estates and Treaty Annuities Directorate, under the Resolution and Individual Affairs Sector, has overall responsibility for Living Estates. The programs are managed jointly by the national and regional offices. The national office plays a supporting role in the development of policies and procedures for the program's implementation in the regions.

Activities conducted at HQ include management and advisory services such as:

- Advise regions on cases that require analysis beyond the standard policy and on litigation with national policy implications.
- Maintain communication with regions to discuss program design, policy and delivery, etc.
- Organize National Workshops for AANDC employees.
- Develop policy and amend and maintain Policy and Procedures Manuals based on evolving policy, legislation, and court decisions.
- Train regional colleagues.
- Review of regional files to ensure capacity and conformity with established policy and procedures.

Further, HQ's role is to exercise and fulfill the Minister's quasi-judicial role in matters of litigation, allegations, and disputes over estates. The Resolution and Individual Sector also provides statistics on the program (although insufficient to conduct an aggregate analysis) as well as the materials (e.g., manuals and development tools) to support the work of the regions and to promote the awareness and abilities of First Nations for estates management, including planning, the preparation of wills and the administration of estates.

The regional offices are responsible for administering the programs and for the following activities:

- Confirm departmental jurisdiction over dependent adults and decedent estates.
- Contact families, loved ones, heirs, beneficiaries and administrators of estates.
- Identify, gather and secure assets of dependent adults and deceased individuals.
- Identify and appoint an administrator for living and decedent estates.
- Act as an administrator of last resort.

4.1.4 Key stakeholders

First Nations individuals

Living estates serves First Nations individuals deemed "mentally incompetent" by provincial/territorial authorities. The clientele covers a wide range of people, including of aging individuals who have lost their faculties and young homeless Aboriginal people with addictions.

Provincial Public Guardian and Trustee

Canada has entered into agreements with Manitoba and the Northwest Territories, which enables them to administer the estates and financial affairs of individuals under the AANDC Minister's jurisdiction, pursuant to sections 51 and 52 of the *Indian Act*.

First Nation communities, bands and tribal councils

First Nation communities, bands and tribal councils often have interests or a role to play in the estate-related matters of their members, particularly where land-holdings under an estate are involved. Moreover, some play an influential role in the supporting their members with estate-related affairs (e.g., awareness, planning, administration, etc.). Such influence is most apparent where the First Nation and AANDC have made arrangements for certain estate-related activities to be carried out at the community level under the guidance and authority of the Department.

AANDC Lands and Economic Development Sector (Lands Branch)

AANDC Lands Branch personnel are involved in estates when they include interests in reserve land. Their role is to execute the sale of reserve lands where necessary, and record any transfers in the Land Registry.

Legal Services, Department of Justice

Legal Services provides advice and legal opinions to AANDC estates personnel regarding the interpretation of sections of the *Indian Act* relating to Living Estates. Legal advice and opinions that may impact delivery at a national level are integrated in policy, procedures and supporting guidance documents.

The Office of the Indian Registrar (AANDC)

The AANDC Office of the Indian Registrar maintains the Indian Registry, the official record identifying all Registered Indians in Canada, as defined in the *Indian Act*. The Indian Register contains the names of all Status Indians.

4.2. Findings – Relevance³¹

Finding # 7: Living Estates continues to be relevant as it supports the fulfillment of federal obligations to protect vulnerable individuals under its jurisdiction.

As mentioned in Section 3.2.2, federal jurisdiction over First Nations on and off reserve is legislated in the *Constitution Act* and further defined in the *Indian Act*. According to the *Indian Act*, the Minister of AANDC is responsible for the estates of First Nation minors and those who have been deemed “mentally incompetent” by the province or territory in which they live. Section 51 describes the legal obligations of the Minister for incompetent Indians and Section 52 pertains to guardianships and funds of minors. The Living Estates program³² supports the fulfillment of the legal obligations of the federal government as defined in the *Indian Act*. It

³¹ As noted earlier in the report, this evaluation does not cover estates management for minors, adoptees or missing persons.

³² AANDC, “Living Estates Program,” accessed at: <http://www.aadnc-aandc.gc.ca/eng/1100100032363/1100100032365>, June 4, 2012.

is worth repeating, however, that provinces and territories have processes in place and significant expertise in managing living estates for the rest of Canadians.

There is a moral obligation on the part of the state toward vulnerable Aboriginal people. The idea of “moral responsibility” is widely shared by stakeholders in the program. All interviews conducted for the administration of trusteeships with program officers and managers highlight the program’s impact on the protection of the most vulnerable of people, particularly in cases where the value of the estates could lead to abuse. To the question “what would be different for the targeted population if the living estates program did not exist?” most, if not all, of the respondents answered: “There will be many individuals with no voice.”

This vulnerability among individuals is especially marked in older people. They are in the most representative age category of adults under legal protection³³. They are also the most likely to have received a Common Experience Payment following the Indian Residential Schools settlement. According to the Court’s official website on the settlement of the *Indian Residential Schools Class Action Litigation*,³⁴ the settlement provides as much as \$275,000 per individual. Without effective management, however, these individuals may be left without protection for their assets.

4.3. Findings – Performance

As outlined in the program profile, outcomes identified by the evaluation are: dependent adults are identified and assets are protected; administrators are appointed; funds are available for the use and benefit of dependant adults; and administrators fulfill their obligations to dependent adults.

Findings related to the achievement of these outcomes reveal that only one of the outcomes has been fully realized. In regards to the identification of dependent adults, less than half of the regions have a systematic approach in place and AANDC jurisdiction can only be confirmed in a small percentage of files.

The extent to which assets are being protected is not known. Administrators are being identified in each case, but the “administrator of last resort” policy is not being consistently applied in all regions due to concerns that the policy exposes vulnerable individuals and the Minister to increased risk because of a lack of monitoring of third-party administrators. This lack of monitoring makes it impossible to confirm whether dependent adults are protected and whether administrators fulfill their obligations. It is only possible to confirm that funds are being

³³ Loue, S. and M. Sajatovic (eds.). (2008). *Encyclopedia of Aging and Public Health*, Springer Science & Business Media, 853 pages. Podniek, E. (2008). “Elder Abuse: The Canadian Experience”, *Journal of Elder Abuse and Neglect*, 20(2): 126-150. Connell-Carrick, K. and M. Scannapieco. (2008). “Adult Protective Services: State of the Workforce and Workplace Development”, *Gerontology and Geriatrics Education* 29(2): 189-205. Curateur public du Québec. (2011). *Annual Management Report 2010-2011*, 78 pages, accessed at: <http://www.curateur.gouv.qc.ca/cura/publications/rapport-annuel-2010-2011.pdf>.

³⁴ Residential Schools Settlement, Official Court Notice. Accessed at: http://www.residentialschoolsettlement.ca/english_index.html, June 2012.

delivered to dependent adults and obligations towards individuals have been fulfilled in cases where the Department is the administrator.

A number of suggestions to improve efficiency and economy were advanced in the findings such as improved relationships with provincial trustees, clarification of roles and responsibilities, training and information sharing and improvements to the Estates Reporting System. The advantages and disadvantages of moving responsibility of Living Estates to provincial/territorial public trustees is also explored, however, further analysis is required to determine if a transfer of responsibility would be more efficient and effective over suggested program improvements.

4.3.1 Effectiveness

Finding # 8: The processes in place to identify dependent adults are not consistent across regions and AANDC jurisdiction can only be confirmed in a small number of cases.

Key to the identification of dependent adults within AANDC jurisdiction is the notification of mental incompetence by the province. As a result, good relations with provinces are fundamental. An analysis of the notification process between regional offices and provincial/territorial governments revealed that only four out of nine regional offices have a systematic approach to confirm their jurisdiction: Manitoba, Saskatchewan, British Columbia and the Northwest Territories. Other regions, sometimes due to influences beyond the Department's control, function without a systematic approach in place.

For example, the public trustee in Quebec does not always notify the AANDC regional office of individuals found to be mentally incompetent and is, therefore, often in a reactive position. The Alberta regional office has not been able to confirm AANDC jurisdiction since 2009 when the Alberta government passed the *Adult Guardianship and Trusteeship Act*, which prohibits the sharing of information related to person's under provincial care. As a result, AANDC jurisdiction can only be confirmed in approximately four percent of all active Living Estates files in Alberta.

Recommendation # 5:

- **Develop policies and procedures for Living Estates to identify dependent adults and confirm AANDC jurisdiction.**

Finding # 9: Administrators are being identified, however, who is selected as the administrator varies among regions and the AANDC policy to act as "administrator of last resort" is not consistently applied across regions.

There is wide regional diversity in appointing an administrator. The case studies revealed that only the Atlantic and Quebec regional offices consistently attempt to appoint a family member or friend with a close trusting relationship with the adult. In Manitoba, Ontario and the Northwest Territories, it is the province or territory that acts as administrators. In Quebec, individuals who hold positions of authority, such as a health director or the head nurse of the institution in which

the dependent adult is housed, are often appointed as administrators.³⁵ Alberta and British Columbia do not appoint non-departmental administrators and choose to directly administer trusteeships of dependent adults.

Table 4.1 Priority Administrators Selected for Trusteeships by Region

Province	Primary Administrators for Trusteeships			
	Department	Province	Family or friend of incompetent adult	Officeholder in a social or healthcare institution
Alberta	X			
Atlantic ³⁶			X	
British Columbia	X			
Manitoba		X		
Ontario		X		
Quebec	X			X
Saskatchewan	X		X	
Northwest Territories		X		
Yukon	Unknown			

The case study conducted in Alberta region showed that Alberta is unable to confirm jurisdiction over dependent adults since the adoption of the *Adult Guardianship and Trusteeship Act* in 2009. Under this legislation, the medical certificate of (physical or mental) incapacity issued by Alberta’s Office of the Public Trustee can no longer be shared. As a result, no new files have been opened since 2009, and the Alberta regional office is potentially not fulfilling its responsibilities, either because it is not administering the files that should be under its responsibility or because it is administering files that are no longer its responsibility.

When the appointed administrator is the Department, access to data shows a thorough monitoring of expenses. Paper records created when the files are opened have detailed accounts of expenditures made on behalf of the dependent adults as well as expenditures required for the maintenance of the identified assets. These files were sampled during the evaluation³⁷.

When a third party is appointed as administrator, access to data is more complicated. The appointment of an administrator includes an annual reporting requirement in the form of records of cash receipts, disbursements and cash outflows belonging to the dependent adult. However, it is often difficult to enforce reporting because the appointed representative receives no direct support from the Department. Lack of this reporting often leads to the revocation of the departmental appointment order, however, information on possible revocation of administrators is poorly documented at the national level.

³⁵ The appointment is made to the position, not the individual to avoid bringing the case back before the Superior Court to change the identity of the administrator.

³⁶ New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

³⁷ Every region covered by the case studies except Northwest Territories.

Reporting from provincial and territorial public trustees is also inconsistent. In Manitoba and the Northwest Territories, there is a high degree of confidence in the public trustee's administration of trusteeships. Both agreements provide for a possible audit of the practices and processes put in place by the province and state that the AANDC regional office may request, at any time, to see reports on the income and expenses of the dependent adults. However, sources could not confirm whether audits have actually been carried out since the signing of the agreements.

In Manitoba, although monitoring procedures have not been formally established, the public trustee provides reports on the expenditures of unfit adults and a biannual update on active files. The data is provided at the public trustee's initiative and not at the request of the AANDC regional office. In the Northwest Territories, there is no monitoring mechanism and the regional office was unable to provide information on the number of active files or the actual costs associated with these files. Yet, the appointment of the public trustee is part of a contract.

Consequently, in Manitoba and the Northwest Territories, it is difficult to determine, with the existing supporting evidence, whether AANDC is fulfilling its obligations to protect individuals or whether AANDC's responsibility in its role as trustee could be called into question.

British Columbia, on the other hand, enjoys a continuous exchange of information through working meetings between the public trustee and the AANDC regional office. This relationship is made easier by the legal training of the team's members, who are former employees of the public trustee in some cases.

Acting as the "administrator of last resort" is a common practice in Western countries and in Canadian provinces and territories, however, the "administrator of last resort" policy is not consistently applied at AANDC. The procedures in Alberta and British Columbia conflict with directives appearing in the guides produced by HQ³⁸. Essentially, these regions feel that the "administrator of last resort" exposes dependent adults to potential exploitation and abuse that is difficult to detect due to the lack of monitoring of third-party administrators. The Guide on the Administration of Property Belonging to Mentally Incompetent Indians does not suggest methods for systematic monitoring of non-departmental administrators nor do they prescribe recovery methods in case of mismanagement. These regions expressed concern that increased liability to the Minister is introduced by third-party administrators. They also referenced capacity issues of appointees and difficulties with recovery of assets in the past after administration was suspended for mismanagement.

Underlying the concerns above is the belief that a primary objective of Living Estates is to protect dependent adults, a very vulnerable segment of population. As outlined above, the "administrator of last resort" policy and lack of monitoring would seem to work contrary to this objective. The guidelines provide that an investigation may be conducted in response to a complaint by a third party. The issue is that dependent adults may not have the capacity to identify and report abuse to friends or family. As a result, their ability to complain depends on other witnesses to the abuse to report it.

³⁸ "Guide on the Administration of Property Belonging to Mentally Incompetent Indians" and "Guide on the Administration of Property Belonging to Indian Minors."

Recommendation # 6:

- **Examine the appropriateness of the “administrator of last resort” policy for Living Estates.**

4.3.2. Efficiency and Economy

Finding # 10: Given the legal nature of the work, there is a need for HQ to provide more consistent and timely support to the regions.

The national office has some knowledge of the problems arising from the administration of trusteeships, but appears to be unaware of the impact of provincial jurisdiction, and cannot always provide real support. For example, although advice can be sought from the national office or the Department of Justice, few regional employees feel that this approach is easy or effective; requests for legal advice give rise to a certain degree of frustration due to delays.

The disconnect between the national office and regional offices can be attributed in large measure to differences in perspective. Although there are national directives (for example, those provided by the manuals), regional offices look for tools and procedures applicable to the regions and prefer to work more on collaboration with the public trustee of the province of residence. It is also very difficult for the national office to obtain data for each region because the administration of trusteeships in regional offices reports back to Regional Operations (HQ). An agreement to share information reported to Regional Operations with the Indian Moneys, Estates and Treaty Annuities Directorate would help bridge the disconnect between the regions and HQ.

The training and professional profiles of the staff responsible for the administration of estates vary considerably from one region to the next. The evaluation found that only one regional team consists primarily of lawyers or legal experts, some of whom are or were members of the bar (British Columbia). In other regions, the staff had neither legal training nor training in the administration of trusteeships. Whatever the profile of estate agents, all share the responsibility of administering trusteeships and are automatically granted full decision making and advisory powers. The interviews confirm that no training is currently being offered on trusteeships

As a result, seeking the opinion and advice of legal experts is sometimes necessary before any decision is made, which leads to delays (some regions mentioned that it can take up to a year from the time an application for legal opinion is made until the opinion is issued) and additional costs (the number of hours necessary to produce a legal opinion charged to the program).

British Columbia has implemented measures that have resulted in greater efficiencies. A study of the management systems and procedures in place in British Columbia and the subsequent reorganization of the work team eliminated the backlog and reduced the number of active files by about half. As a result, when the process was re-engineered, one trusteeship agent position was eliminated and replaced with a clerk position, which handles routine administrative work.

This means that trusteeship agents can focus mainly on managing their files and also on developing workshops or training sessions on estates for the communities. Rotating visits are therefore organized in the communities every year. Due to budgetary constraints, the target communities are subject to a risk analysis based on the needs of members. The document analysis supports these findings, as it provide access to a range of data: unit accountability reports, monthly reports from trusteeship agents, quarterly financial reports that list all the financial transactions carried out and communication and training products.

British Columbia is the only region that has monitoring mechanisms and procedures generating reliable data that can be used in decision making. British Columbia collects information on the number of active files, management fees per file, travel costs per file, operations and maintenance, salary, time spent on trusteeships and actual cost per file.

Recommendation # 7:

- **Examine IMETA HQ's relationship with regions in order to provide more consistent and timely support for the administration of Living Estates.**

Finding # 11: Data contained in the Estates Reporting System is unreliable and poorly documented and cannot provide a historical national perspective.

Nationally, the main data collection system for the program is the Estates Reporting System (ERS). Implemented in 2006, the purpose was to modernize and replace an older system containing information on the trusteeships of living persons from Canada's Aboriginal communities. The ERS, which has between 30 and 50 users across Canada, was created to help trusteeship agents administer the assets of Indians who are deemed to be dependent, from the time AANDC receives notification of the incapacity to the time it closes the file.

While the system was designed to address shortcomings in the previous ERS, it is not used extensively by estate agents, and its use varies widely from one region to the next. As a result, the system provides neither credible information nor a general overview of the status of living estates across Canada. For instance, the frequency of data entry varies considerably between the regions: the entry of information is done on a regular basis in some regions and on an as-needed basis in others. In some cases, files for several years might be entered all at once, creating considerable confusion because the file creation date in the system is confused with the date the file was opened. In other cases, files dating back several years, sometimes a couple hundred of them, are entered under the same date. Moreover, the data available is relatively limited and contains only the names and date of notification of dependant status. Hard-copy documentation, often the real source of information, is sometimes scanned and uploaded into the system but this practice is not common.

These problems are neither new nor unknown. On the contrary, they have been raised in many reports or studies commissioned by the program or conducted by the Office of the Auditor General of Canada; the modernization of the ERS was an attempt to remedy this. However, there is no indication that the measures taken have corrected the situation.

Activity monitoring and reporting capacity essentially depends on complementary mechanisms implemented in each region and are influenced by various parameters, such as file volume, staff assigned to the administration of living trusteeships (particularly the existence of a team of trusteeship specialists versus teams of generalists), and the potential federal–provincial/territorial agreements that allow the AANDC regional office to use reporting mechanisms as defined in the agreement.

The profile created from the case studies shows that none of the regions evaluated generates the same data.

Recommendation # 8:

- **Ensure a standard approach to data entry into the Estates Reporting System in order to generate more reliable data for program management.**

4.3.3. Alternative Delivery Models

Given the Crown’s obligations associated with the assets of vulnerable individuals, some options for program delivery were identified and are summarized in Table 4.3. Options 1 and 2 (where exclusive authority for Living Estates rests either with the provinces/territories or with the federal government) might simplify the administration of estates because there would be fewer governments involved. However, these options would require the agreement of provinces and, in the case of the federal government taking sole responsibility, would require a new federal system for caring for both assets and the person. Option 3 is essentially a continuation of the current system for the delivery of Living Estates but with enhanced management and increased monitoring by AANDC. Option 4 reflects increased capacity and involvement of First Nations such that they can capitalize on their social and cultural connections to their members and contribute to their community’s autonomy.

Table 4.2 Alternatives in the Delivery of Living Estates: Advantages and Disadvantages.

Option	Advantages	Disadvantages
<p>OPTION 1: Provinces assume control of First Nations dependent adults</p>	<ul style="list-style-type: none"> • Responsibility for the administration of interests of vulnerable adults rests with a single legal entity. • Ends notification/duplication issues created by the existence of two separate systems. • Existing expertise/capacity in the province to manage estates. • Equal treatment of First Nations and other Canadians. 	<ul style="list-style-type: none"> • Involves amendments to sections 51 and 52 of the <i>Indian Act</i>. • Agreements must be negotiated with each province. • Aboriginal communities to agree to the transition. • Cost to AANDC to compensate province. • Provincial/territorial monitoring to ensure needs are being met unknown.
<p>OPTION 2: AANDC assumes control over all living estates and improves trusteeship management based on identified best practices and lessons learned.</p>	<ul style="list-style-type: none"> • Responsibility for the administration of interests of vulnerable adults rests with a single legal entity. • No change in legislation required. • Improved service to First Nations under AANDC control. • Increased reporting and monitoring of vulnerable individuals. 	<ul style="list-style-type: none"> • Aboriginal communities to agree to the transition. • Awkward to take back control from certain provinces and territories where agreements are in place. • Duplication of systems – one for First Nations and one for other Canadians leads to unequal treatment. • Cost to AANDC to assume control over files previously managed by provinces and

		territories and improve existing system.
<p>OPTION 3: Improved status quo – Current agreements with provinces/territories remain in place and AANDC improves trusteeship management based on identified best practices and lessons learned.</p>	<ul style="list-style-type: none"> • No negotiations with provinces/territories or Aboriginal communities required. • No change in legislation required. • Improved service to First Nations under AANDC control. • Increased reporting and monitoring of vulnerable individuals. 	<ul style="list-style-type: none"> • Duplication of systems – one for First Nations and one for other Canadians leads to unequal treatment. • Cost to AANDC to improve existing system.
<p>OPTION 4: Aboriginal communities deliver the Living Estates program</p>	<ul style="list-style-type: none"> • Knowledge of the vulnerable adults and minors in their community. • First Nations communities build capacity to manage living estates. 	<ul style="list-style-type: none"> • Involves amendments to sections 51 and 52 of the <i>Indian Act</i>. • First Nations have limited capacity to do work. • Duplication of systems – one for First Nations and one for other Canadians leads to unequal treatment. • Cost to AANDC to build capacity in communities.

There is no single option that stands out as an obvious choice to pursue. Amending legislation or undertaking agreements with provinces would involve a significant commitment of time and resources. The duplication of efforts, which can result in unequal service levels for First Nations and other Canadians is also an important consideration. Since expertise for managing the estates of dependent adults rests with the provinces and territories, only Option 1 would not lead to duplicate systems. In addition, at the surface, it would also seem most logical that Option 1 would be the least costly as the provinces and territories have the skills and infrastructure in place to deliver similar services to the rest of Canadians. In contrast, Option 4 would be the most costly as little capacity currently exists in communities to manage estates. These assumptions, however, have to be confirmed through a more in depth analysis to determine which option would allow the Minister to fulfill responsibilities, provide the best level of service with the least cost to taxpayers.

5.1 Program Profile

Upon the death of an individual, their estate, or possessions, including investments, house, land and personal belongings, is typically passed on to heirs. This process is made simple if the individual prepared a will with instructions on how their estate is to be divided. However, this process gets more difficult if there is no will and heirs have not been identified. The purpose of Decedent Estates program is to ensure that property of First Nations individuals, who were resident on reserve before death, is passed on to the rightful heirs. This is achieved by identifying an administrator, usually a family member, or by acting as an “administrator of last resort” where an appropriate external administrator cannot be identified.

This section provides a brief description of Decedent Estates, including an overview of the origins and current functioning of the program, objectives, management, stakeholders and beneficiaries.

5.1.1 Background and Description

The Decedent Estates program is designed to ensure that the federal government’s legal obligations and responsibilities to First Nations people, pursuant to sections 42 through 50 of the *Indian Act* are met by providing for the management of Indian estates. Under the *Indian Act*, the Minister of AANDC has exclusive jurisdiction and authority over the estates of deceased First Nation individuals who were registered, or entitled to be registered, as an Indian and were ordinarily residents on a reserve before their death.

When AANDC is notified of a death, departmental personnel create a file to track all actions taken by the Department with regard to the estate. Subsequently, an investigation is conducted to determine whether the estate falls under the Minister’s jurisdiction. The only estates to fall under the Minister’s jurisdiction are those of individuals who were registered, or entitled to be registered, as an Indian and were ordinarily resident on reserve before their death. Where estates do not fall under the Minister’s jurisdiction, the file is closed. The estates of individuals who did not live on reserve do not fall under the Minister’s jurisdiction and the relevant provincial, territorial or foreign laws apply. In these cases, the Minister cannot act in relation to the estate *except* where the deceased held an interest in reserve land. In such circumstances, the ordinary provisions of the *Indian Act* apply and all land transfers must be approved by the Minister. The transfer of reserve land is overseen by the Department and it ensures that land interests are not transferred to a party that is not entitled to hold an interest in reserve land.

³⁹ It is important to note that the evaluation covers the period of 2006-2011. At the time of writing this evaluation (2012), private member’s bill C-428 was introduced by Rob Clarke. The Bill proposes to repeal certain sections of the *Indian Act*, including certain powers of the Minister with respect to the administration of estates and wills. The Bill is currently under consideration by Parliament. As such, the Department remains responsible for the administration of estates for First Nations individuals ordinarily resident on reserve and the findings of the evaluation should be read in that context.

If the Minister has jurisdiction, then the Department contacts potential heirs and/or beneficiaries or the band office to determine the existence of a will. If the will is in place and it names an executor or non-departmental administrator, and if that person is eligible, willing and able to act, then that person will be appointed and the Department closes the file.

When a third party has been appointed, it is assumed by the Department that the administration of the estate proceeds lawfully and promptly and no further monitoring by the Department occurs. Any land transactions that may be required are processed by the Department. The Department will, however, re-open the file if it becomes aware of a dispute or allegation regarding the estate and/or its administration.

AANDC considers estates administration to be a private family matter and, therefore, the policy is to always ensure that eligible third parties have the opportunity to administer the estate.⁴⁰ The “administrator of last resort policy” came in response to the decision of the 1976 case *AG of Canada v. Canard*. Before the Canard decision, all decedent estates under the jurisdiction of the AANDC Minister were administered by the Department. Thereafter, the departmental policy became to promote and facilitate the administration of estates by eligible third parties (ordinarily family members or their nominees) instead of the Department. As noted, where no eligible non-departmental individual is willing or able to administer the estate, a departmental employee will be appointed instead; in this sense the Department is the “administrator of last resort”.

If no such non-departmental administrator can be appointed, the Department will act as “administrator of last resort” and conduct the necessary proceedings to ensure that the estate is processed and distributed in accordance with policy, regulations and law. Tasks related to the administration of estates include:

- Identifying, gathering, and securing assets
- Determining and paying debts from the proceeds of the estate (where necessary, assets will be sold to pay debts)
- Determining the final value of the estate
- Providing final accounting to all beneficiaries
- Distributing estate assets in accordance with the will or, where there isn’t one, the *Indian Act*

When all of the estate assets have been distributed, the file is closed.

Support and capacity building for First Nations in estates

The Department encourages the efforts of Aboriginal people to manage their own finances and, therefore, the Decedent Estates program seeks to empower First Nations people in the planning and administration of estates by developing awareness and educational materials and conducting workshops in estate planning (e.g., will preparation and financial management). HQ produces materials with general information such as the need to have a will and basic overviews around the settling of estates. These documents are designed to be accessible to clients and they are

⁴⁰ AANDC, “Estates”, accessed at: <http://www.aadnc-aandc.gc.ca/eng/1100100032357/1100100032361>, August 10, 2012.

useful for providing basic information but they are, necessarily, general in nature as they are meant to apply in all cases across the country. Regions may use these materials in their efforts (holding workshops and presentations, for example) to raise awareness and skills among First Nations about estate related matters.

In addition, the Department has entered into agreements with a few First Nations to explore the potential for conducting some estates-related activities at the First Nation/tribal council. An example of such an initiative is the agreement between the Department and the Wikwemikong First Nation in Ontario. Under this agreement, employees of the council carry out many of the duties of the Department. These employees, trained by departmental staff and working in accordance with the *Indian Act*, *Estate Regulations* and applicable manuals and policies, provide support in estate planning and administration to band members. This arrangement moves much of the work related to estates to First Nation communities themselves while maintaining and supporting the Minister's legal authority. It is important to note that the agreement is carefully designed to ensure that there is no transfer or delegation of authority. The Department is involved as necessary and makes the approvals and decisions that fall under the jurisdiction of the Minister, retaining authority as per the *Indian Act*.

Table 5.1 Decedent Estate Initiatives Funded by Aboriginal Affairs and Northern Development Canada fiscal year 2009-10*

Initiative	Region	Amount of Funding (\$)	Purpose
Wikwemikong and AANDC Estate Partnership	Ontario	102,000	Created position of First Nations Estates Trustee
Mi'kmaw Wills and Estates: Developing Capacity	Atlantic	58,750	Provide assistance and guidance to members with respect to estate administration and wills
Bigstone Estate Officer	Alberta	24,000	Funding is applied to Indian Registration Administrator salary for estate program activities
Western Cree Tribal Council Estate Administration Program	Alberta	12,900	Funding is applied to Indian Registration Administrator salary for estate program activities
Lesser Slave Lake Indian Regional Council	Alberta	23,000	Funding is applied to Indian Registration Administrator salary for estate program activities
Community Wills Writing Workshop	Yukon	48,000	Consultant to deliver workshops and write wills (based on proposals from First Nations)
Total Funds		268,650	

* A review of provincial online sources indicate that most provinces make available capacity-related services and initiatives (e.g., writing wills) to their citizens. Provincial funding dedicated to such initiatives was not available in this evaluation.

5.1.2 Objectives and expected outcomes

The review of Decedent Estates documentation revealed the following immediate outcomes: protection of assets and availability for disbursement; fulfillment of legal and/or policy obligations; and First Nation capacity in estate planning and administration. The intermediate outcome identified was the transfer of assets to the lawful heirs and beneficiaries. These

outcomes are based on program documentation and approved by program managers for use in this evaluation.

5.1.3 Program management

The IMETA Directorate under the Resolution and Individual Affairs Sector has overall responsibility for Decedent Estates. The program is managed jointly by the national and regional offices.⁴¹ The national office plays primarily a supporting role in the development of policies and procedures for the program's operation in the regions.

Activities conducted at HQ include management and advisory services such as:

- Develop policy and amend and maintain Policy and Procedures Manuals based on evolving policy, legislation, court cases, litigation, and legal opinions.
- Advise regions on cases that require analysis beyond the standard policy and on litigation with national policy implications.
- Maintain communication with regions to discuss program updates and discuss feedback/concerns from regions.
- Organize National Workshops for AANDC employees.
- Train regional colleagues.
- Review of regional files to ensure conformity with established policy and procedures.

Further, HQ's role supports the fulfillment of the Minister's quasi-judicial role in matters of litigation, allegations, and disputes involving estates. The Resolution and Individual Sector also provides statistics on the program as well as the materials (e.g., manuals and development tools) to support the work of the regions to promote the awareness and abilities of First Nations in the preparation of wills and the administration of estates.

The regional offices are responsible for administering the programs and for the following activities:

- Confirming departmental jurisdiction for the estates of deceased individuals.
- Contacting families, heirs, and beneficiaries, etc.
- Identifying and securing assets of deceased individuals.
- Identifying and appointing administrators.
- Act as administrator of last resort where necessary.
- Support the fulfillment of the Minister's quasi-judicial role.
- Contribute to capacity development in Aboriginal communities.
- Conduct Section 50 sales where necessary and otherwise facilitate strategies to avoid Section 50 sales where feasible.

⁴¹ Alberta, Atlantic (Prince Edward Island, New Brunswick, Nova Scotia, Newfoundland and Labrador), British Columbia, Manitoba, Ontario, Quebec, Saskatchewan, Northwest Territories and Yukon.

5.1.4 Key stakeholders and beneficiaries

First Nations individuals

Decedent Estates' primary clients are First Nation individuals (i.e., registered Indians or those entitled to be registered) who ordinarily reside on reserve and their heirs and beneficiaries. As noted above, the estates of individuals who do not ordinarily reside on reserve do not fall under the AANDC Minister's jurisdiction. In these cases, the relevant provincial, territorial or foreign law apply.

First Nation communities, bands and tribal councils

First Nation communities, bands and tribal councils often have interests or a role in the estate-related matters of their members, particularly where land-holdings under an estate are involved. Moreover, some play an influential role in supporting their members with estate-related affairs (e.g., awareness, planning, administration, etc.). Agreements with some First Nation organizations allow certain estate-related activities to be carried out at the community level under the guidance and authority of the Department.

Lands and Economic Development Sector (Lands Branch)

AANDC Lands Branch personnel are involved in estates when they include interests in reserve land. Their role is to approve transfers of reserve land from decedent estates to living heirs and beneficiaries and to record those transfers.

AANDC Legal Services

Legal Services provides advice and legal opinions to AANDC estates personnel regarding the interpretation of sections of the *Indian Act* relating to estates. Legal advice and opinions that have the potential to impact delivery at a national level are integrated in policy, procedures and supporting guidance documents.

Office of the Indian Registrar

The Office of the Indian Registrar maintains the Indian Registry, the official record identifying registered Indians (as defined in the *Indian Act*). Deaths recorded in the Indian Registry are to be reflected in the ERS maintained by the Estates program. The Office of the Indian Registrar facilitates access to family records, necessary to identify heirs.

5.2. Findings – Relevance⁴²

Finding # 12: The Decedent Estates program continues to be relevant due to federal obligations towards First Nations, the need for estates services and capacity building on reserve and the Crown’s interest in reserve land.

The *Indian Act* continues to be the legal authority giving the Minister jurisdiction over the property of deceased Indians. As noted in the program profile section above, the Minister of AANDC has exclusive authority over the estates of persons registered, or eligible to be registered, as an Indian (as defined in the *Indian Act*) and who were ordinarily residents on reserve at the time of their death.⁴³ A point commonly made by interviewees was that the Minister’s responsibilities under sections 42 through 50 of the *Indian Act* are the primary driver of the Decedent Estates program. This assertion was supported by the program’s policy documentation⁴⁴, training materials for AANDC personnel,⁴⁵ and communications and support materials⁴⁶ for First Nations. These materials all note the Minister’s authority as an essential reason for AANDC involvement in First Nations’ estates. The Decedent Estates program is the Department’s mechanism for fulfilling this legal obligation of the Minister.

Decedent Estates is also driven by the need for capacity building in First Nations because estates are ordinarily a private, family matter. As such, estates are an area in which the Department seeks to encourage the efforts of Aboriginal people to increasingly manage their own affairs.⁴⁷ An essential factor in the good management of estates is existence of a will. Wills are helpful because they stipulate how assets are to be distributed and usually result in estate administration that is easier and quicker. Not having a will may create hardship for families and friends and there may be a lengthy process involved in finding beneficiaries.⁴⁸ Interviewees in the evaluation tended to agree that capacity building for First Nations in estate-related matters is perhaps the most effective ways to see First Nations reach higher levels of self-sufficiency. As noted, the administrator of last resort policy is in place to provide First Nations with the opportunity to administer estates; the program’s policy of supporting them is reflected in program communications and support documents (e.g., the AANDC website and program support materials).

⁴² As noted earlier in the report, this evaluation does not cover estates management for minors, adoptees or missing persons.

⁴³ Government of Canada. Department of Justice. *Indian Act*. R.S.C., 1985, c. I-5. Act current to 2012-05-14 and last amended on 2011-01-31. Accessed at: <http://laws-lois.justice.gc.ca/eng/acts/I-5/>.

⁴⁴ AANDC. IMETA Directorate and Lands and Trusts Services. *Decedent Estates Procedures Manual*, January 2008.

⁴⁵ AANDC. IMETA Directorate. *Estates Training Course – Level 1*, June 2009.

⁴⁶ AANDC. “Decedent Estates Program,” accessed at: <http://www.aadnc-aandc.gc.ca/eng/1100100032519/1100100032520>, June 5, 2012.

⁴⁷ AANDC, “Decedent Estates Program,” accessed at: <http://www.aadnc-aandc.gc.ca/eng/1100100032519/1100100032520>, June 5, 2012.

⁴⁸ Public Legal Education Association, “Wills and Estates,” accessed at: http://www.plea.org/legal_resources/?a=377&searchTxt=Wills and Estates&cat=28&pcat=4.

The Crown's legal interest in the estates of Indians also lies in its interest in reserve land. Although bands and their members have a right to the use and benefit of reserve lands on which they reside, the legal interest in them rests ultimately with the Crown. To protect this legal interest, the Government of Canada placed limitations on the passage and inheritance of interests in reserve land; this limitation is reflected in the *Indian Act*, which gives the Minister authority over the estates of First Nations people and, by definition, any land assets included in them. The Minister's authority over First Nations' estates is a safeguard to prevent persons who are not band members from gaining an interest in reserve lands, thereby eroding the reserve land base.

The Decedent Estates program fulfils the Department's need to ensure that reserve land is transferred only to eligible parties (i.e., bands and/or their members). Pursuant to Section 50 of the *Indian Act*, the program oversees the sale of land that would otherwise pass (e.g., as specified in a will though it contradicts law as reflected in the *Indian Act*) to a beneficiary or heir who is not a band member. In accordance with Section 50 of the *Indian Act* and *The Indian Estates Regulations*⁴⁹, the proceeds of that sale are then paid to that heir/beneficiary.

5.3 Findings –Performance

As outlined in the program profile, the immediate outcomes of Decedent Estates are the protection of assets and availability for disbursement; fulfillment of legal and/or policy obligations; and First Nation capacity in estate planning and administration. The intermediate outcome identified was the transfer of assets to the lawful heirs and beneficiaries.

Based on findings presented below, the first immediate outcome to protect/secure assets so they are available for disbursement, is only being partially achieved. Contributing factors include: logistical and financial limitations of the program, delays in the notification of death and differing cultural practices.

The evaluation is unable to conclude on the success of achieving the immediate outcome relating to the fulfillment of legal and policy obligations and the intermediate outcome of transferring assets to heirs due to insufficient information and monitoring. The "administrator of last resort" policy does not support the monitoring of third-party administrators and information on files administered by the Department is limited.

Capacity development of First Nations was identified by some as the single most effective way to improve program effectiveness and efficiency, however, available data reveals that capacity building efforts have had limited success. The evaluation revealed that there is a lack of consistency in training across all regions and low participation in training sessions. The lack of adequate performance data makes it impossible to determine success.

An adequate analysis of efficiency and economy was not possible due to incomplete and/or inaccurate data in the Estates Reporting System.

⁴⁹ Government of Canada. Department of Justice. *Indian Estates Regulations*. C.R.C., c. 954, Regulations are current to 2012-05-14. Accessed at: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._954/index.html.

5.3.1. Effectiveness

Finding # 13: Given the length of time that passes between when a person dies, when the Department is notified of that death and the appointment of an administrator, it is often difficult for AANDC personnel to ensure the protection of assets for orderly disbursement as per policy.

To meet the first outcome and to ensure that assets are available for disbursement, the assets of the deceased must be protected. This need figures prominently in program documentation such as the Decedent Estates Procedures Manual and the program's training manual.⁵⁰ Between the time when the Department is notified of a death until the appointment of an administrator, the Department is responsible for the protection of assets as of the date of the notification of death. Among the measures that may need to be taken are: consulting with insurance companies regarding insurance for homes and vehicles; arranging for building repairs; feeding livestock; securing valuables; obtaining control over vehicles; and renewing licences or leases. The evaluation found that such oversight by AANDC employees is rarely practical or possible.

Program officials reported that for logistical and financial reasons, it is difficult for AANDC personnel to be directly involved in the securing of assets that program policy requires. For example, the securing of physical assets (e.g., valuables such as jewellery, vehicles, and buildings) would usually require travel and lodgings on short notice, personnel, sufficient time on-site to carry out the necessary tasks, and provisions for travel to and operation in isolated locations. Challenges such as these make it difficult, if not impossible, to consistently secure the assets of the deceased such that they are intact and available for disbursement at the conclusion of the estate proceedings.

The securing of assets is also complicated by delays in the notification of death, incomplete information or lack of disclosure by family and/or community members. Program officials report that gaps can exist between the date of death and the notification of death to the Department, resulting in a period of time when the assets of the deceased are fully outside AANDC influence. The Department is not technically responsible for assets during this period (i.e., before it has been notified of a death), which contributes to a level of uncertainty around the status of the assets.

Importantly, the program's policies and processes relating to the protection of assets may conflict with established cultural practices. For example, some traditions specify that grandchildren should not inherit benefits and others specify that property should be distributed soon after death. According to one program official, possessions may be gifted or distributed according to tradition before the Department has been notified and can secure assets. It has been argued that the distribution of property should be permitted according to local custom.⁵¹ In the end, systematic measures to monitor whether assets are available for disbursement are currently unavailable.

⁵⁰ Training Manual Level I.

⁵¹ Moss, W. and Gardner-O'Toole, E. (1991). *Aboriginal People: A History of Discriminatory Laws*. Government of Canada – Law and Government Division.

Recommendation # 9:

- **Revisit the policy of securing assets in Decedent Estates to identify and mitigate risks such as addressing delays in the notification of death and possible policy conflicts with existing cultural practices.**

Finding # 14: The Estates Reporting System does not provide consistent and reliable data, which would facilitate the effective and efficient management of the program.

The ERS was designed to be the program’s primary tool for monitoring the processing of individual estates files and for national and regional reporting. Unfortunately, the type of information collected and shortages and/or inconsistencies in the information make it unreliable for reporting purposes. For example, the number of files closed, as recorded in the ERS, does not reliably distinguish between recent files and those that were open for an extended period of time. Similarly, the ERS does not differentiate between “dormant” and “active” files, designating them simply as “open”. Shortcomings such as these make it harder to distinguish between those files that may be delayed and those that are progressing at a reasonable pace. The majority of staff interviewed noted limitations in the ERS regarding the type of information housed in it, the reports that it can produce, user-friendliness, and inconsistencies in data entry that undermine its consistency and utility.

As a result of deficiencies with the ERS, regional staff interviewed for the evaluation indicated that they use ERS to report to HQ but use separate region-specific systems of record-keeping involving paper files and spreadsheets in order to monitor progress on individual estates and to support management at the regional level. For example, British Columbia has developed monthly reports by Estate Officers and summary files for information for estates involving Section 50 land sales. Atlantic region maintains a similar system in the form of a spreadsheet that records particulars for individual estates, including pertinent dates (e.g., date of death) and details of file administration. This spreadsheet is complemented by file summaries documenting the file’s history; these documents are maintained and organized in the Department’s Comprehensive Integrated Document Management. The fact that regions are using their own systems of monitoring estates files indicates that the ERS system has limited functionality and, consequently, does not provide sufficient information for effective program management. As it relates to this evaluation, the lack of useful data from the ERS (the official system of record) has limited the ability of the team to conduct an analysis of the efficiency and economy of the program.

Finding # 15: Capacity building efforts for First Nations are inconsistent across regions and have had limited success.

HQ produces and distributes support materials on estate-related topics that are designed to be applicable across the country. Regional staff organize presentations and distribute materials to First Nations to encourage and support their involvement in estate planning (e.g., will preparation and financial management) and administration of the estates of the deceased. However, regionally based capacity building efforts occur without a strategic approach applied

across the country. Although providing support for First Nations in estate planning and administration is an important function of the Estates Program, the evaluation found that, while capacity building and support takes place, the program does not have clear and measurable goals for First Nations' capacity around estates.

Interviewees agreed that capacity among First Nations in estate matters is low but these assertions were based on individual opinion and experience rather than assessments against targets. Nonetheless, their assertions are supported by the apparent low number of deceased First Nation people with wills approved by AANDC (i.e., that meet the four requirements under the *Indian Act*.⁵² Over the evaluation period, the mean percentage of deceased First Nation persons under Minister's jurisdiction with AANDC-approved wills as reported in the ERS was calculated to be approximately eight percent (assuming the ERS numbers are reliable). This means that over 90 percent died intestate (i.e., without a will), which, as interviewees reported, usually signals a complicated and lengthy estate process.

Interviewees agreed that capacity building for First Nations in estate-related matters, particularly in planning, could be the single most impactful way to achieve program objectives and support the Minister's obligations and, importantly, to support First Nations in becoming increasingly autonomous in managing their own affairs. It was often noted during interviews, however, that the participation of First Nations individuals is highly variable from one information session to the next. It was also noted that estate planning may not align with traditional First Nations practices and beliefs, which may further limit involvement. Program officials, while recognizing the importance of building capacity, noted that activities for capacity-building and awareness may be limited due to shortages in resources.

Capacity-related Expected Results and performance indicators appearing in the Report on Plans and Priorities include First Nations "managing the estates and the affairs of the deceased" (2007-2008) and "assuming greater control over programs and services" (2008-2009). However, reporting against these Expected Results, as seen in the corresponding Departmental Performance Reports (DPR), was unclear. In the 2007-2008 DPR⁵³, the program reported that modernized training, educational and business tools "were helpful" and the 2008-2009 DPR⁵⁴ was silent on First Nations' control over programs and services. Although successful support and capacity building are implicit in these goals and achievements, the evaluation did not find effective measures to monitor results.

⁵² To be approved by the Minister, wills must meet four criteria pursuant to Section 45 of the *Indian Act*: (1) wills must be written, 2) wills must be signed, (3) the will must specify the wishes or intention as to the disposition of property, and (4) the will must be intended to take effect on death.

⁵³ AANDC. (2008). Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission Performance Report For the period ending March 31, 2008. Accessed at: <http://www.tbs-sct.gc.ca/dpr-rmr/2007-2008/inst/ian/ian-eng.pdf>, August 2, 2012.

⁵⁴ AANDC. (2009). Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission Performance Report For the period ending March 31, 2009. Accessed at: <http://www.tbs-sct.gc.ca/dpr-rmr/2008-2009/inst/ian/ian-eng.pdf>, August 2, 2012.

Recommendation # 10:

- **Develop a strategic approach to capacity development to increase effectiveness and efficiency of Decedent Estates with appropriate measurements to monitor success.**

Finding # 16: Confirmation that assets have been transferred to heirs can only be achieved when the Department manages a file. The “administrator of last resort” policy does not require continued monitoring of third-party administrators to ensure desired outcome is achieved.

A key outcome of the Decedent Estates program is to ensure assets are transferred to lawful heirs and/or beneficiaries. However, when a non-departmental administrator is appointed, as it is in the majority of cases, the Department closes the file and does not systematically monitor the proceedings and settlement of an estate to determine whether assets have been appropriately distributed. The only way the Department can confirm the distribution of assets is when it is the administrator of that estate. This occurs in a minority of cases due to the “administrator of last resort” policy.

In the case of a complaint or allegation, the file is re-opened and the program addresses the issue in question, but it does not necessarily become aware of other particulars of the estate or its overall progress. Although this arm’s length approach is in line with the program’s “administrator of last resort” policy, it reveals that the program does not know whether non-departmental administrators of estates successfully distribute assets to the lawful heirs and beneficiaries. As a result, the Department does not have sufficient information for monitoring and reporting on the distribution of all of the estates under the Minister’s jurisdiction.

Although AANDC does not monitor the progress of estate administration when a non-departmental administrator has been appointed, the Minister remains responsible for estates until their conclusion and liability does not end with the appointment of an administrator.

Recommendation # 11:

- **Examine the appropriateness of the “administrator of last resort” policy in the administration of Decedent Estates.**

5.3.2 Efficiency and economy

Given the lack of national data over the evaluation period, available regional data was examined for indications of efficiency and economy.

Table 5.2 Regional Estates Workload for 2010-11⁵⁵

REGIONAL WORKLOAD ANALYSIS - ESTATES ADMINISTRATION							
Region	# of new estate files opened in 2010	# of estate files closed in 2010	# of open estate files at present	# of estate files involving Section 50 sales	# of appointments of administrators processed in favour of departmental employee	# of appointments of administrators processed in favour of non-departmental individual	Total # of person years dedicated to estates, including managers
British Columbia	352	498	469	129	169	250	10
Alberta	248	259	1,929	NIL	0	165	2.25
Saskatchewan	404	383	1,026	12	3	885	1.5
Manitoba	533	524	575	NIL	349	175	4.5
Ontario	585	814	1,128	86	6	374	5.75
Quebec	215	187	140	2	21	60	4.35
Atlantic	150	197	81	NIL	16	78	3
Northwest Territories	3	27	41	NIL	100% ⁵⁶	NIL	4
Yukon	84	54	5	NIL	13	17	0.10
TOTAL	2,574	2,943	5,394	229	577	2,004	31.1

The information depicted in Table 5.2 was obtained from program documentation. Of particular note is the relationship between the number of person years dedicated to estates with the number of Section 50 sales (which are typically associated with increased effort and time).

British Columbia had the greatest number of person-years dedicated to estates and the greatest number of estates involving Section 50 land sales in 2011-2012.

It is also interesting to note the number of files administered by either the Department or by a non-departmental administrator. Manitoba had a relatively high number of person years and the greatest number of departmental administrators, however, additional information that might explain the relatively high number of estates in Manitoba with departmental administrators was not available.

Table 5.2 also demonstrates that there was great variability in the number of estates files that were open across regions when this information was compiled in March 2011. This variability can occur for many reasons, many of which fall outside the control of AANDC (e.g., normal fluctuations in the number of deaths in a given year, the overall number of estates that fall under the Minister’s jurisdiction, disputes among family members and delayed communications from family members to the Department). Furthermore, the information in Table 5.2 is not suitable for a rigorous comparison among regions on the number of open files, particularly whether any could be categorized as “backlog”. Nonetheless, there may be cause for concern as a higher

⁵⁵ Summary of Regional Reports – March 2011.

⁵⁶ AANDC has an agreement with the NWT government – all estates under the AANDC Minister’s jurisdiction are administered by the NWT government.

number of open files may result in a greater accumulation of expenses such as interest to be paid by the Department.

Overall, although some information on efficiency and economy was available for this evaluation, it is not suitable for a straightforward conclusion. Moreover, the apparent shortage of relevant information suggests that Decedent Estates program management is without comprehensive information for decision making around the processing and associated costs of eligible estates under the Minister's jurisdiction.

5.3.3 Alternative delivery models

The findings in the preceding sections suggest that, overall, the Decedent Estates program will benefit greatly from the implementation of a few "standard" approaches to program management that the Department has implemented elsewhere, such as conducting a risk analysis and improving Performance Measurement. These exercises will clarify the objectives of the program and support the management of the program and support decision making.

Once the program's objectives are clearly defined, effective and efficient options for their achievement should emerge. Furthermore, the evaluation has identified some options for the Decedent Estates program with a view to empowering First Nations in estates matters and optimizing the Department's involvement in the estates of its First Nations clients.

Decedent Estates Planning and Administration in First Nations

The Department has entered into agreements with the Wikwemikong First Nation and the Mohawk Council of Akwesasne. AANDC provides funding of \$102,000 per year for Wikwemikong to pay for dedicated staff while the Mohawk Council of Akwesasne uses its own funds (please see Program Profile section). Under these agreements, employees of the councils do much of the work around the estates of deceased band members, offering a "closer" relationship with family members and loved ones than is possible with departmental officials. For example, communication can be in the language of the community members and, as the employees are themselves members of the communities, they have knowledge of its culture and traditions.

The evaluation team spoke with personnel at Wikwemikong and the Mohawk Council of Akwesasne, both of whom emphasised that closer relationships are beneficial in resolving issues that may delay the processing of an estate file. The personnel reported that such delays can arise for various reasons but, often, they are due to administrative delays, perceived interference on the part of the Department and family disputes over assets, particularly land distribution. According to the personnel, such delays are almost always dealt with better by an employee of the band (who is typically also a community member) than by AANDC representatives.

Other initiatives designed to enable and support First Nations in estate-related matters are focused on support and capacity-building in estates planning and administration for both individuals and bands themselves. According to internal program communications, AANDC has funded the Confederacy of Mainland Mi'kmaw in its efforts to develop capacity around wills and

estates (\$58,750 in 2010-2011).⁵⁷ In Alberta region, three communities receive AANDC funding to be applied to the annual salaries of their Indian registration administrators in order to work with the Department and community members to carry out duties related to the processing of estates.

It is important to note that the initiatives described here serve to increase the involvement and autonomy of First Nations in the estates of their members while, in all cases, retaining the authority of the Minister; none of these initiatives reflect a transfer or delegation of authority and requirements for monitoring and reporting are made explicit in each of these arrangements.

Overall, these initiatives contribute to two important goals of the Decedent Estates program. First, they support First Nations' capacity in estates, thereby enhancing their involvement and autonomy in estates matters. Second, when First Nations have greater capacity in estates, the involvement of the Department is more likely to be limited to that of "administrator of last resort". Anecdotal evidence suggests that these capacity building efforts benefit the First Nations involved, but the evaluation did not find systematic information on their impacts and whether any cost efficiencies have been realized through them. Similar initiatives in the future may offer a more balanced perspective on impacts, benefits and challenges.

Minimum Value Policy

To reduce the number of files that AANDC has to process and to improve their management, the British Columbia region assesses the need for the administration of individual files remaining under AANDC administration. The strategy does not actually depend on the dollar value of an estate but, rather, on the nature of the deceased's assets. For example, if the sole asset of an estate is a motor vehicle, even if the vehicle is of relatively little value, a departmental administrator will administer the estate because ownership of a motor vehicle can only be transferred by the appointed personal representative of an estate. However, if the assets of an estate are limited, for example, to the deceased's personal belongings, the estates officer may cease administration of the estate and notify the next-of-kin and/or beneficiaries accordingly as the distribution of these assets typically do not require the Department's involvement.

The British Columbia Minimum Value Policy assures AANDC due diligence before an estates file is closed. As part of this due diligence, attempts are made to contact the deceased's next of kin, financial institutions and creditors to ensure that the estate should be closed. Where estates files are to be closed, the appropriate notices are distributed. Files will be re-opened where necessary (e.g., if additional assets are discovered that would change the original decision to close the file).

The British Columbia Minimum Value Policy was designed by British Columbia AANDC staff specifically for the British Columbia region and no similar policy is in use nationally. However, a 2002 audit recommended that some form of minimal value policy approach be adopted nationally.⁵⁸ It should be noted that if a Minimum Value Policy were to be applied to AANDC,

⁵⁷ Internal program communication – Current Initiatives March 2011.

⁵⁸ Audit of Estates Administration, AANDC Corporate Services, Departmental Audit and Evaluation Branch with BDO Dunwoody LLP, February, 2002.

it would need to be flexible enough to allow each region to adapt to provincial/territorial context. Moreover, any approaches or procedures for a similar policy elsewhere must include a rigorous approach to determining which estates files will be closed by the Department and include the flexibility to re-open files as necessary. Above all, such approaches must be designed and implemented with a clear goal in mind, such as reducing the number of open estates, while adequately fulfilling the Minister's responsibility for the estates of deceased status Indians ordinarily resident on reserve.

Recommendation # 12:

- **Explore the feasibility of adopting and implementing the British Columbia Minimum Value Policy for Decedent Estates on a national scale.**

Adoption of cost recovery for AANDC Decedent Estates

As part of the literature review, cost recovery measures applied by provinces when they administer estates were sampled, examining four provinces: British Columbia⁵⁹; Alberta⁶⁰; Manitoba⁶¹; and Ontario⁶². The review shed light on the provinces' cost recovery regimes for estate administration. These provinces deduct fees and costs from the estate before final distribution. Deductions are calculated using combinations of set fees and percentages. Other than actions related to the Crown's interests in reserve land, the administration of estates under the jurisdiction of the AANDC Minister is, overall, similar to that of other Canadians. Currently, AANDC has no cost recovery mechanism in place for the services it provides when it administers estates.

⁵⁹ Public Guardian and Trustee of BC, "Fee Schedule as Administrator for an Estate," accessed at: <http://www.trustee.bc.ca/pdfs/EPTS/Fee%20Schedule%20as%20Administrator%20for%20an%20Estate.pdf>, July 13, 2012.

⁶⁰ Alberta Justice, "Office of the Public Trustee – Administration Fee Rates For Decedent's Estates", accessed at: http://justice.alberta.ca/programs_services/public_trustee/Documents/admin_fee_rates_decedents_estates.pdf, July 13, 2012.

⁶¹ The Public Trustee of Manitoba, "Fee Schedule," accessed at: <http://www.gov.mb.ca/publictrustee/services/fees.html>, July, 2012.

⁶² The Office of the Public Guardian and Trustee Ontario, "Estates Administration," accessed at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/estatesadmin.pdf>, July 12, 2012.

6. Treaty Annuities

6.1 Program Profile

6.1.1 Background and description

The signature of treaties is part of a historical process dating back to the arrival of the first Europeans in North America.⁶³ The first formal ties between Europeans and First Nations were diplomatic and military alliances. Every year, the alliance was renewed at a ceremony where gifts were exchanged and friendships renewed. The English gained the loyalty of the Indian groups against the French and their Indian allies in exchange for gifts. In 1760, after New France was conquered by England, military alliances gave way to trade alliances to guarantee a supply of fur pelts. Once again, this alliance was renewed every year at ceremonies, during which the English offered gifts and annuities to their Aboriginal allies, who were then in a strong position to negotiate payments and annuities. At the time, according to colony leaders, the land belonged to the Indians and formed the foundation for an economy driven by the fur trade.

At the end of the 18th century, however, pressures mounted to open Indian lands to agricultural settlement and the exploitation of mineral and forest resources. Moreover, the British Treasury imposed budgetary restrictions that led to a gradual decrease in annuities and the value of gifts.

Thus began the period of signing treaties containing annuities with Indians in exchange for their land, which would allow for the settlement and development of resources. The British Crown signed the Robinson–Superior and Robinson–Huron treaties in 1850. It committed to paying an annuity of \$4⁶⁴ in cash per member in good standing of the band, at the same time every year, “as long as the sun shines, the grass grows and the rivers flow.”

The need for expansion on the land and the purchase of lands for settlement in the west led to the negotiation of a new round of treaties. These negotiations spanned the years between 1871 and 1921 and led to the signing of treaties 1 to 11. These treaties stipulate that \$5 annuities shall be paid every year to Indians who are members in good standing of these bands. The numbered treaties also stipulate that the chief and headmen (who are included starting in treaty no. 3) shall receive an annuity of \$25 and \$15, respectively, and a new suit of clothing every three years.

⁶³ The following studies can be consulted for a more in-depth historical analysis: J.R. Miller. (2009). *Compact, Contract, Covenant. Aboriginal Treaty-Making in Canada*. Toronto, University of Toronto Press, 379 pages. White, J.P., Anderson, E., Morin, J. and D. Beavon (Eds.). (2010). *Aboriginal Policy and Research. A History of Treaties and Policies, Volume VII*. Toronto, Thompson Educational Publishing Inc., 212 pages. Leslie, J.F. and B. Baldwin. (2006). *Indian Treaty Annuities: The Historical Evolution of Government Policy, from Colonial Times to Treaty 3*. Ottawa, Public History Inc. and Aboriginal Affairs and Northern Development Canada, 183 pages. Morin, J. *Treaties and the Evaluation of Canada*, in Newhouse, D.R., Voyageur, C.J. Voyageur and D. Beavon (Eds.). *Hidden in Plain Sight. Contributions of Aboriginal Peoples to Canadian Identity and Culture*. Toronto, University of Toronto Press, pp. 19–34.

⁶⁴ Initially, the annuity was less than \$4. In May 1879, Parliament voted for an increase in the annuity set out in the Robinson treaty from \$0.60 to \$4. Leslie, J.F. and Public History Inc. (2007). *The Historical Development of the Indian Act from Colonial Days to 1951, Volume 1, 3rd edition*. Prepared for the Claims and Historical Research Centre Special Claims, Specific Claims Branch, Department of Aboriginal Affairs and Northern Development Canada, p. 62.

The value of annuity payments was far more significant when the treaties were signed than they are today. For example, when the first numbered treaty was signed in 1871, it included a treaty payment of five dollars. In 2007, that amount equates to approximately 100 dollars. The five dollar annuity included in the final numbered treaty, signed in 1922, was worth about \$60.00 dollars at the time.⁶⁵

Since the signing of these treaties, annuities must be paid in cash during a visit to the communities every year. This is how the Treaty Annuities Payment program came to be. The Treaty Annuities Payment is divided into two components: 1) payment of annuities to eligible band members; and 2) Treaty Annuity Payment Experience.⁶⁶

Treaty Annuity Payment program

The treaty annuities program⁶⁷ is responsible for the administration of policies and processes for the payment of annuities based on treaties the First Nations signed with the British and, later, the Canadian governments. Annuity recipients are those descended from the signatories of the Robinson–Superior, the Robinson–Huron treaties and the numbered treaties (1 to 11). As of December 31, 2011, there were approximately 310 bands and 503,653 Aboriginal people eligible for a treaty annuity.⁶⁸

Treaty bands have the privilege, but not an obligation, every year to request that an annuity payment ceremony with AANDC be held. In the event of a request, the Department must ensure the request is satisfied. Some bands can also request that the more than one annuity payment ceremony be held, especially if the band is divided into several small communities.

Treaty pay lists identifying entitled individuals are generated by the Treaty Payment System (TPS) from data stored and maintained within the Indian Registration System. Regional AANDC staff use these pay lists to record payments of annuities. In addition to on-reserve treaty days, some regions may host urban events.

Payment ceremonies are organized in similar ways across regions. Planning of the treaty season begins in January when the regions send a letter to all eligible bands to gauge their interest in organizing an annuity payment ceremony in the community between May and October. Once the responses are received, a schedule can be created. Once the schedule is determined, the next step is to contact the program delivery partners, such as security agencies and the Royal Canadian Mounted Police (RCMP), to work out the travel details. As the regional AANDC personnel are

⁶⁵ Erik Anderson. *The Treaty Annuity as Livelihood Assistance and Relationship Renewal*, op. cit., p. 90.

⁶⁶ The information in this section is taken from: AANDC, *Indian Moneys, Estates and Treaty Annuities Directorate. Manual for the Administration of Payments Pursuant to Treaty*. Registration, Revenues and Band Governance, Lands and Trust Services, March 2002. IMETA. *Guide for the Treaty Annuity Payment Experience (TAPE)*. 2011, 11 pages. IMETA. *Treaty Annuity Payment Experience*. 2010, 23 pages. AANDC, “Treaty Annuity Payment Experience,” accessed at:

<http://intra/inac/category.asp?Id=1797&SortBy=Alpha&Name=Exp%20rience+du+paiement+des+annuit%20s+pr%20vues+dans+les+trait%20s&AltName=Treaty+Annuity+Payment+Experience&Language=E>.

⁶⁷ AANDC. *Treaty Annuities Program. Program Assessment*. November 19, 2009, 4 pages.

⁶⁸ AANDC. *Treaty Payment System Report. Treaty Annuity Summary by Treaties, 2011*. Report generated on January 6, 2012.

required to transport large sums of cash to and from various locations, a Security Guidelines Policy was adopted in March 1996. This policy set out some national principles for the handling of cash for treaty payments in order to minimize risk to persons and property. Based on those national guidelines, regions developed their own policy to guide practices for the procurement, transport, storage and payment of treaty annuities. Key elements of the regional security guidelines describe: 1) the responsibilities of the management and staff of AANDC in the development and implementation of security procedures; 2) detailed procedures for the transport, the handling and safeguard of cash from the point of receipt at the bank through to the return of surplus to the bank; 3) the presence, roles and responsibilities of security officers; 4) the handling and security of treaty payment lists; and 5) the response that staff should make to robbery attempts⁶⁹.

The AANDC annuity payment team arrives in a community accompanied by a Red-Serge RCMP officer, whose presence is an important part to the commemoration of the treaty signing. The treaty event begins with a speech by the Band Chief followed by a handshake. The annuity payments then begin, with the first community payment being made to the chief. The other band members follow.

Annually, an average of about 30 payment ceremonies were held in urban centres during the period 2006-2011.⁷⁰ These urban ceremonies bring together members from a number of bands covered by several treaties. Urban ceremonies are organized at the initiative of the regional office and not the bands. According to individuals interviewed, by providing an opportunity for urban treaty band members to receive their payments in cash, the number of annuities paid by cheque, which is costly to the Department, is reduced.

Two regions provided data on the various annuity payment methods, including payments in urban areas. These tables show that in Manitoba, urban payments accounted for between 19.8 percent and 25.5 percent of total payments from 2009 through 2011 (Table 6.1).⁷¹ This proportion is below nine percent in Sudbury, where in-person payments made in the regional office account for anywhere between 2.3 percent in 2011 and 8.2 percent in 2006 (Table 6.2).⁷²

Table 6.1 Various Annuity Payment Methods in Manitoba, 2009–11

Year	Annuities Paid in Communities (\$)	Annuities Paid in Urban Centres (\$)	Annuities Paid by Cheque (\$)	Total Annuities Paid (\$)	% Urban Payments Out of Total Payments
2009	348,625.00,	132,040.00	38,070.00	518,735.00	25.5
2010	370,393.00	104,545.00	53,972.00	528,910.00	19.8
2011	356,325.00	103,835.00	40,933.00	501,093.00	20.7

⁶⁹ AANDC, IMETA. *Manual for the Administration of Payments Pursuant to Treaty*. p. 21-22.

⁷⁰ AANDC. *Treaty Payment System*. Compilation of data based on consultation on April 19, 2012.

⁷¹ AANDC, Manitoba Region. *Treaty Annuity Payment Reports for the Manitoba Region*, 2010 and 2011.

⁷² AANDC, Sudbury Region. *Treaty Reconciliation Reports*, 2006 to 2011.

Table 6.2 Various Annuity Payment Methods in Sudbury, 2006–11

Year	Annuities Paid in Communities (\$)	Annuities Paid Through Alternative Means (\$)	Annuities Paid in Regional Office (\$)	Total Annuities Paid (\$)	% Alternative Means Out of Total Payments
2006	32,628.00	3,208.00	3,376	39,212.00	8.2
2007	44,564.00	3,240.00	2,889	50,693.00	6.4
2008	29,140.00	1,352.00	3,480	33,972.00	4.0
2009	50,305.00	2,576.00	4,896	57,777.00	4.5
2010	35,868.00	3,628.00	7,032	46,528.00	7.8
2011	48,743.00	1,236.00	4,088	54,067.00	2.3

Treaty Annuity Payment Experience (TAPE)

The TAPE is a national learning program designed for employees working in the National Capital Region and non-treaty regions (Atlantic, Quebec, Yukon and Nunavut). Employees working in other regions where First Nations communities are eligible for treaty annuities may volunteer in their own region. The TAPE provides employees with a unique learning opportunity by inviting them to assist with the treaty payment events in the regions. As well, the program is meant to provide extra resources to regions during the busy treaty annuity months. Employees who wish to take part in the program include this activity in their annual learning plan and their employer covers the all participant travel expenses, including travel within the host region⁷³.

The TAPE program has existed since 2002, but data on participation rates was available only for 2010 and 2011.⁷⁴ TAPE participants attended 13.5 percent of ceremonies in 2010; in 2011, 7.5 percent of ceremonies were attended by TAPE participants.⁷⁵

6.1.2 Objectives and expected outcomes

Immediate outcomes identified through the document review and interviews are that Canada honours its obligations stemming from treaties with First Nations and that Canada and First Nations celebrate treaty events. The intermediate outcome is trust and good relations between Canada and First Nations. The TAPE has two complementary goals: 1) provide a unique Aboriginal learning and awareness opportunity; and 2) support the regions in delivering treaty annuities.

⁷³ Prior to 2010, travel expenses were shared by the employer and the host regions.

⁷⁴ IMETA. *Treaty Annuity Payment Experience 2010*. Individual Affairs Branch, Resolution and Individual Sector, 20 pages. IMETA. *Treaty Annuity Payment Experience 2011*. Individual Affairs Branch, Resolution and Individual Sector, 19 pages.

⁷⁵ IMETA. *Treaty Annuity Payment Experience 2010*, p.6, and *Treaty Annuity Payment Experience 2011*, p.5. AANDC. *Treaty Payment System, 2010 and 2011*. Report generated on April 19, 2012.

6.1.3 Program management

Treaty annuity payments are administered by Regional Directors General with functional guidance from the IMETA Directorate at HQ. This team develops the standards and processes specific to those activities.

The regions follow general procedures contained in the Manual for the Administration of Payments pursuant to Treaties,⁷⁶ the most recent version of which is dated March 2002. The standards and procedures provide details on the annuities to be paid, eligible individuals and bands, and the criteria for payment. However, annuity payments and the organization related to their payment are left up to the regions.

6.1.4 Key Stakeholders and Beneficiaries

Treaty First Nations and Members, both on reserve and in urban centres

Treaty annuities are payable to registered Indians who are members of a treaty band (Robinson-Huron, Robinson-Superior and the numbered treaties). The First Nation bands ask for a treaty event to their regional office. The band members are free to collect their annuities in their communities during a treaty event, at an urban payment or by mail.

Security Organizations and Companies

Depending on the region, different police organizations (provincial, municipal, First Nations, RCMP) are involved in security during the treaty payment season. RCMP officers also play a protocol role during the treaty payment events.

In some regions, private security companies are in charge of transporting the money from the bank to the regional office.

TAPE program volunteers

AANDC staff may volunteer to provide support during the treaty annuity payment ceremonies. As well, in the regions staff from other departments may volunteer.

Legal Services Unit, AANDC

Legal Services and the Department of Justice, from both HQ and regions, provide advice on how various aspects of the treaty annuities could affect the Minister's fiduciary obligations under historical treaties.

⁷⁶ AANDC, Indian Moneys, Estates and Treaty Annuities Directorate. *Manual for the Administration of Payments Pursuant to Treaty*. Registration, Revenues and Band Governance, Lands and Trust Services, March 2002.

The Office of the Indian Registrar

The Office of the Indian Registrar maintains the Indian Registry, the official record identifying all Registered Indians in Canada, as defined by the *Indian Act*. The Indian Register is used to compile the names of those eligible to receive a treaty annuity. Deaths, births and other changes in status recorded in the Indian Registry are to be reflected in the TPS maintained by the Treaty Annuities Payment program, which should result in up-to-date lists.

6.2. Findings – Relevance

Finding # 17: Treaty annuity payments are driven by the continued need for Canada to honour treaties and the high demand for treaty events and payments.

The literature review shows that for the federal government, historic treaties are closed non-negotiable agreements that contain obligations that must be fulfilled in exchange for the purchase of Aboriginal lands on the territory covered by the treaty. The terms of the treaties must be honoured or the relationship between the Government of Canada and First Nations will be damaged.

The payment of treaty annuities ties directly into the role and responsibilities of the federal government. The Government of Canada's role and its responsibilities to Aboriginal peoples are described in the *Constitution Acts of 1867 and 1982*.⁷⁷ Section 91 of the *Constitution Act, 1867* states that the Government of Canada is responsible for Indians and, therefore, is responsible for the treaties and annuities and for the negotiation of new treaties. Section 35 of the *Constitution Act, 1982* recognizes and confirms the Aboriginal and treaty rights of Canada's Aboriginal peoples.

Over the evaluation period (2006-07 through 2010-11) an average of 86.4 percent of eligible bands hosted a treaty payment event. This proportion dropped to 70 percent in 2007 and 2008, but information explaining the decline could not be obtained.

Over the years covered by the evaluation, an average of 73.6 percent of annuities owing were collected by band members (see Table 6.4). However, there are variations from one year to another, the extremes being 67.3 percent in 2011 and 80.1 percent in 2010.⁷⁸ If the collection of annuities through other means is considered, such as through the regional office, at urban events, or by cheque, members from a total of 305 of the 310 eligible bands are collecting their annuities,⁷⁹ which represent 98.4 percent of eligible bands.

⁷⁷ Justice Canada, "Constitution Acts, 1867 to 1982," accessed at: http://laws-lois.justice.gc.ca/eng/Const/Const_index.html.

⁷⁸ AANDC. *Treaty Payment System*. 2010 information generated on January 6, 2012, and 2011 information generated April 19, 2012.

⁷⁹ AANDC. *Treaty Payment System*. Report generated on April 19, 2012. AANDC, Indian Moneys, Estates and Treaty Annuities Directorate. *Manual for the Administration of Payments Pursuant to Treaty*, Appendix A: List of Treaty Annuity Bands, Numerical Order.

6.3. Findings – Performance

Outcomes for the treaty annuity payments program include: Canada honours its obligations stemming from treaties with First Nations; Canada and First Nations celebrate treaty events; trust and good relations between Canada and First Nations. TAPE outcomes are as follows: learning and awareness of treaties and support for regions in the delivery of treaty annuities.

The findings reveal that the treaty annuities payment program does honour Canada’s obligations stemming from treaties and promotes the celebration of treaty events. During the evaluation period, an average of 86.4 percent eligible bands hosted a treaty payment event and an average of 73.6 percent of annuities owing were collected by band members. Overall, while AANDC staff believe that the treaty annuity payment process establishes trust and contributes to good relations between Canada and First Nations it is not known at this time if First Nations share the same perspective.

Findings suggest that improvements to efficiency and economy could be achieved by addressing issues related to the TPS and sharing and implementation of best practices to reduce costs associated with the delivery of treaty annuities.

6.3.1 Effectiveness

Finding # 18: The Treaty Annuities Payment program supports Canada in honouring its treaty obligations to First Nations through the celebration of treaty events.

As indicated in Section 6.2.1, there is a high demand for treaty events and the majority of annuities are being collected on an annual basis. This indicates a level of success, however, there are some challenges in delivery. According to regional staff interviewed, a variety of internal and external factors pose challenges to the payment of treaty annuities. Internally, these challenges include: travel costs, particularly to remote communities; uncertainty around the number of individuals who will claim their annuity, particularly when they have not collected in previous years and so are entitled to “catch up”, makes it difficult to plan the amounts to be distributed; inaccuracies in the lists of eligible individuals; recurring problems with the TPS making it impossible, for example, to print annuity payment lists, and; failure to meet Security Directive requirements.

In spite of these challenges, AANDC staff are delivering and participating in treaty events and payments. All of the individuals interviewed⁸⁰ said that delivering treaty annuities helps build trust and promote good relations between the Crown and the First Nations, not only with the signatories to the treaties, but with all of Canada’s First Nations. All interviewees also mentioned that failure by the Government of Canada to comply with the terms of the historic treaties would hurt its relationship with all the First Nations in the country and may open the door to legal action. Canada’s reputation would also be damaged at home and abroad.

⁸⁰ Interviews conducted at Headquarters and in Ontario, Manitoba, Saskatchewan and Alberta.

The literature notes⁸¹ that for the First Nations, Treaty Day celebrations mean the renewal of the agreement reached between nations. The payment of annuities is perceived by many First Nations as the renewal of the relationship established during the signing of the historic treaties as well as a relationship that helps define the overall policy environment on Aboriginal issues. However, available information does not permit confirmation that First Nations believe that the treaty annuities payment program establishes trust and contributes to good relations between Canada and First Nations.

Finding # 19: The TAPE program is a good opportunity for participants to raise awareness of Aboriginal people and culture and treaties, but it does not meet the demand for staff in the regions.

As evidenced by comments from past participants, the TAPE program has succeeded in providing opportunities for community visits and cultural exchange. Documentation available on volunteer participation⁸² shows that past TAPE participants have enjoyed their learning experience, reporting that it is a very rewarding experience that sheds light on living conditions on reserves and in remote communities; is an honour to represent the Crown and observe respectful relations between the Crown and the First Nations; is an important opportunity to visit communities, interact personally with First Nations people, and discover their cultures, all of which are impossible to do from HQ, and; allows for exchanges with regional colleagues.

Although the program is well received among the volunteers, according to interviewees and a sample of information on staffing for treaty payment events, the ability of the TAPE program to meet staffing needs has fallen short due to low participation rates and the timing of the treaty payment season. Most payment ceremonies (62 percent) are held between April and June, when AANDC Learning Plan budgets are not yet confirmed and, in turn, employees' participation is not confirmed. The remainder of payment ceremonies (38 percent) are held during July and August when many employees are on vacation and the pool of potential volunteers is reduced.

In their efforts to meet the demand for staff in the delivery of annuity payments, most of the regions⁸³ have developed their own versions of the TAPE program, all based on the same principle and function as the national version.⁸⁴ The basics remain unchanged: participants are recruited from AANDC and other departments in the region, training is offered to participants and the employer pays participant costs. To meet staffing needs, the regional managers interviewed suggested that participation in the payment experience should be mandatory for all new AANDC employees.

⁸¹ The following document summarizes the historiographical position: Anderson, E. *The Treaty Annuity as Livelihood Assistance and Relationship Renewal*, p.73, 88.

⁸² IMETA. *Treaty Annuity Payment Experience 2010*, p. 8, and *Treaty Annuity Payment Experience 2011*, p.6. IMETA. *Employee/Volunteer Evaluation Report – TAPE-EPAT 2011*.

⁸³ British Columbia does not participate in the TAPE program nor does it operate a similar regional program.

⁸⁴ Interviews held in Ontario, Manitoba, Saskatchewan and Alberta.

Data on workforce needs for treaty payment events is limited and only the Manitoba and Saskatchewan⁸⁵ regions provided specific data on the number of people involved in delivering annuity payments. Workforce information for Manitoba and Saskatchewan during the 2010 payment season is presented in Table 6.5, showing that the TAPE program provided relatively few people from HQ compared to regular staff, other regional AANDC sectors and other regional departments.

Table 6.3 Staff in Manitoba and Saskatchewan for Annuity Payments, 2010

Personnel	Manitoba	Saskatchewan
Total payment days	87.5	85
Number of events	69	81
Regular staff (treaties)	87	184
Other regional AANDC sectors	94	100
TAPE – headquarters	6	14
Other regional departments	45	15
Total staff	232	313
Average days worked per person	7.7	3.7
Average number of people per event	3.4	3.9

As of 2011, some regions have stopped participating in the national TAPE program entirely. Besides the problem of too few TAPE volunteers, regions’ budgeting can be adversely affected when they accept participants. That is, the costs related to the number of TAPE participants in one year must be subtracted from the regions’ budget (staffing) projections in the following year, leading to a budget reduction.⁸⁶

Recommendation # 13:

- **Revisit and revise as appropriate the Treaty Annuities Payment Experience to better serve regional needs.**

Recommendation # 14:

- **Explore options for dealing with resource shortages during the treaty payment season, including making participation in treaty events mandatory to regular duties of all Individual Affairs staff.**

⁸⁵ AANDC, Manitoba Region. *Treaty Annuity Payment Reports for the Manitoba Region*, 2010. AANDC, Saskatchewan Region. *Summary of Treaty Payment Volunteers*, 2010.

⁸⁶ Interviews held in Manitoba, March 2012.

6.3.2. Efficiency and economy

Finding # 20: The Treaty Payment System does not contain sufficient or consistent data to support program management and delivery, performance measurement and decision making.

The Treaty Payment System exists to support performance management, but due to a lack of data, inaccurate data or incomplete data it does not meet program needs for reporting and, consequently, does not adequately support decision making. Data collection is limited to the annuity amounts paid in each community, the individuals who collected their annuity, and the number and location of the payment ceremonies. While this basic information is necessary, it is insufficient to aid in effective program management.

There is a lack of data on the actual costs of delivering Treaty Annuities and turnout, or degree of demand for treaty annuities⁸⁷. As a result it is difficult for regional staff to plan the budget and allocate resources and to know the precise amount of money to be brought to the communities. The TPS and the Indian Registration System are not adequately synchronised. As a result, deceased people sometimes remain on the treaty pay lists while other members are missing. No information is collected on the social characteristics of the people who collect them (gender, age group), which would be useful for projecting trends in participation.

In addition to a lack of data described above, TPS data is also not always reliable. There are variances depending on the type of report requested. Some data is also difficult to interpret. For example, the difference between “arrears” and “amounts owing” is not defined. Finally, there are issues with TPS functionality. The TPS does not run well in its mobile version. Employees must therefore compile data on paper and then enter the data manually in the system. Reconciliation carried out at the end of every season is also done manually, defeating an important purpose in having the system at all. This lack of functionality contributes to inefficiencies and potential for error during data entry.

Recommendation # 15:

- **Refine the Treaty Payment System data collection in order to facilitate more effective program management and synchronize the TPS with the Estates Reporting System in order to improve the reliability of the data overall.**

Finding # 21: The current payment method for treaty annuities is costly given the annuity amounts paid.

⁸⁷ Information on data shortcomings is taken from the analysis of TPS data and is corroborated by interviews conducted with national and regional managers.

Table 6.4 shows an estimate of expenses incurred by six regions compared to the amount of annuities they paid. According to this data, the British Columbia and Northwest Territories regions spend more to deliver the program than the amount of annuities they pay. Expenses vary from one region to the next; some must pay more than others for security and increased costs associated with travel to isolated and/or distant communities. Based on this data, the average cost per annuity payment ceremony in 2011 ranges from \$1,556 in British Columbia to \$2,649 in Northwest Territories.

Table 6.4 Expenses Incurred vs. Annuities Paid, 2011

Expenditures	Ontario	Manitoba	Saskatchewan	Alberta	British Columbia	Northwest Territories	Total
Ceremonies	89	69	81	43	9	26	317
Total/Payment-Related Expenditures ⁸⁸ (\$)	158,880	176,561	160,780	72,911	14,000	68,869	652,001
Average cost per ceremony (\$)	1,785	2,559	1,985	1,696	1,556	2,649	2,057
Annuities Paid ⁸⁹ (\$)	236,394	505,462	537,454	313,526	11,155	63,110	1,667,286
Expenditures as a percentage of annuities paid (%)	67.2	34.9	29.9	23.3	125.5	109.1	39.1

In the case of Saskatchewan, the estimated costs identified above are likely lower than actual costs. The Saskatchewan region conducted a detailed assessment of costs associated with treaty annuity payments for 2007–08 to 2009–10,⁹⁰ which estimated the cost of delivery at \$252,000. This is \$92,000 more than the estimated cost of delivery for Saskatchewan captured in Table 6.4., which indicates that actual costs may be closer to 70 percent of the cost of annuities as opposed to 30 percent as shown in Table 6.4 for 2011.

6.3.3 Alternative delivery models

Finding # 22: Over the years, every region has put in place certain alternatives to reduce or partly limit delivery costs, without sharing these best practices with others.

The central challenge in considering alternatives is the fact that annuities must be paid as per the treaties regardless of associated costs to the Department. Nonetheless, the program should explore ways of reducing and controlling costs associated with making the payments.

⁸⁸ Data is taken from financial reports provided by the regions to IMETA at Headquarters, January 2012.

⁸⁹ Data is taken from the Treaty Payment System, *Regional Summary, 2011*. Data extracted on April 19, 2012.

⁹⁰ Aboriginal Affairs and Northern Development Canada, Saskatchewan Region. Treaty Expenditure Evaluation Report. Prepared by Regional Finance, September 28, 2009. 5 pages.

Changing the program delivery is no easy task. The regions face a major challenge because travel costs are rising every year while travel budgets have been frozen. Moreover, growth in the Aboriginal population will result in increased numbers of people collecting annuities. As a result, a number of changes to the terms of delivering annuities are being considered. For example, making the payments every two years; sending a cheque for the total amount to the band council for redistribution to the members; or establishing a minimum annuity amount of \$20 for payments by cheque. However, change will be difficult as the treaties stipulate that the annuity must be paid in cash to members on an individual and annual basis. Additionally, it may not be possible to put a limit on payments by cheque. According to interviewees, the Department cannot unilaterally change the delivery of treaty annuities.

To meet these challenges, the regions have tried a number of alternatives to improve and save on the delivery of annuity payments. For example, payment ceremonies in urban centres reduce costs associated with the payment of annuities by cheque⁹¹ and summer students have been used to reduce salary costs. As mentioned earlier, most regions have developed their own TAPE program to increase the number of people available to deliver annuities. This initiative reduces pressure on their employees as well as costs incurred, since participant-related costs are covered by the participants' home branches.

Some regions have also organized annuity payment ceremonies for a few communities located in close proximity to one another. When a band has several communities, the teams from regional offices alternate visiting the communities every two or three years. Finally, the coordination of travel with other sectors in the branch has been used to reduce transportation costs. Regional managers indicated that these measures have generated savings in program delivery, but were unable to provide specific figures to support this claim.

Improvements and alternatives are a key element in discussions and initiatives among IMETA management. For example, some regional managers would like to have a forum to discuss the alternatives, challenges and solutions. Managers suggest adopting a national standing offer for security services. The regions could, thus, avoid the long and complex process of negotiating and processing new contracts each year. Headquarters is exploring the possibility of implementing alternatives, such as paying annuities every two years and depositing annuities directly into a bank account.

Recommendation # 16:

- **Coordinate regular forums among Indian Moneys, Estates and Treaty Annuities regional and Headquarters staff to provide opportunities for information exchange, sharing of best practices and lessons learned.**

⁹¹ Interviewees estimate that the cost of issuing a cheque by the federal government is between \$50 and \$60.

7. Conclusions and Recommendations

7.1 Conclusions

Overall, all four programs under Indian Moneys, Estates and Treaty Annuities continue to be relevant and have been generally successful in meeting immediate outcomes involving the fulfillment of responsibilities under legislation including the *Indian Act*. However, the close association of programs to legislated obligations has reduced the amount of attention paid to the impacts of IMETA programs. In addition, it has also likely contributed to the deficit in reliable national data, making it impossible to conclude on the overall performance of IMETA programs.

In terms of efficiency and economy, some regions were found to be extremely high functioning and have implemented best practices to reduce delivery costs that could be applied on a national scale. Thus, the efficiency and economy of IMETA programs could be increased through information sharing between regions and with HQ. Alternative delivery models could also contribute to improved efficiency and economy.

Further elaboration on the general conclusions is presented below:

Relevance

Indian Moneys, Estates and Treaty Annuities continue to be relevant due to legislation such as the *Constitution Act*, which establishes federal jurisdiction over First Nations people living on and off reserve and the *Indian Act*, which defines ministerial obligations related to trusts and estates. In the case of Treaty Annuities, the Government of Canada must continue to honour obligations in early historical treaties or risk conflict with treaty bands and the international community supporting Aboriginal rights. Until such time that the *Indian Act* is changed, alternative legislation is enacted and/or new delivery models are advanced, the need for these programs will continue.

The relevance of Indian Moneys, Estates and Treaty Annuities is also confirmed by the level of demand for existing programs such as the high number of, and dollar values of, Band Moneys transactions, and high participation rates in treaty payment events. In addition, relevance is driven by the continued need by First Nations to have access to Estates services that are comparable to those provided by provinces to non-Aboriginal Canadians and a lack of alternatives to IMETA programs.

In terms of alignment with federal and departmental priorities, there is a disconnect between Band Moneys and current priorities relating to transparency, self-sufficiency and economic development. It would seem that linkages to the *Indian Act* has created a situation in which the program has been unable to adapt to changing priorities or meet the changing interests of First Nations.

Performance – Effectiveness

Indian Moneys, Estates and Treaty Annuities programs have been generally successful in meeting program obligations under the *Indian Act*. For example, the approval process for Band Moneys expenditures ensures proper due diligence and contributes to good governance. In addition, while the Estates programs have encountered some challenges in determining jurisdiction and identifying and securing assets, both Estates programs successfully identified administrators. The Treaty Annuities program enjoys high participation in treaty payment events and distributes the majority of treaty payments as outlined in historical treaties.

The longer-term impact of IMETA programs on communities and individuals could not be determined due to a lack of reliable performance information. Inconsistencies in the type of Estates data being collected, regional data quality and, a lack of monitoring (with the exception of British Columbia) of non-departmental administrators, did not permit a national assessment of performance for Estates. For Treaty Annuities, the evaluation was unable to determine, with available data, the extent to which the Treaty Annuities Payments program contributes to good relations between Canada and First Nations. There is a need for better reporting and/or supporting information systems.

Performance – Efficiency and Economy

There are a number of ways in which the IMETA programs could improve efficiency and economy. The number of trust accounts managed by the Department could be reduced through the implementation of alternatives to Band Moneys such as revised opt-in legislation and/or new policies and procedures to give bands control over funds held in trust. Shifting responsibility for Living Estates to the provinces and territories would take advantage of existing expertise and processes in provinces and territories. It is also clear that program improvements could be achieved through increased information sharing and national implementation of identified best practices.

7.2. Recommendations

In light of the findings and conclusions, it is recommended that Aboriginal Affairs and Northern Development Canada support the implementation of the following recommendations:

Recommendation # 1:

- Explore the development of a workable alternative to Band Moneys that would provide First Nations access to funds in the Consolidated Revenue Funds outside the constraints of the *Indian Act* and present proposed alternative to the Strategic Policy Committee.

Recommendation # 2:

- Any changes to Band Moneys and alternatives be designed to increase the transparency of Band Moneys expenditures to members, better support access to capital for economic development and promote greater self-sufficiency.

Recommendation # 3:

- That AANDC revise the Manual for the Administration of Band Moneys to reflect current policy and modern practices.

Recommendation # 4:

- Facilitate a discussion with First Nations on how to report back to members in a clear and useful manner on Band Moneys expenditures.

Recommendation # 5:

- Develop policies and procedures for Living Estates to identify dependent adults and confirm AANDC jurisdiction.

Recommendation # 6:

- Examine the appropriateness of the “administrator of last resort” policy for Living Estates.

Recommendation # 7:

- Examine IMETA HQ’s relationship with regions in order to provide more consistent and timely support for the administration of Living Estates.

Recommendation # 8:

- Ensure a standard approach to data entry into the Estates Reporting System in order to generate more reliable data for program management.

Recommendation # 9:

- Revisit the policy of securing assets in Decedent Estates to identify and mitigate risks such as addressing delays in the notification of death and possible policy conflicts with existing cultural practices.

Recommendation # 10:

- Develop a strategic approach to capacity development to increase effectiveness and efficiency of Decedent Estates with appropriate measurements to monitor success.

Recommendation # 11:

- Examine the appropriateness of the “administrator of last resort” policy in the administration of Decedent Estates.

Recommendation # 12:

- Explore the feasibility of adopting and implementing the British Columbia Minimum Value Policy for Decedent Estates on a national scale.

Recommendation # 13:

- Revisit and revise as appropriate the Treaty Annuities Payment Experience to better serve regional needs.

Recommendation # 14:

- Explore options for dealing with resource shortages during the treaty payment season, including making participation in treaty events mandatory to regular duties of all Individual Affairs staff.

Recommendation # 15:

- Refine the TPS data collection in order to facilitate more effective program management and synchronize the TPS with the Estates Reporting System in order to improve the reliability of the data overall.

Recommendation # 16:

- Coordinate regular forums among Indian Moneys, Estates and Treaty Annuities regional and Headquarters staff to provide opportunities for information exchange, sharing of best practices and lessons learned.