

**Indian and Northern Affairs Canada
Corporate Services**

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Audit of Estates Administration

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Executive Summary

Background

The *Indian Act*, section 42(1) vests to the Minister of Indian and Northern Affairs Canada (INAC), exclusive jurisdiction and authority over the estate of deceased Indians who were ordinarily residents on a reserve at the time of death. Sections 42 to 50 of the *Indian Act* and the *Indian Estates Regulations* provide rules for administering Indian Estates. However, section 4(3) of the *Indian Act* excludes the Minister from becoming the administrator if the deceased did not ordinarily reside on a reserve or Crown lands.

The administration of Indian estates, in the past, was seen as a function of the federal government. The Minister automatically appointed departmental employees to administer First Nation estates. However, the department's role changed in 1975. The present position was that executors and heirs to First Nations estates have the equivalent right to be appointed to administer the estate of a deceased relative, under the *Indian Act*, as do their counterparts under provincial legislation. If no one entitled to administer the estate comes forward, or the deceased dies intestate with no surviving relative, only then does the department, as an administrator of last resort, appoint a departmental employee to administer the estate.

Headquarters carries out the judicial role of the department, while the everyday administration of individual estates is conducted at the regional offices.

Scope

The audit was done in three phases (planning, fieldwork and reporting) and involved a review of the management control frameworks, policies, practices and administrative regimes established in accordance with the provisions of the *Indian Act*, to effectively manage, administer and protect those estates falling under the jurisdiction of the Minister. The project included a review of the systems, procedures and controls related to the management and protection of Indian estates at headquarters and in four regions: Quebec, Ontario, Alberta and British Columbia, covering the fiscal period from April 1, 1999 to March 31, 2001.

Scope Limitation

Our audit commenced at the point where the department has been notified of a death and the department determines that, through the application of the legislative criteria, it has jurisdiction over the estate. The criteria includes: the individual is deceased, the deceased was an Indian, and the deceased was ordinarily resident on a Reserve or Crown lands. Any point prior to the notification of death to the department was not included in the audit as the identification of the death by the audit team and the department would not be feasible.

Objectives

The objectives of the audit were to provide assurance that the estates are being administered in compliance with the *Indian Act*, Regulations and departmental requirements, ensure that the best interests of the heirs are being managed with due diligence and to review the integrity of the Estates Reporting System and its use in effective decision-making. Each of these objectives are addressed below.

Assurance

With the exception of the scope limitation and the following audit findings related to best interest of heirs, it is our opinion that there is reasonable assurance that the Indian estates are processed in compliance with the *Indian Act*, Regulations and Estates Administration departmental policies based on the documentation that was verified and the interviews that were conducted with key departmental staff.

Key findings

Under the Estates Administration departmental policies, the department has a responsibility to carry out the minimum steps necessary to preserve the assets of an estate until an administrator has been appointed. Currently, the departmental focus, is on appointing an administrator rather than preserving the assets.

As a result, the necessary steps to identify and protect the key assets were not taken or evidenced in the files during the period of appointing an administrator, as such, some high-risk assets, which would normally be protected by an estate administrator, would be vulnerable to loss. In this circumstance, the Minister would be potentially liable for its value.

Effective Decision Making

In the past, headquarters maintained a national performance information system where the regions periodically provided information that was cumulated into a national Estate Administration picture. This reporting system is currently not being utilized and therefore, there is no national information data relating to the Estates Administration Program.

An information system called the Estates Reporting System (ERS) is currently in use. This system was designed and implemented to assist regional management in the administration of the estates and reporting to headquarters on the effectiveness of estates management. The ERS provides various performance information including: number of files opened and closed, number of files in backlog (estate files open for more than two years) and the average value of the estates.

During our fieldwork, it was observed that the regions gathered information only on an ad hoc basis. A formal reporting structure does not exist between the officers and regional management nor the regions and headquarters. Therefore, Estates Administration management is not utilizing the information from ERS to make effective decisions.

Devolution of the Estates Administrator Role

The regional offices have been conducting various training sessions (capacity building sessions) with the First Nation Communities regarding the preparation of a Will, the role of the department in appointing an administrator and the role of the department when a non-departmental administrator is appointed.

In many cases, the capacity building sessions are done on an as requested basis rather than on a proactive basis. As a result, the department may not be devolving its roles and responsibilities as an administrator as expeditiously as desired.

Backlog

A backlog exists according to the department's definition. The staff interviewed indicated that the cause for the backlog emanates from pending legal advice or decisions from headquarters; difficulty in locating, contacting and verifying potential heirs; and delays in responses from heirs, First Nation communities and creditors. The total national backlog for Estate files is not monitored at headquarters.

Policies and Procedures

Currently, all estate files that fall under the jurisdiction of the Minister must be processed with a comparable degree of documentation and investigation, regardless of the value or risk associated with the estate. As a result, a considerable amount of the officers' time is required to process each estate file. Consequently, the estates officers' cannot adequately focus their time on the complex, high risk and significant value estates.

Risk Management and Management Control Framework

Our interviews with the estates officers and regional management revealed that there are varying opinions as to the level of risk associated with the Estates Administration Program. The Estates officers interviewed were not aware of a risk assessment and mitigation plan.

Also, through our interview process, we determined that a formal management control framework does not exist in the four regions, as such, management control framework activities such as file reviews, training, peer reviews, supervision and performance measurement are not occurring.

Recommendations

1. It is recommended that the Director General, Registration, Revenues and Band Governance Branch reinforce the requirement for the estates officers to undertake steps to identify an estate's assets, to determine their vulnerability and to take the appropriate measures in these rare situations, such as appointing an interim administrator, to protect the assets until the department identifies and appoints a representative for the estate.
2. It is recommended that the Director General, Registration, Revenues and Band Governance Branch enhance the current ERS system in consultation with the system users to provide regional and national performance information to enable managers to use this information for effective decision-making relating to the Estates Administration Program.
3. It is recommended that the Director General, Registration, Revenues and Band Governance Branch in consultation with the Regional Directors General establish a schedule and budget for providing training to the First Nation Communities to promote and facilitate the devolution of the Estates Administration and Will Preparation process.
4. It is recommended that the Director General, Registration, Revenues and Band Governance Branch redefine the term backlog. The term backlog should be separated into two categories. The first category would be based on the length of time required to appoint and administrator. The second category would be based on the length of time for a departmental administrator to administer an estate file. Separating the backlog time frame into two categories will provide more meaningful information and provide the regions and headquarters a more accurate analysis of which category is causing delays in the closure of the estate files.
5. It is recommended that the Director General, Registration, Revenues and Band Governance Branch, in consultation with the Regional Directors General establish a minimum dollar value or risk level for the extent of processing procedures required to be administered for an estate. For these minimum dollar value or low risk estates the required procedures should be reduced to a minimum such as the depth of investigation to determine all the heirs of an estate.
6. It is recommended that the Director General, Registration, Revenues and Band Governance Branch in conjunction with the Regional Directors General assess the current level of risk associated with the Estates Administration Program to ensure that policies, procedures, controls and resources are in place in order to mitigate the risk. This would include ensuring that each region institutes a management control framework.

Section 1 - Introduction

Purpose

The purpose of the audit was to provide a comprehensive assessment of the management control framework, policies, procedures, practices and administrative regimes established in accordance with the provisions of the *Indian Act* to effectively manage, administer and protect the estates of deceased Indians for those estates which fall under the jurisdiction of the Minister.

Background

The *Indian Act*, section 42(1) vests to the Minister of Indian and Northern Affairs Canada (INAC), exclusive jurisdiction and authority over the estate of deceased Indians who were ordinarily residents on a reserve at the time of death. Sections 42 to 50 of the *Indian Act* and the Indian Estates Regulations provide rules for administering Indian Estates. However, section 4(3) of the *Indian Act* excludes the Minister from becoming the administrator if the deceased did not ordinarily reside on a reserve or Crown lands.

Accordingly, the Minister of INAC has statutory and fiduciary duties in relation to the estates of deceased Indians who died ordinarily resident on reserve or Crown land during their life time. The Minister, or his/her delegate, exercises a judicial role by appointing and removing administrators, approving Wills and resolving disputes concerning a Will's validity.

The administration of Indian estates, in the past, was seen as a function of the federal government. The Minister automatically appointed departmental employees to administer First Nation estates. However, the department's role changed in 1975 after a decision by the Supreme Court of Canada (*A.G. Canada v Canard*)(1976)(1SCR 170). The case concluded that executors and heirs to First Nations estates have the equivalent right to be appointed to administer the estate of a deceased relative, under the *Indian Act*, as do their counterparts under provincial legislation. If no one entitled to administer the estate comes forward, or the deceased dies intestate with no surviving relative, only then does the department, as an administrator of last resort, appoint a departmental employee as an administrator to administer the estate.

Headquarters carries out the judicial role of the department, while the regions carry out the everyday administration of individual estates.

Need for the Audit

The Estates Administration Program was last examined by the Departmental Audit and Evaluation Branch (DAEB) in 1991-1992, as well as the last audit of the Estates Administration Program was carried out by the Office of the Auditor General (OAG) in 1986.

As such, it has been a considerable amount of time since the Estates Administration Program has been reviewed and there is a need to provide assurance to the Deputy Minister that Indian estates, under the Minister's jurisdiction, are being administered in compliance with the *Indian Act*, Regulations and departmental requirements; that assets and the best interest of the heirs are being managed with due diligence and to review the integrity and management of the Estate Reporting System and its use in effective decision making.

Section 2 - Objectives and Scope

Objectives

The objectives of the audit were to verify the following issues:

1. to provide assurance to the Deputy Minister that Indian Estates, under the Minister's jurisdiction, are being administered in compliance with the *Indian Act*, Regulations and departmental requirements;
2. To ensure that assets and the best interests of the heirs are being managed with due diligence; and
3. to review the integrity and management of the Estates Reporting System and its use in effective decision making.

Scope

The scope of the audit covered a verification of management control frameworks, policies, procedures, practices and administrative regimes established in accordance with the provisions of the *Indian Act*, to effectively manage, administer and protect the estates of deceased Indians for those estates which fall under the jurisdiction of the Minister. The audit included an assessment of the systems, procedures and controls related to the management and protection of Indian estates at headquarters and in four regions: Quebec, Ontario, Alberta and British Columbia, covering the fiscal period from April 1, 1999 to March 31, 2001

The team selected a sample of 30 to 60 estate files per region (total of 167 estate files) initiated and processed within the audit period to ensure they had been administered in accordance with the *Indian Act* and Regulations and departmental policies.

Scope Limitation

Our audit commenced at the point where the department has been notified of a death and the department determines that, through the application of the legislative criteria, it has jurisdiction over the estate. The criteria includes: the individual is deceased, the deceased was an Indian, and the deceased was ordinarily resident on a Reserve or Crown lands. Any point prior to the notification of death to the department was not included in the audit as the identification of the death by the audit team and the department would not be feasible.

Section 3 - Detailed Findings and Recommendations

The objectives of the audit were to provide assurance that the estates are being administered in compliance with the *Indian Act*, Regulations and departmental requirements, ensure that the best interests of the heirs are being managed with due diligence and to review the integrity of the Estates Reporting System and its use in effective decision-making. Each of these objectives are addressed below.

Best Interest of Heirs

Under the Estates Administration departmental policies, the department has a responsibility to carry-out the minimum steps necessary to preserve the assets of an estate until an administrator has been appointed. In situations where there may be a risk of loss to the assets, the estates officer may have to undertake steps to protect the assets, such as feed livestock and the safe keeping of jewels and other valuables.

Through the file reviews conducted at each region, we determined that the majority of files sampled did not contain evidence that the department took steps to identify key assets, unless there were Reserve land and/or a trust account with the department. As such, the officer would not have been aware of any assets that may have been considered vulnerable and the appropriate steps would not have been taken to protect the assets.

In the departmental policies there are two requirements for the officers to fulfil:

- an administrator must be appointed as expediently as possible in order to manage an estate; and
- the department is required to protect the assets of an estate until an administrator is appointed.

At present, the departmental focus is on appointing an administrator. Frequently, lengthy periods of time lapses in identifying an administrator, as such, some assets which are usually protected by an estate administrator, are vulnerable to loss.

Recommendation

1. It is recommended that the Director General, Registration, Revenues and Band Governance Branch reinforce the requirement for the estates officers to undertake steps to identify an estate's assets, to determine their vulnerability and to take the appropriate measures in these rare situations, such as appointing an interim administrator, to protect the assets until the department identifies and appoints a representative for the estate. The appointment of an interim administrator will enable the department to undertake actions that are required to protect the assets and to protect the Minister against potential liability.

Effective Decision-Making

Performance information is a tool that assists management in assessing the results of the Estates Administration Program. It also provides information for corrective actions and about risks. Performance information can include, as a minimum, operational information such as:

- Staff Workloads;
- Resource issues;
- Backlog situations (Number of files in backlog files and their causes);
- Number of open and closed files;
- Number of departmental and non-departmentally administered estates;
- Actual number of files processed versus the work plan of files to be processed;
- Number of complaints from heirs and beneficiaries;
- The average cost and time spent to process a file;
- Asset value per file Vs resources (dollars, time) per file; and
- Asset values managed by each estates officer.

In the past, headquarters maintained a national performance information system where the regions periodically provided information that was cumulated into a national Estate Administration picture. This reporting system is currently not being utilized and therefore, there is no national information data relating to the Estates Administration Program.

An information system called the Estates Reporting System (ERS) is currently in use. This system was designed and implemented to assist regional management in the administration of the estates and reporting to headquarters on the effectiveness of estates management. The ERS does provide various performance information including: number of files opened and closed, number of files in backlog (estate files open for more than two years) and the average value of the estates.

During our fieldwork, it was observed that the regions gathered information only on an ad hoc basis. A formal reporting structure does not exist between the officers and regional management nor the regions and headquarters. Therefore, Estates Administration management process does not utilize the information from ERS to make effective decisions.

Recommendation

2. It is recommended that the Director General, Registration, Revenues and Band Governance Branch enhance the current ERS system in consultation with the system users to provide regional and national performance information, to enable the managers to use this information for effective decision-making relating to the Estates Administration Program.

Devolution of the Estates Administrator Role

The regional offices have been conducting various training sessions (capacity building sessions) with the First Nation Communities with regards to preparing a Will, the role of the department in appointing an administrator and the role of the department when a non-departmental administrator is appointed.

In many cases, the capacity building sessions are done on an as requested basis rather than on a proactive basis. During our interviews, the officers in two of the regions indicated that many of the First Nation communities were not aware that the department provided these capacity building sessions and that they would be interested in providing these sessions to their members. As a result, the department may not be devolving its roles and responsibilities as an administrator as expeditiously as desired.

Pilot Project

The Ontario region has conducted a pilot project of self-administration with one of the First Nations communities. The role of the First Nations officer ('the officer') is to fulfil the functions of the department which includes the investigative work, information gathering and the administration of estates where an heir has not been appointed.

The role of the department under this capacity building project is to provide advice to the officer, perform periodic reviews of the files to ensure that the files contain the appropriate documentation, approve Wills in accordance with the *Indian Act* and appoint administrators.

The officer provides the department quarterly reports highlighting the number of files opened, closed and in backlog during the quarter. The officer also provides the department an annual report that highlights the actual performance versus the objectives, budgets and work plans that were submitted at the beginning of the year. The department also performs an annual review of the officer's performance.

The First Nation community has designated two members to carry out the functions of an estate officer. During our fieldwork, the team visited the location to interview one officer to determine what challenges were encountered and how they were overcome and what the officer believed were the benefits of the pilot project.

Challenges

The officer indicated that there is a lack of knowledge and awareness of the Estates Administration Program within the First Nation community. The officer is presently conducting a number of training sessions, using departmental prepared training materials on Will preparation and Estates Administration, with the members of the First Nation community.

The officer indicated that the members of the First Nation community are reluctant to utilize the Estates Administration Program. This reluctance has created a major barrier in the implementation of the Pilot project. To overcome this barrier, the officer suggested that it was essential to change how the First Nation community perceives the Estates Administration Program. The officer indicated that one of the ways to overcome this perception is by having a First Nation community member interacting with the heirs rather than a departmental employee.

The officer did not obtain access from the department to the Estates Reporting System for approximately five years after the pilot project began as there were technical difficulties that resulted in this delay. One of the technical difficulties was to determine how to limit the officer's access to only the specific First Nation community member files.

Benefits

The officer indicated that the members of the First Nation community felt that they had more control over their families' affairs when they interacted with a member of their First Nation community rather than a departmental employee, placing a higher level of confidence in the officer's administration of their family member's estates.

As liaisons and correspondence were provided to members of the First Nation community in their mother tongue, departmental services were better utilized. The officer provides an important link between the First Nation community Council and the department, as a result, an open line of communication exists between all parties.

As the officer is a member of the First Nation community and resides on the Reserve, his knowledge of the community, its culture and traditions is extensive. As a result of his connection to the First Nation community, he felt that he was more effective at determining all the heirs and assets of an estate and he was able to meet with family members in the evenings and on weekends. Interest in the Estates Administration Program has increased due to the availability of an immediate contact on the reserve.

As can be seen in the above example, the benefits of all capacity building mechanisms including the pilot project will be long-term as a new generation will have the knowledge to administer the estates of their family members effectively and efficiently and as a result, the department will be able to assume its role as “the administrator of last resort”.

Recommendation

3. It is recommended the Director General Registration, Revenues and Band Governance Branch in consultation with the Regional Directors General examine the feasibility of implementing capacity building mechanisms such as pilot projects in each of the regions. The pilot projects provide a mechanism for the department to progress towards First Nations self-administration. As part of the pilot projects, a proactive approach should be undertaken to provide capacity building such as establishing a schedule and budget for providing training to First Nations communities to promote and facilitate the devolution of Estates Administration and Will preparation.

Backlog

A backlog exists according to the department’s definition. The staff interviewed indicated that the cause for the backlog emanates from pending legal advice or decisions from headquarters; difficulty in locating, contacting and verifying potential heirs; and delays in responses from heirs, First Nation communities and creditors. The total national backlog for estate files is not monitored at headquarters.

Presently, the ERS provides limited backlog information and does not notify officers that a file has been outstanding for a specified period of time. In some regions, officers manually monitor their caseloads in order to determine the status of each of their files. On average, an officer’s caseload could be approximately 60 to 100 files and as such manual monitoring requires a sizeable investment of time.

Recommendation

4. It is recommended that the Director General, Registration, Revenues and Band Governance Branch re-define the term backlog. The term backlog should be separated into two categories. The first category would be based on the length of time required to appoint and administrator. The second category would be based on the length of time for a departmental administrator to administer an estate file. Separating the backlog time frame into two categories will provide more meaningful information and provide the regions and headquarters a more accurate analysis of which category is causing delays in the closure of the estate files.

Policies and Procedures

Currently, all estate files that fall under the jurisdiction of the Minister must be processed with a comparable degree of documentation and investigation, regardless of the value or risk associated with the estate. The adequate documentation requirement is to provide evidence that each client has been treated equally and given the same opportunities and information.

This requirement includes:

- Determining if a Will exists;
- Searching for all the heirs of an estate;
- Sending Application for Administration forms and letters to all eligible heirs; the heirs have 30 days to respond;
- If the department has not received a response within 30 days, sending letters to all the heirs indicating that they have an additional 15 days to respond;
- Once an heir has indicated his or her interest in becoming an administrator, the department will send requests for objections of the appointment to all the heirs; and
- Once an administrator has been appointed, the department will send all the heirs a letter indicating who was appointed by the department to administer the estate.

As a result of the documentation requirement, a considerable amount of the officers' time is required to process each estate file. Therefore, Estates officers' cannot adequately focus their time on the complex, high risk and significant value estates.

Also during the audit of the estate files, the team noted that a standardized approach to the preparation of a file was not evident as there was a wide variation in the type and extent of documentation maintained on the files. In many cases, due to lack of documentation, it was difficult to follow the progress of the activities in the processing of the estate file. The following are examples of documentation that was frequently missing in the files:

- letters to heirs informing them of their options and/or whom had been appointed as administrator;
- letters to the heirs providing them the opportunity to object to the potential administrator appointment; and
- records of telephone conversations.

With varying methods to file preparation, it was often difficult to locate key documents such as the Application for Administration forms. Some of the regions had developed file checklists, however, these were not always prepared or completed.

The file documentation requirement that is discussed above is described in the Estates Procedures Manual. This manual provides a useful tool for the processing and administration of First Nation estates as it addresses many of the routine issues that an officer may encounter in carrying out his or her duties. The manual is required to be maintained and updated by headquarters. However, the last update of the manual was September 14, 1994 and as a result, many current issues are not reflected.

For example, the manual does not reflect cases that involve Sections 14 and 50 of the *Indian Act*. Section 14 relates to deeming common law spouses as heirs to an estate while Section 50 relates to Reserve land that is transferred to beneficiaries/heirs that cannot reside on that Reserve.

Headquarters has requested that officers put a hold on cases where Sections 14 and 50 apply until a policy decision has been made. These policy decisions have been with Headquarters for over a year and the officers have not received any information as to how to proceed with these files.

The officers also indicated that the procedures in the manual often conflict with the traditions of the various First Nations communities. For example, the response time for an heir to inform the department that he or she is interested in applying for the administrator's role is thirty days. In many of the northern First Nation communities, the members are often unavailable for months at a time. As a result, many of the heirs that have been contacted for the administrator role are not able to inform the department of their interest prior to the deadline.

Under the *Indian Act* and Regulations, the Minister and the officers are liable for decisions made while administering an estate that falls under the Minister's jurisdiction. The utilization of the outdated Estates Procedures Manual creates a potential situation for an estates officer to make an incorrect decision that may result in a liability to the department. The value of this liability is dependent on the value of the estate.

Recommendation

5. It is recommended that the Director General, Registration, Revenues and Band Governance Branch in consultation with the Regional Directors General update the Estates Procedures Manual to include the following:
 - an established minimum dollar value or risk level for the extent of processing procedures required for an estate. For these minimum dollar value or low risk estates the required procedures should be reduced such as the depth of investigation to determine all the heirs of an estate;
 - a standardized checklist and filing system. This system would facilitate simple referencing when a staff member is required to work on an estate file as a result of vacation or staff turnover; and
 - the traditions and cultures of the various First Nations communities in order to develop a manual that is an improved reflection of the way of life of the department's clientele.

Risk Management and Management Control Framework

Our interviews with the estates officers and regional management revealed that there are varying opinions as to the level of risk associated with the Estates Administration Program. The estates officers interviewed were not aware of a risk assessment and mitigation plan.

Also, through our interview process, we determined that a formal management control framework does not exist in the four regions, as such, management control framework activities such as file reviews, training, peer reviews, supervision and performance measurement are not occurring.

In one region, management informed us that periodic internal reviews of the estate files were carried out to ensure the files contained all the information required and that the officers made appropriate decisions. However, this form of review has not been conducted in approximately two years due to a lack of resources.

Regional Managers indicated that they often rely on the officers' knowledge and experience in estates administration and that they will inform the managers should they encounter any complex issues. However, in one of the regions, staff turnover has been frequent and many of the officers have worked in Estates Administration for less than a year and do not have the appropriate background, training and experience.

Recommendation

6. It is recommended that the Director General, Registration, Revenues and Band Governance, in conjunction with the Regional Directors General, assess the current level of risk associated with the Estates Administration Program to ensure that policies, procedures, controls and resources are in place in order to mitigate the risk. This would include ensuring that each region institutes a management control framework that would comprise of, as a minimum, periodic file review by a supervisor; training for the estates administration officers on the relevant legislation, Estates Procedures Manual, Estates Reporting System and file preparation; peer review; supervision by either a manager or senior estates officer during the processing of estate files and a system which provides performance information.

Communication Between the Regions and Headquarters

The interview process and file audits indicated that the estates officers and managers were not receiving timely policy decisions from Headquarters. For example, in one estate file, the region requested guidance from Headquarters on January 2001 regarding the validity of an amendment to a Will. As of May 2001, the estate officer had not received a decision or guidance from Headquarters and as such, the estate file remains open. Timely guidance and decisions from Headquarters is required to complete the processing of an estate file.

As time lapses, heirs to an estate may have passed away adding additional complexity to the administration of the estate. Periodic communication of national policy decisions is necessary in order to ensure that the officers are applying current policy and legislation..

Recommendation

7. It is recommended that the Director General, Registration, Revenues and Band Governance Branch develop and implement a communication protocol with all the regions. This protocol would include:
 - providing memorandums of national policy decisions to all regions on a timely basis;
 - timely responses to regional queries regarding policy and legislative issues on an estate file.

Training

Headquarters is responsible for providing formal training to new estates officers and current officers on changes to legislation, policy, processing of estate files and ERS.

Many of the new estates officers indicated that they did not receive any formal training from Headquarters for at least one year after they commenced their position in estates administration. The training they did receive was informal, on-the job and in some regions, a senior estates officer assisted the new officers in preparing files and dealing with complex issues.

The current estates officers indicated that they have not received any training on new changes or updates to the Estates Administration Program. As a result, headquarters is not utilizing the training methodology to ensure that all estates officers are aware of changes to legislation and policy.

It was indicated that the last training session that the officers received, with respect to the ERS, was when the system was first implemented. As a result, many of the officers are unaware of the capabilities of the ERS and simply utilize the system for opening and closing an estate file.

Recommendation

8. It is recommended that the Director General, Registration, Revenues and Band Governance Branch provide regular training sessions for all estates officers in order to disseminate information about legislation, policy decisions, processes and procedures for an estate file and the ERS. It is important that new estates officers receive formal training within a few months of commencing the position.

Client Satisfaction

The regions have implemented an informal process for receiving and addressing complaints from heirs and beneficiaries. However, the existence of this process is not openly communicated to the First Nations communities. Clients are only made aware of this process when they approach the department with the intention of filing a complaint. The officers and managers indicated that generally, the department only receives the occasional critical comments from heirs or beneficiaries.

Recommendation

9. It is recommended that the Director General, Registration, Revenues and Band Governance Branch develop a mechanism, such as an information letter, that will enable the department to inform the heirs and beneficiaries of an estate that a process exists to receive their comments and concerns.

Best Practices

Public Trustee Practices

During the fieldwork phase, the audit team interviewed the staff and management of the public trustees office in the Alberta and B.C. regions in order to understand the processes utilized by the provincial organizations to administer estates of First Nations and their other clientele. The purpose of the interviews was to determine if any 'best practices' existed in the public trustees offices' processes that would be beneficial if implemented in the processes at Indian and Northern Affairs Canada (INAC).

In both regions, the public trustees indicated that their organization does not administer many First Nation estates. However, each office processes in excess of 4000 files per year with the number of officers ranging between 25 and 30. On average an officer will be processing 150 estate files at any one time.

While the process of administering an estate at the public trustee is similar to that of INAC, there are a number of variances between the two organizations. Some of the 'best practices' employed by the public trustees are:

- **Management Control Framework and Risk management:** the manager performs an internal review on a sample of files before an estate is administered, and an annual provincial audit is conducted on a sample basis. This ensures that the liability is reduced for the administrator. Additionally, there are monthly meetings held to review the process performance and discuss any difficulties encountered by the officers.

- **Service Standards:** The public trustees office distributes questionnaires to its clients in order to obtain feedback on the services provided by its officers. Client suggestions and concerns are discussed with the officers.
- **Policy Manual:** In Alberta, the policy manual used by the provincial trustee is continually reviewed and updated by a Policy Review Committee. The committee consists of two lawyers who assist with any interpretation of legislation and policy.
- **Protection of Assets:** While the priority of the public trustees is to appoint an outside administrator, the offices employ in-house investigators that immediately visit the deceased's residence to secure any assets and to collect any personal papers (i.e. Will, deeds, bank records, etc.). Vulnerable assets are secured under 'lock and key' and are maintained in storage facilities.

Recommendation

10. It is recommended that the Director General, Registration, Revenues and Band Governance in conjunction with the Regional Directors General conduct an analysis of implementing the public trustees 'best practices'. The analysis will enable the department to determine if the implementation of these 'best practices'; are practical in the environment in which it operates; will assist the department in providing its clients a more efficient and effective service; and will ensure the 'best interest' of the heirs are protected.

Terms of Reference

Terms of Reference

Audit of Indian Estates Administration

Background: The *Indian Act* section 42 (1) vests to the Minister of Indian Affairs and Northern Development, exclusive jurisdiction and authority over the estate of deceased Indians who were ordinarily residents on a reserve at the time of death. Sections 42 to 50 of the *Indian Act* and the Indian Estates Regulations provide rules for administering Indian estates. However, subsection 4 (3) of the *Indian Act*, excludes application of the above sections to or in respect of any Indian who does not ordinarily reside on a reserve or on Crown lands.

Accordingly, the Minister of Indian Affairs and Northern Development has statutory and fiduciary duties in relation to the estates of deceased Indians who died ordinarily residents on a reserve or Crown land during their life time. The Minister or his/her delegate exercises a judicial role by appointing and removing administrators, and approving wills and resolving disputes concerning a will's validity.

The administration of Indian estates, in the past, was seen as a function of the federal government. The Minister automatically appointed departmental employees to administer First Nations estates. However, the department's role changed in 1975 after a decision by the Supreme Court of Canada (A.G. Canada v. Canard) (1976) (1SCR 170). The case concluded that executors and heirs to First Nations estates have the equivalent right to be appointed to administer the estates of a deceased relative under the *Indian Act* as do their counterparts under provincial legislation. If no one entitled to administer the estate comes forward or the deceased dies intestate with no surviving relative, only then does the department, as an administrator of last resort, appoint a departmental employee as an administrator to administer the estate.

An Estates Reporting System is designed to assist the regional management in administration of estates and reporting to the Minister on the effectiveness of management of the estates. The judicial role of the department is carried out by the headquarters and the day to day administration of individual estates is carried out by the regions.

Need: Indian Estates Administration was last examined by DAEB in 1991-1992. Also, the OAG has expressed their concerns that no recent review activity has occurred. The OAG may decide to carry out its own audit if the department does not, as the last audit of Indian Estates Administration was carried out by the OAG in 1986.

There has been considerable time since the function has been reviewed, therefore, there is a need to provide assurance to the Deputy Minister that Indian estates, under the Minister's jurisdiction, are being administered in compliance with the *Indian Act*, regulations and departmental requirements; that assets and the best interest of the heirs are being managed with due diligence and to review integrity and management of the Estate Reporting System and its use in effective decision making.

Scope: The audit will cover a review of management control framework, policies, procedures, practices and administrative regimes established in accordance with the provisions of the *Indian Act*, to effectively manage, administer and protect the estates of deceased Indians for those estates which fall under the jurisdiction of the Minister. It will include a review of the systems, and procedures and controls related to the management and protection of Indian Estates at headquarters and in four regions: Quebec, Ontario, Alberta and British Columbia regions covering the fiscal period from April 1999 to March 2001.

Issues: The main objectives of the audit will be to verify:

Operation and Legislation related Issues

- Are the Minister's legal and fiduciary responsibilities in respect to Indian Estates Administration being adequately fulfilled?
- Are there appropriate operational systems and processes in place at headquarters and in the regions to provide assurance that Indian estates are being administered in compliance with the *Indian Act*, regulations and departmental requirements, that assets and the best interests of the heirs are being protected?
- What risk management measures are in place to monitor and address the Minister's exposure to the fiduciary risks?
- Is there any improvement made to the processes for efficient administration of Indian Estates and to address a backlog of estate files?
- Is the quality of service for estates consistently and appropriately administered across the country?
- Is the policy regarding section 50 (2) of the Indian Act providing for sale of right to possess or occupy land in a reserve by a person not entitled to reside on a reserve discharged with due diligence?
- Are existing procedures and practices and training/information manuals adequate?

Capacity building and Gathering Strength related Issues

- Does the department have a strategy for achieving “self administration” of Indian estates? What level of “self administration” has been achieved? Do barriers or constraints exist to self administration?
- Has any training plan being developed and delivered for capacity building of First Nations?
- Is the department’s management practice regarding administration of Indian estates comparable with the private sector estate management practices?

Approach: The audit will look at the practices, procedures and systems in place in the department to ensure compliance with legislative, administrative and financial management requirements.

The audit will include appropriate verification of the operations of these procedures, system and managers and front line officers’ understanding of their roles and responsibilities for effective management of Indian Estates Administration at headquarters and Quebec, Ontario, Alberta and British Columbia regions.

Time Frame: The audit planning will begin in March 2001. The fieldwork should take place in April to June 2001. The draft and final audit reports to be completed by August 2001.

Resources: The work will be carried out by DAEB staff and consultants, supervised by DAEB.

Cost: Budget of \$60,000 has been established for consulting work.

Approved by:

Warren Johnson
A/Assistant Deputy Minister
Lands and Trust Services
February 13, 2001

Action Plan

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REGION OR SECTOR / RÉGION OU SECTEUR : Registration, Revenues and Band Governance Branch,
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<p>1. It is recommended that the Director General, Registration, Revenue and Band Governance Branch reinforce the requirement for the estates officers to undertake steps to identify an estate's assets, to determine their vulnerability and to take the appropriate measures in these rare situations, such as appointing an interim administrator, to protect the assets until the department identifies and appoints a representative for the estate. The appointment of an interim administrator will enable the department to undertake actions that are required to protect the assets and to protect the Minister against potential liability.</p>	<p>5</p>	<p>Establish a joint headquarters/regional working group to identify existing barriers faced by departmental staff to initiating interim asset protection and assess current best practices in order to develop a national policy. Once approval has been obtained from senior management, the new policy will be implemented and included in the revision of the Estates Procedures Manual and any other requisite publications regarding First Nations estate administration.</p> <p>Resources requirements identified May 31, 2002</p> <p>National working group established August 31, 2002</p> <p>Policy directive approved March 30, 2003</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>March 31, 2003</p>

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<p>2. It is recommended that the Director General, Registration, Revenue and Band Governance Branch enhance the current Estates Reporting System (ERS) system in consultation with the system users to provide regional and national performance information, to enable the managers to use this information for effective decision-making relating to the Estates Administration Program.</p>	<p>6</p>	<p>Develop a project team to review the current ERS and provide recommendations to our corporate informatics team. Look within the department for other existing automated systems which track performance information and identify potential enhancements to the ERS. A factor on revising the existing ERS will be commitment from regional users to input the requisite data as well as a commitment from headquarters for funding for enhancement development and training.</p> <p>Review of the current system June 30, 2003</p> <p>Feasibility study & list of enhancements December 31, 2003</p> <p>Seek necessary funding for enhancements March 31, 2004</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>March 31, 2004</p>

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<p>3. It is recommended the Director General Registration, Revenue and Band Governance Branch in consultation with the Regional Directors General examine the feasibility of implementing capacity building mechanisms such as pilot projects in each of the regions. The pilot projects provide a mechanism for the department to progress towards First Nations self-administration. As part of the pilot projects, a proactive approach should be undertaken to provide capacity building such as establishing a schedule and budget for providing training to First Nations communities to promote and facilitate the devolution of Estates Administration and Will preparation.</p>	<p>8</p>	<p>First Nations estates training is delivered at the regional level and has always placed both a financial and human resource burden on regions. The Director General of RRBG will prepare and provide a communique to Regional Directors outlining the findings and recommendations relating to First Nation training and capacity building as highlighted in this audit recommendation. In particular, this communique will encourage regions to forecast First Nation training sessions within the next fiscal cycle. Headquarters will also investigate other sources of potential funding such as <i>Gathering Strength</i>, capacity building funding, et cetera to relieve funding pressure from regions on delivering this training.</p> <p>Communique to regions February 28, 2002 Review other potential funding sources April 30, 2002</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>April 30, 2002</p>

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<p>4. It is recommended that the Director General, Registration, Revenue and Band Governance Branch re-define the term backlog. The term backlog should be separated into two categories. The first category would be based on the length of time for a departmental administrator to administer an estate file. Separating the backlog time frame into two categories will provide more meaningful information and provide the regions and headquarters a more accurate analysis of which category is causing delays in the closure of the estate files.</p>	<p>8</p>	<p>This performance measurement item will be linked to the assessment and redevelopment of the ERS. An influencing issue will be the limitation on resources, both human and financial.</p> <p>* This item also encompasses recommendation number 2.</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>December 31, 2003</p>

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<p>5. It is recommended that the Director General, Registration, Revenues and Band Governance Branch in consultation with the Regional Directors General update the Estates Procedures Manual to include the following:</p> <ul style="list-style-type: none"> an established minimum dollar value or risk level for the extent of processing procedures required for an estate. For these minimum dollar value or low risk estates the required procedures should be reduced such as the depth of investigation to determine all the heirs of an estate; 	<p>10</p>	<p>Rather than limiting the scope of the recommended action relating to the policies and procedures relating to the estates administration program, it is intended to have a review of the Estates Procedures Manual conducted and any subsequent revisions to the manual completed which would include such policies relating to section 50 sales; low risk-minimal value estates; interim assets protection; changes in the legislation regarding common-law spouses; simplified letters to heirs/beneficiaries, et cetera.</p> <p>* this item also encompasses recommendation number 6.</p> <p>Exact process is yet to be determined, however, a headquarters/ regional approach is suggested</p> <p>First draft of a revised manual September 30, 2003</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>September 30, 2003</p>

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<p><u>Recommendation 5 - continued</u></p> <ul style="list-style-type: none"> • a standardized checklist and filing system. This system would facilitate simple referencing when a staff member is required to work on an estate file as a result of vacation or staff turnover; • the traditions and cultures of the various First Nations communities in order to develop a manual that is an improved reflection of the way of life of the department's clientele. 				

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<p>6. It is recommended that the Director General, Registration, Revenues and Band Governance Branch in consultation with the Regional Directors General update the Estates Procedures Manual to include the following:</p> <ul style="list-style-type: none"> an established minimum dollar value or risk level for the extent of processing procedures required for an estate. For these minimum dollar value or low risk estates the required procedures should be reduced such as the depth of investigation to determine all the heirs of an estate; 	<p>11</p>	<p>Rather than limiting the scope of the recommended action relating to the policies and procedures relating to the estates administration program, it is intended to have a review of the Estates Procedures Manual conducted and any subsequent revisions to the manual completed which would include such policies relating to section 50 sales; low risk-minimal value estates; interim assets protection; changes in the legislation regarding common-law spouses; simplified letters to heirs/beneficiaries, et cetera.</p> <p>Exact process is yet to be determined, however, a headquarters/ regional approach is suggested</p> <p>First draft of a revised manual September 30, 2003</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>September 30, 2003</p>

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<p><u>Recommendation 6 - continued</u></p> <ul style="list-style-type: none"> • a standardized checklist and filing system. This system would facilitate simple referencing when a staff member is required to work on an estate file as a result of vacation or staff turnover; • the traditions and cultures of the various First Nations communities in order to develop a manual that is an improved reflection of the way of life of the department's clientele. 				

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<p>7. It is recommended that the Director General, Registration, Revenues and Band Governance Branch develop and implement a communication protocol with all the regions. This protocol would include:</p> <ul style="list-style-type: none"> • providing memorandums of national policy decisions to all regions on a timely basis; • timely responses to regional queries regarding policy and legislative issues on an estate file. 	<p>12</p>	<p>Coordinate a joint headquarters/regional working group tasked with developing a process/protocol whereby national decisions as well as regional queries regarding policy and legislative issues can be disseminated to all regions. Standards to what is considered to be an acceptable turnaround time will also be developed.</p> <p>First working group meeting June 2002.</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>October 31, 2002</p>

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8. It is recommended that the Director General, Registration, Revenues and Band Governance Branch provide regular training sessions for all estates officers in order to disseminate information about legislation, policy decisions, processes and procedures for an estate file and the ERS. It is important that new estates officers receive formal training within a few months of commencing the position.	12	Headquarters to ensure that all regions have up-to-date versions of the basic estates training course training manual. Develop a process to ensure any information, update or changes concerning legislation, policy decisions, processes and procedures for estates administration are disseminated on a timely basis. Encourage regional estates managers to advise headquarters of new estates officers in need of training in order that headquarters has the necessary information to organize and coordinate regional training sessions as needed.	Director General, Registration, Revenues and Band Governance Branch	March 31, 2003

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<p>9. It is recommended that the Director General, Registration, Revenues and Band Governance Branch develop a mechanism, such as an information letter, that will enable the department to inform the heirs and beneficiaries of an estate that a process exists to receive their comments and concerns.</p>	<p>13</p>	<p>Develop a communique/householder which will provide information to individuals of the general purpose and process of estate administration as well as provide detailed contact names and numbers to assist in addressing queries and/or concerns. Ensure that the web site information for estates is up-to-date and accurate. Contact Friendship Centres to request their assistance in posting pamphlets and information. Ensure the departmental kiosk is aware of the appropriate departmental contacts and available information concerning estates administration.</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>September 30, 2003</p>

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<p>10. It is recommended that the Director General, Registration, Revenues and Band Governance in conjunction with the Regional Directors General conduct an analysis of implementing the public trustees "best practices". The analysis will enable the department to determine if the implementation of these "best practices"; are practical in the environment in which it operates; will assist the department in providing its clients a more efficient and effective service; and will ensure the "best interest" of the heirs are protected.</p>	<p>14</p>	<p>Coordinate a joint headquarters/regional working group tasked with conducting an analysis of the Provincial Public Trustees' "best practices" taking into account the different structure between the provincial and the federal regime. The team will prepare a report outlining their findings, as well as make recommendations for consideration by senior management. This effort needs to be coordinated within the scope of the Estates Procedures Manual review and potential revision to ensure the best possible policies, practices and procedures are developed.</p>	<p>Director General, Registration, Revenues and Band Governance Branch</p>	<p>September 30, 2003</p>