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Report of the Auditor General of Canada

CHAPTER 6

Creating a Historical Record of Indian Residential Schools



Office of the Auditor General of Canada

OAG

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CHAPTER 6

Creating a Historical Record of Indian Residential Schools

Performance audit reports

This report presents the results of a performance audit conducted by the Office of the Auditor General of Canada under the authority of the *Auditor General Act*.

A performance audit is an independent, objective, and systematic assessment of how well government is managing its activities, responsibilities, and resources. Audit topics are selected based on their significance. While the Office may comment on policy implementation in a performance audit, it does not comment on the merits of a policy.

Performance audits are planned, performed, and reported in accordance with professional auditing standards and Office policies. They are conducted by qualified auditors who

- establish audit objectives and criteria for the assessment of performance,
- gather the evidence necessary to assess performance against the criteria,
- report both positive and negative findings,
- conclude against the established audit objectives, and
- make recommendations for improvement when there are significant differences between criteria and assessed performance.

Performance audits contribute to a public service that is ethical and effective and a government that is accountable to Parliament and Canadians.

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Creating a Historical Record of Indian Residential Schools

Main Points

What we examined

Starting in the 1870s, the Government of Canada began funding a system of church-run residential schools. These schools isolated Aboriginal children from the influence of their parents and culture with the objective of integrating them into mainstream society. When the last residential school closed in the 1990s, approximately 150,000 children had passed through the system.

More than 13,000 former students took legal action against the churches and the federal government. They were seeking compensation for emotional, physical, and/or sexual abuse suffered during the time they had spent in residential schools. The government tried various approaches to resolve their claims and address the legacy of Indian residential schools. Because of perceived limitations in these approaches, calls for a global settlement became more pressing.

In May 2005, the federal government appointed a federal negotiator. His mandate was to represent Canada and work with legal counsel for former students, legal counsel for churches, and other representatives of former students, including the Assembly of First Nations and other Aboriginal organizations, to negotiate an agreement that would address compensation for claims of abuse and the broader legacy of the residential schools. In May 2006, the Indian Residential Schools Settlement Agreement was ratified by all parties. It included the establishment of the Truth and Reconciliation Commission with a budget of \$60 million and a five-year mandate.

The current Commission was created in July 2009 as a federal department. The Commission's mandate, which ends in July 2014, includes creating as complete a historical record as possible of the residential school system and legacy. The Commission is also responsible for preserving the records collected and created during its mandate and for establishing a national research centre in a manner and to the extent its budget permits. Under the Agreement, the federal government has an obligation to provide all relevant documents to and for the use of the Commission.

Our audit examined whether Aboriginal Affairs and Northern Development Canada, with support from Library and Archives Canada, had taken adequate steps to provide the Commission with all relevant documents about the residential school system and legacy. We also examined whether the Truth and Reconciliation Commission has taken adequate steps to receive and protect those documents for the historical record and to establish a national research centre.

Audit work for this chapter was completed on 13 February 2013. Details on the conduct of the audit are provided in **About the Audit** at the end of this chapter.

Why it's important

The Agreement was intended to be a fair, comprehensive, and lasting resolution of the legacy of Indian Residential Schools. On 11 June 2008, in the presence of Aboriginal leaders and residential schools survivors in the House of Commons, the Prime Minister apologized to Aboriginal peoples on behalf of the Government of Canada and all Canadians. He described the Truth and Reconciliation Commission as a cornerstone of the Agreement. It offered a unique opportunity to educate all Canadians on the residential school system and was a positive step in forging a new relationship with Aboriginal peoples.

The creation of the historical record and the establishment of the national research centre will be a permanent legacy of the work of the Commission.

What we found

- Aboriginal Affairs and Northern Development Canada, on behalf of Canada, and the Truth and Reconciliation Commission have been unable to cooperate and agree on a definition of the relevant documents required to help the Commission create as complete a historical record as possible of the Indian residential school system and legacy. Consequently, they were unable to define the scope of the work to be done so that Canada would meet its obligation and the Commission would fulfill its mandate.
- Despite the lack of agreement, Canada has provided thousands of documents it considered relevant to the Commission and has continued to collect and digitize thousands more to be provided. However, it is not possible to assess whether the Commission has obtained or will obtain from Canada all the relevant documents it reasonably requires for the historical record, what remains to be done, how long this will take, or what resources are needed to accomplish this undertaking.

- The Commission has selected an organization to host the national research centre. However, it has no detailed plan to resolve issues regarding the transfer of its documents to that organization. For instance, it must develop a process to transfer its documents in compliance with federal law, including the *Privacy Act* and the *Library and Archives of Canada Act*.

The entities have responded. The entities agree with all of the recommendations. Their detailed responses follow the recommendations throughout the chapter.

Introduction

The residential school experience

6.1 Starting in the 1870s, the Government of Canada funded a system of individual church-run residential schools. One of the purposes was to isolate Aboriginal children from the influence of their parents and culture and integrate them into mainstream society. The children were separated from their parents and communities and were prevented from speaking their own languages. The last residential school closed in the 1990s. It is estimated that approximately 150,000 First Nations, Inuit, and Métis children passed through the residential school system.

6.2 In 1996, the report by the Royal Commission on Aboriginal Peoples brought the experiences of former students to national attention. In 1998, in response to the report, the Government of Canada announced Gathering Strength—Canada’s Aboriginal Action Plan. The Plan included a statement of reconciliation and led to the establishment of the Aboriginal Healing Foundation. In 2001, a federal department, Indian Residential Schools Resolution Canada, was created to address the legacy of Indian residential schools and to resolve claims from former students for the emotional, physical, and/or sexual abuse that they experienced during their school years. By 2005, more than 13,000 former students had taken legal action against the churches and the federal government. As the number of cases grew, the federal government explored and implemented alternative approaches to settling the claims. Reports from the Assembly of First Nations, the Canadian Bar Association, and the House of Commons Standing Committee on Aboriginal Affairs and Northern Development pointed to the limitations of these alternatives and called for a global settlement that would include all former students. It was estimated that about 80,000 former students were alive at that time.

6.3 On 30 May 2005, the federal government appointed a federal negotiator. His mandate was to represent Canada and work with legal counsel for former students, legal counsel for churches, and other representatives of former students, including the Assembly of First Nations and other Aboriginal organizations, to negotiate an agreement that would address not only compensation for claims of abuse, but also the broader legacy of Indian residential schools.

6.4 In May 2006, the federal government announced that the Indian Residential Schools Settlement Agreement had been ratified by all the parties involved. It was intended to be a fair, comprehensive, and lasting resolution of the legacy of Indian residential schools, and was open to all eligible former students. It was approved by the courts in March 2007 and came into effect in September 2007.

The Truth and Reconciliation Commission

6.5 The Indian Residential Schools Settlement Agreement includes, among other elements, compensation provided to former students, funding to the Aboriginal Healing Foundation, and \$60 million for the establishment of the Truth and Reconciliation Commission. Schedule N of the Agreement sets out the Commission's mandate. For certain administrative and legal purposes, the Commission is a federal department. However, it does not take direction from the federal government in carrying out its mandate. Commissioners were appointed in June 2008, but resigned shortly thereafter. The current commissioners were appointed in July 2009. The Commission states that, over its five-year mandate, it has a budget of \$55 million from the Agreement funding, and \$8 million provided by the government for the additional administrative costs associated with its status as a department. The Commission's mandate ends in July 2014.

Responsibilities of the key players

6.6 The Truth and Reconciliation Commission. The Commission is responsible for guiding a truth and reconciliation process. According to the Agreement, the Commission has, among other things, the mandate to collect statements from former students, host national events, fund community events, and create "as complete an historical record as possible of the IRS [Indian residential school] system and legacy." The Commission is also responsible for preserving the records collected and created during its mandate and establishing a national research centre, which will be the custodian of its documents, including those in the historical record. The Commission may be required to cover the cost of reproducing documents.

6.7 Government of Canada. According to Schedule N of the Agreement, the Government of Canada has a legal obligation to “provide all relevant documents in its possession or control to and for the use of the Truth and Reconciliation Commission,” subject to applicable privacy legislation and solicitor-client privilege. Canada is required, at its own cost, to compile all relevant documents in an organized manner for review by the Commission. Each department holding relevant documents is responsible to identify and provide them.

6.8 Aboriginal Affairs and Northern Development Canada. In addition to identifying and providing its relevant documents to the Truth and Reconciliation Commission, since February 2010, Aboriginal Affairs and Northern Development Canada has been responsible for coordinating the identification and provision of relevant documents from other departments.

6.9 Library and Archives Canada. Library and Archives Canada is the permanent repository of the federal government documents that have historical or archival value. Many documents regarding the history of Indian residential schools are located in its collections. Library and Archives Canada is responsible to take measures to facilitate access to these documents.

The goal of reconciliation

6.10 On 11 June 2008, in the presence of First Nations, Inuit, and Métis leaders and residential school survivors in the House of Commons, the Prime Minister described the treatment of children in residential schools as a “sad chapter in our history,” and apologized to Aboriginal peoples on behalf of the Government of Canada and all Canadians. He described the Truth and Reconciliation Commission as a cornerstone of the Agreement. It offered a unique opportunity to educate all Canadians on the residential school system and was a positive step in forging a new relationship with Aboriginal peoples. A few years earlier, a former National Chief of the Assembly of First Nations considered that the commemoration and truth and reconciliation initiatives were the foundation of the Agreement because they would ensure that the stories of the deceased students would be told and remembered.

Focus of the audit

6.11 The main objective of the audit was to determine whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada had taken adequate steps in relation to the creation of as complete a historical record as possible of the Indian residential school system and legacy. It was supplemented by two sub-objectives:

- to determine whether Aboriginal Affairs and Northern Development Canada, with support from Library and Archives Canada, had taken adequate steps to provide all relevant Indian residential school documents; and
- to determine whether the Truth and Reconciliation Commission had taken adequate steps to receive and protect the relevant Indian residential school documents for the historical record and to establish the national research centre.

6.12 The audit did not examine the negotiation phase of the Indian Residential Schools Settlement Agreement. It also excluded the implementation of other parts of the Agreement. It did not examine other aspects of the Truth and Reconciliation Commission mandate. The audit did not look at the rights, interests, and obligations of other parties to the Agreement. More details about the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

Contributing to the historical record

6.13 Creating as complete a historical record as possible of the residential school system and legacy is a significant challenge. The system involved over 135 schools, lasted over a century, and had negative consequences on Aboriginal people and communities. Several departments and organizations played different roles in different periods. Their organizational structures and record management practices changed over time. Several church entities participated in the operations of the schools and the Commission determined that their documents are now located in over 80 archives.

6.14 We sought to determine whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada took adequate steps in relation to the creation of as complete a

historical record as possible of the Indian residential school system and legacy. We examined whether the entities used project management principles to guide the work to be done.

6.15 The creation of the historical record is an obligation arising from the Agreement. It is one element contributing to a fair, comprehensive, and lasting resolution of the legacy of the residential schools. Given the size and complexity of the task, project management principles, as defined in The Treasury Board project management policy, provide a management framework to accomplish this important work. We examined whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada defined the scope of the work to be performed, so that Canada could meet its obligation and the Commission could fulfill its mandate. We also examined whether they set a schedule and budget and managed risks. We reviewed Schedule N of the Agreement, minutes of meetings, and other documentation used to support decisions, and interviewed officials at the three entities. A recommendation regarding the work related to the historical record is found in paragraph 6.43.

No federal department was initially made responsible for coordinating the provision of documents

6.16 The Indian Residential Schools Settlement Agreement was signed in the name of the Government of Canada in May 2006. Although several departments had played a role in the administration of the school system, and each had an obligation to search for relevant documents and provide them to the Commission, no department was initially made responsible for coordinating the provision of documents to the Commission. In December 2009, the Chair of the Truth and Reconciliation Commission wrote to the Clerk of the Privy Council asking him, among other things, to identify a lead department to coordinate Canada's search for all relevant documents across departments and institutions. In response to this request, in February 2010, the Clerk of the Privy Council identified Aboriginal Affairs and Northern Development Canada (then Indian and Northern Affairs Canada) as the lead department.

6.17 Aboriginal Affairs and Northern Development Canada stated, in February 2010, that its coordinating responsibilities would be to inform other departments of Canada's legal obligation to provide all relevant documents, and facilitate the collection and the provision of these documents to the Truth and Reconciliation Commission. It also set up two interdepartmental committees to oversee this work. Between February 2011 and May 2012, Aboriginal Affairs and

Northern Development Canada, in cooperation with the Department of Justice, delivered training to departments on their obligations to provide documents, the method of identifying and providing relevant documents, and the applicable laws. Library and Archives Canada participated in some training sessions to provide information on its policies and practices. Aboriginal Affairs and Northern Development Canada officials told us that in June 2012, the Department of Justice began to coordinate, on behalf of Aboriginal Affairs and Northern Development Canada, the collection of relevant documents and their provision to the Commission.

The scope of the work was not agreed upon

6.18 In the context of efforts toward reconciliation, we examined whether the Commission and the Department cooperated and agreed on the scope of the work to be performed, including a definition of what the “relevant documents” were, where to search for them, over what period, and how they would be organized. We found that the Commission and the Department exchanged information on these questions, but did not agree on any of them. In our view, successfully creating as complete a historical record as possible required cooperation between the Truth and Reconciliation Commission, responsible for creating the record, and Aboriginal Affairs and Northern Development Canada, on behalf of Canada, responsible to coordinate the provision of relevant documents.

6.19 What to search for. Schedule N of the Agreement states that Canada will provide “all relevant documents” to and for the use of the Commission. However, it does not define “relevant.” Schedule N also states that privacy legislation and legal principles, such as solicitor-client privilege, apply when determining whether a document could be provided to the Commission.

6.20 The Truth and Reconciliation Commission did not define the meaning of “relevant documents” or the meaning of “as complete an historical record as possible.” Instead, the Commission broadly defined the term “relevant” as all documents in any format touching directly or indirectly on residential schools. In 2009 and 2010, the Commission and Aboriginal Affairs and Northern Development Canada discussed a draft document developed by the Commission entitled “Guidance on Relevance.” It sets out the Commission’s views on how to identify relevant documents. We found that Aboriginal Affairs and Northern Development Canada officials expressed concerns about it at meetings with the Commission, notably about the fact that this definition would cover a large volume of documents.

6.21 While participating in discussions on the definition of relevance with the parties to the Agreement and the Commission, Aboriginal Affairs and Northern Development Canada developed its own definition of “relevant documents” in the summer of 2010. It was based on its interpretations of Canada’s obligation to provide all relevant documents and of the Truth and Reconciliation Commission’s mandate. With this definition, the search focused on documents related to policies, operations, and funding for residential schools in general and on documents related to each of the schools named in the Agreement.

6.22 The discussions did not lead to an agreement on the definition of “relevant.” In the fall of 2010, the Commission proposed as a solution not to require a common definition of relevant documents. As a result, Aboriginal Affairs and Northern Development Canada defined for itself, the federal government, and the Commission which federal documents would be provided and what period they would cover. The Commission could ask for additional documents if it was not satisfied. If this solution resulted in disputes, the Commission would seek direction in accordance with the Indian Residential Schools Settlement Agreement. In our opinion, the solution of not having a common definition was inconsistent with good project management practices because it postponed the resolution of the issue until after the search for relevant documents had begun.

6.23 During the audit, the Commission informed us that it was not its role to come to an agreement with Canada on a definition of “relevant.” For the Commission, doing so would have changed Canada’s obligation to provide all relevant documents. On the other hand, officials from the Commission requested Canada’s definition on several occasions. Aboriginal Affairs and Northern Development Canada did not share its definition of “relevant” with the Commission until June 2012.

6.24 Where to search. All the departments potentially holding relevant documents were not identified until 2012. We found that Aboriginal Affairs and Northern Development Canada began to establish contacts in February 2010 with 6 departments. In November 2011, the Department was working with 19 departments. As of June 2012, the Department had identified 24 current departments or agencies.

6.25 We also found that there were debates between departments concerning their role and responsibility for searching and providing to the Commission relevant archival documents in Library and Archives

Canada. Library and Archives Canada informed departments that it is not responsible for searching archival documents and that, as a practical matter, the departments that created the documents are better placed to determine which are relevant to meet their obligation under the Agreement.

6.26 However, Library and Archives Canada did provide support to departments. In 2011, for example, Library and Archives Canada developed “roadmaps” outlining where relevant archival documents might be. Library and Archives Canada states that there are roadmaps for 29 departments and agencies other than Aboriginal Affairs and Northern Development Canada. Aboriginal Affairs and Northern Development Canada was working with Library and Archives Canada to determine the volume of archived Indian residential school documents. Also in 2011, at Aboriginal Affairs and Northern Development Canada’s request, Library and Archives Canada estimated the volume of relevant archived documents and the amount of work, time, and cost that searching the archives would require. Library and Archives Canada estimated that the relevant documents for 19 departments and agencies could stretch for about 20 kilometres. We calculate that this represents approximately 69,000 boxes. Library and Archives Canada also estimated that, depending on the proportion of relevant documents, it could cost about \$40 million and take 10 years to find and digitize these documents.

6.27 Aboriginal Affairs and Northern Development Canada had previously searched Library and Archives Canada’s archives and collected Indian residential school documents. However, the search was not done for the Commission. It was done for documents needed for the various residential school litigation claims and in support of the compensation provided to former students under the Agreement. Nonetheless, the Department’s view was that most of the relevant residential school documents in Library and Archives Canada had already been collected. There were no analyses from the Department supporting that view.

6.28 Further, in the fall of 2011, Aboriginal Affairs and Northern Development Canada took the position that Canada’s obligation to provide all relevant documents in its possession or control did not include searching for additional archival documents. Therefore, departments did not have to search documents at Library and Archives Canada. This responsibility was effectively transferred to the Commission. If the Commission wanted to include additional archival documents in the historical record, it would have to search for them. When Commission officials were informed of that interpretation,

they strongly disagreed and reiterated the position that Canada's obligation included searching and providing documents held at Library and Archives Canada. In December 2011, the Commission advised the Clerk of the Privy Council of its intention to seek direction from the court on this matter. The court rendered its decision on 30 January 2013. The court concluded that Canada's obligation to provide documents to the Commission extended to documents archived at Library and Archives Canada.

6.29 Organization of documents. There was no agreement on the digitization formats to be used or on the quality of the relevant documents to be provided. Schedule N of the Agreement requires that documents be provided in an organized manner, but does not define the term "organized." In April 2010, Aboriginal Affairs and Northern Development Canada began providing thousands of documents to the Truth and Reconciliation Commission in digital format. These were the documents previously collected and digitized in response to litigation claims and in support of the compensation provided to former students. Although the Commission informed Aboriginal Affairs and Northern Development Canada about quality problems with some of the documents, it nonetheless integrated them into its database for the historical record. Exhibit 6.1 provides examples of the importance of setting quality benchmarks. In our view, good management practices required the Commission and the Department to set quality benchmarks that would be appropriate for the preservation and accessibility of these documents as set out in the Commission's mandate.

6.30 In the fall of 2010, Aboriginal Affairs and Northern Development Canada decided to continue to use the same formats for digitizing thousands of documents collected specifically for the use of the Commission. The decision was based on the desire to ensure that government documents would have a consistent format.

6.31 Officials from the Department and the Commission exchanged information about the formats to be used when digitizing documents for the historical record. For example, at a conference organized by the Commission in May 2011, officials from the Commission and the Department presented information on their respective formats. At that time, the Commission had not yet determined which formats it would use to meet its long-term preservation and access requirements. The Commission decided on these matters in July 2011. However, it did not share its formats and requirements with Canada until January 2013.

Exhibit 6.1 The quality of digitized photographs can vary

Fort Frances (St. Margaret's) Residential School—circa 1948

Digitized photographs provided by Aboriginal Affairs and Northern Development Canada that are of poor quality.



Photographs provided by Aboriginal Affairs and Northern Development Canada to the Truth and Reconciliation Commission. The source was a poor copy microfilm held at Library and Archives Canada. These photographs are part of the Commission's database for the historical record.

Digitized photographs can faithfully reproduce the essential information of the original.



For comparison purposes, at the request of the Office of the Auditor General, Library and Archives Canada digitized the same photographs using its usual practices. The source was the archived original paper document at Library and Archives Canada.

Source: Library and Archives Canada, Fort Frances Agency, Water Supply System at the Fort Frances Residential School (RG 10. Vol. 6546. File IA-1380-3, pt. 2)

6.32 Retrieval and use of digitized documents require developing an adequate description of their content. We found that Aboriginal Affairs and Northern Development Canada set a less detailed description format than the one it had used for the documents it had prepared for litigation. This was done to save time and money. Document description is usually set to meet the needs of potential users, which, in this case, includes former students, their families, researchers, and the general public. The needs of potential users were not analyzed by the Department.

6.33 In summary. The Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada could not find common ground upon which to cooperate on creating the historical record, in a spirit of reconciliation. As a result, they were unable to define the scope of the work to be done so that Canada could meet its obligation and the Commission fulfill its mandate.

The schedule and cost of the work were not defined

6.34 Schedule. We examined whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada had developed a schedule for the work related to the historical record. Although the Commission devoted attention to the historical record early in its mandate, we found that it had not developed a schedule setting out when it would require the relevant documents from government departments.

6.35 Canada began providing documents to the Commission in 2010. The Indian Residential Schools Settlement Agreement was approved by the federal government in May 2006. Some analyses of the need to collect documents to implement the Agreement, including documents for the Commission, were carried out as early as January 2007. However, priority was given to the collection of documents needed for other aspects of the Agreement, such as the compensation provided to former students. Aboriginal Affairs and Northern Development Canada took the position that Schedule N did not contain a deadline for the provision of documents. Consequently, given this position, documents could be provided at any time, up to the end of the Commission's mandate.

6.36 Further, Aboriginal Affairs and Northern Development Canada did not prepare a schedule that clearly set out how Canada would fulfill its obligation to provide documents within the Commission’s five-year mandate. In September 2011, departmental officials informed the Commission of target dates for providing lists of documents to the Commission by some departments. These dates were not met. In November 2011, the Commission chair wrote to the Clerk of the Privy Council and stated that the federal government documents were not being provided at a satisfactory pace. In June 2012, the chair also communicated in writing to the Prime Minister that there were “serious delays” in receiving documents.

6.37 Cost estimates. We examined whether the Truth and Reconciliation Commission and the Department had cost estimates and budgets for the work associated with creating the historical record. We found that the Commission could not estimate whether its budget would be sufficient to cover its share of the costs of collecting documents for the historical record. Setting a budget requires analysis of what needs to be done, by whom and when, and estimates of the costs. In the absence of an agreed-upon definition of the relevant documents that would make up the historical record between the Commission and the parties to the Agreement, there were no reliable estimates of the volume of documents. Nonetheless, the Commission allocated approximately \$6 million of its funding to collect documents for the historical record for the 2011–12 and the 2012–13 fiscal years.

6.38 Further, there was no agreement on who would be responsible to pay for scanning costs. According to Schedule N, Canada could ask the Commission to bear the cost of “copying, scanning, digitalizing, or otherwise reproducing” documents. In November 2012, the Department of Justice, on behalf of the federal government, notified the Commission that it would have to bear those costs for the documents at Library and Archives Canada. The Commission replied in January 2013 that it had not allocated a budget for such a request. As indicated in paragraph 6.26, Library and Archives Canada has estimated that it could cost about \$40 million to find and digitize these documents.

6.39 For the federal government, we found that no estimate of the total cost of providing documents has been made and no budget set. When the search for documents began, each department was expected to cover its own costs. Additional funding was sought as activities and costs increased. Between 2009 and 2012, Aboriginal Affairs and Northern Development Canada obtained additional funding on three occasions to cover the cost of providing documents, for a total of approximately \$20 million, of which \$3 million was to cover other

departments' costs. Departmental officials told us that approximately \$5 million available in 2009 could not be used because the funds were approved late in the year, and the plan for their use was changed following the appointment of new commissioners. The total cost of providing relevant documents remains unknown.

Risk was not fully assessed and mitigated

6.40 Any project carries risks. We examined whether the Truth and Reconciliation Commission and the Department identified key risks and took measures to mitigate them. We found that the Commission identified some risks and took some mitigation measures. For example, to mitigate the risk that it would not receive all relevant documents during its mandate, the Commission communicated its concerns to the Department and sent letters to senior government officials. The Commission also sought direction from the court on Canada's obligation. However, there were no documents analyzing the risk of not having a common definition of document formats with Canada and its impact on the capacity of the Commission to fulfill its mandate.

6.41 Aboriginal Affairs and Northern Development Canada also identified certain risks. The Department identified, for example, the risk that the thoroughness of the document searches and the organization of relevant documents would not be viewed as sufficient by the courts. It also identified the risk of not having a common definition of relevance with the Commission. The Department took measures to mitigate these risks. For example, it developed its own definition of relevant documents and trained other departments in using a uniform practice to search and digitize documents. However, there was no documentation analyzing the risk associated with the format used to digitize documents and its impact on the quality of the documents to be provided to the Commission.

6.42 In summary. It is still essential to clearly define the scope of the work to be completed. The Truth and Reconciliation Commission and, on behalf of Canada, Aboriginal Affairs and Northern Development Canada, need to define the relevant documents that are reasonably required by the Commission to create as complete as possible a historical record. They need to factor in the time left in the Commission's mandate and the resources available. They also need to take into account the rights, interests, and obligations of other parties; the documents already provided; the documents that will be provided; and the requirements for the documents' long-term preservation and accessibility.

6.43 Recommendation. The Truth and Reconciliation Commission and, on behalf of Canada, Aboriginal Affairs and Northern Development Canada should cooperate to:

- define the work to be completed, including clear roles and responsibilities, so that Canada can meet its obligation and the Commission can fulfill its mandate;
- set out the schedule and budget;
- assess and mitigate risks; and
- monitor progress and take corrective actions as necessary.

The Truth and Reconciliation Commission’s response. Agreed. The Commission is working with Canada to define the work to be completed by Canada to provide all relevant documents in its possession or control to the Commission, as required by the Agreement. There remain numerous other issues related to Canada’s documents, and there is a need to consider timing and budgetary constraints. The Commission hopes it will not be necessary to return to court for guidance on any of the outstanding issues.

Aboriginal Affairs and Northern Development Canada’s response. Agreed. The Department agrees to work jointly with the Commission to develop a project plan for the provision of documents. Issues such as higher-quality digitization for photographs (approximately 2,000 to 3,000 photographs) will be considered as a priority, so that former students can better identify details they are searching for. Overall, the Department notes that the final cost of reviewing, coding, and digitizing documents could vary significantly from the estimates used in this chapter, depending on the volume of relevant documents. The Department’s actions will be in compliance with the direction provided by the Ontario Superior Court in its 30 January 2013 decision.

Creating the national research centre

6.44 The Truth and Reconciliation Commission mandate requires the creation of a national research centre to house all the documents collected and created by the Commission during its mandate. Schedule N of the Indian Residential Schools Settlement Agreement states that the centre shall be established in a manner and to the extent that the Commission’s budget permits. We sought to determine whether the Commission had taken adequate steps to plan the creation of the national research centre. We examined whether the Commission defined the centre’s characteristics, such as identifying potential user needs and setting document protection, preservation,

and access parameters. We reviewed Schedule N and the documentation regarding the Commission's plan to create this centre and interviewed Commission officials.

Issues regarding the transfer of the Commission's documents remain unresolved

6.45 The Truth and Reconciliation Commission held a conference in March 2011 about the national research centre. These discussions were used in designing a call for proposals to find an organization to permanently host the centre.

6.46 In November 2011, the Truth and Reconciliation Commission issued a call for proposals, in which it confirmed that it had no funding to establish the centre. The Commission expects the selected organization to cover all costs associated with preserving documents and providing all Canadians, particularly former students, with access to over one million residential school documents. In October 2012, it had completed its analysis of the four proposals received and had begun discussions with the organization selected. It had also defined an approach to transfer its documents to the selected organization. However, we found that the Commission did not have a detailed plan to guide its work and resolve a number of issues affecting the transfer. These include

- the terms and conditions of the agreement with the selected organization;
- the description of the content of the historical record, including digitization and description formats for long-term preservation and access;
- the process of transferring the documents in the historical record to the national research centre in compliance with federal law, including the *Privacy Act* and the *Access to Information Act*; and
- the need to obtain a **disposition authority** from Library and Archives Canada, under the *Library and Archives of Canada Act*, to dispose of its documents.

Disposition authority—This allows for the disposal of documents that no longer have operational value, either by permitting their destruction, by requiring their transfer to Library and Archives Canada, or by agreeing to their transfer out of the control of the Government of Canada.

6.47 The Commission has informed Canada of its intention to transfer its documents and assets to the selected organization. It has also identified a risk that Canada might interfere with this transfer. In the fall of 2012, the Chair of the Commission wrote to the Clerk of the Privy Council seeking Canada's position on the application of the *Library and Archives of Canada Act* and the *Privacy Act* to the transfer of documents, and on the transfer of the Commission's assets to the selected organization. In his reply, in February 2013, the Clerk

indicated that he supported the Commission's proposed approach, while identifying several issues that will need to be resolved cooperatively with four federal entities. He was confident that Canada and the Commission would be able to work together to find solutions.

6.48 Recommendation. The Truth and Reconciliation Commission should identify all the issues that affect the transfer of the historical record to the national research centre, and develop and implement a detailed plan to address them. In particular, the Commission and Library and Archives Canada should work closely on all matters relating to the disposition of the Commission's documents.

The Truth and Reconciliation Commission's response. Agreed. The Commission is confident that all issues related to the establishment of the national research centre can be resolved in a cooperative manner. A detailed plan is being developed as discussions take place with the organization selected, federal government departments, and the Government of Manitoba. A detailed draft agreement has been reached with the selected organization for hosting the national research centre. Consultations with the parties to the Settlement Agreement related to this draft agreement, and detailed discussions to ensure that the records at the national research centre will be protected by appropriate privacy legislation, have occurred. The Commission has had detailed discussions with Library and Archives Canada with a view to ensuring that the National Archivist will provide a disposition authority, as intended by the Settlement Agreement.

Library and Archives Canada's response. Agreed. Library and Archives Canada will work closely with the Truth and Reconciliation Commission on all matters related to the disposition of the Commission's documents. Specifically, Library and Archives Canada will continue to work with the Commission, including further discussions on document disposition matters and plans for establishing a disposition authority prior to the end of the Commission's mandate—in the fourth quarter of the 2013–14 fiscal year. In consultation with the Commission, Library and Archives Canada will undertake the evaluation process required for decisions about document disposition. Furthermore, Library and Archives Canada will provide feedback on any draft record transfer agreements as the Commission pursues the establishment of the national research centre—upon receipt of drafts from the Commission.

Conclusion

6.49 We concluded that the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada had not taken adequate steps in relation to the creation of as complete a historical record as possible of the Indian residential school system and legacy. The Commission and, on behalf of the Government of Canada, Aboriginal Affairs and Northern Development Canada could not find common ground upon which to cooperate and agree on answers to essential questions, including what constitute relevant documents, where to search, what time frame the documents would cover, what formats to use for long-term preservation and accessibility, when the documents would be provided, and who would cover what costs.

6.50 Aboriginal Affairs and Northern Development Canada had not taken adequate steps to provide all relevant Indian residential school documents. The Department had not defined a project scope and schedule for collecting and providing “all relevant documents” to the Commission, and has not established a project budget. Library and Archives Canada provided support and advice regarding access to archived documents.

6.51 The Truth and Reconciliation Commission had not taken adequate steps to receive the relevant Indian residential school documents for the historical record. It has not set the scope of the historical record and defined the relevant documents needed; it has not established a schedule and it could not set a budget to receive all relevant documents. For the creation of the national research centre, the Commission has selected an organization as host of the centre, has undertaken discussions with the organization, and has identified an approach to transfer its documents and assets. However, it did not have a detailed plan to resolve issues, including privacy protection, related to the transfer of the documents to that organization.

6.52 The creation of the historical record and the establishment of the national research centre will be a permanent legacy of the work of the Commission. The fact that the Commission and Aboriginal Affairs and Northern Development Canada, on behalf of Canada, failed to find common ground upon which to cooperate has resulted in the need to seek direction from the court. The scope of the undertaking is still undefined. Canada and the Commission need to cooperate in order

to assess what has been accomplished, what remains to be done, how long this will take, and what resources are required. It remains to be seen what impacts the disagreements to date will have on achieving a fair, comprehensive, and lasting resolution of the legacy of the residential schools.

About the Audit

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

As part of our regular audit process, we obtained management's confirmation that the findings reported in this chapter are factually based.

Objectives

The audit objective was to determine whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada had taken adequate steps in relation to the creation of as complete a historical record as possible of the Indian residential school system and legacy.

The audit was divided into two sub-objectives:

- to determine whether Aboriginal Affairs and Northern Development Canada, with support from Library and Archives Canada, had taken adequate steps to provide all relevant Indian residential school documents; and
- to determine whether the Truth and Reconciliation Commission had taken adequate steps to receive and protect the relevant Indian residential school documents for the historical record and to create the national research centre.

Scope and approach

The audit focused on the implementation of one aspect of the Truth and Reconciliation Commission mandate defined in Schedule N of the Indian Residential Schools Settlement Agreement. The Commission is responsible to create as complete a historical record as possible of the Indian residential school system and legacy, and establish a national research centre. The Government of Canada, represented by Aboriginal Affairs and Northern Development Canada, has an obligation to provide the Commission with all relevant documents under its control.

We reviewed pertinent sections of the Agreement and of Schedule N of the Agreement. For the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada, we reviewed documentation used to support decisions on the scope, schedule, and budget for the work associated with the historical record, and to identify and mitigate key risks. We examined whether the Truth and Reconciliation Commission and Aboriginal Affairs and Northern Development Canada cooperated and agreed on the scope of the work to be done, including a definition of the relevant documents for the historical record, where to search for them, and how they would be organized. For the creation of the national research centre, we limited our work to the Commission's planning activities. At Library and Archives Canada, we focused on the support provided to Aboriginal Affairs and Northern Development Canada to facilitate access to archived documents. We also visited the research and scanning operations of

Aboriginal Affairs and Northern Development Canada in Ottawa and interviewed officials at the Truth and Reconciliation Commission, Aboriginal Affairs and Northern Development Canada, and Library and Archives Canada.

The audit did not examine the negotiation phase of the Agreement. It also excluded the implementation of other parts of the Agreement and did not cover other aspects of the Commission’s mandate. The audit did not look at the rights, interests, and obligations of other parties to the Agreement.

Criteria

Criteria	Sources
To determine whether Aboriginal Affairs and Northern Development Canada, with support from Library and Archives Canada, had taken adequate steps to provide all relevant Indian residential school documents, we used the following criteria:	
Aboriginal Affairs and Northern Development Canada has cooperated with the Truth and Reconciliation Commission to define the relevant Indian residential school documents to be put in the historical record.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission
Aboriginal Affairs and Northern Development Canada has appropriate systems, processes, and controls in place for providing its relevant Indian residential school documents.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission • Policy on the Management of Projects, Treasury Board
Aboriginal Affairs and Northern Development Canada has appropriate systems, processes, and controls in place for coordinating the activities of other federal entities that have to provide Indian residential school documents.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission • Policy on the Management of Projects, Treasury Board
Library and Archives Canada has appropriate systems, processes, and controls in place for facilitating access to Indian residential school archived documents.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission • Policy on the Management of Projects, Treasury Board • <i>Library and Archives of Canada Act</i>
To determine whether the Truth and Reconciliation Commission had taken adequate steps to receive and protect the relevant Indian residential school documents for the historical record and to create the national research centre, we used the following criteria:	
The Truth and Reconciliation Commission has cooperated with the parties to the Agreement to define the relevant Indian residential school documents needed for the historical record.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission
The Truth and Reconciliation Commission has appropriate systems, processes, and controls in place for collecting and protecting documents.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission • Policy on the Management of Projects, Treasury Board
The Truth and Reconciliation Commission has appropriate systems, processes, and controls in place for creating the national research centre.	<ul style="list-style-type: none"> • Indian Residential Schools Settlement Agreement, Schedule N—Mandate for Truth and Reconciliation Commission • Policy on the Management of Projects, Treasury Board • Contracting Policy, Treasury Board • Policy on Privacy Protection, Treasury Board

Management reviewed and accepted the suitability of the criteria used in the audit.

Period covered by the audit

For Aboriginal Affairs and Northern Development Canada and Library and Archives Canada, the audit covered the period between May 2006, when the federal government approved the Indian Residential Schools Settlement Agreement, and November 2012. For the Truth and Reconciliation Commission, the period covered was from July 2009, when the current commissioners were appointed, and November 2012. The audit also included any significant subsequent events that occurred up until the completion date of the report. Audit work for this chapter was completed on 13 February 2013.

Audit team

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 6. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
<p>Contributing to the historical record</p> <p>6.43 The Truth and Reconciliation Commission and, on behalf of Canada, Aboriginal Affairs and Northern Development Canada should cooperate to:</p> <ul style="list-style-type: none"> • define the work to be completed, including clear roles and responsibilities, so that Canada can meet its obligation and the Commission can fulfill its mandate; • set out the schedule and budget; • assess and mitigate risks; and • monitor progress and take corrective actions as necessary. <p>(6.13–6.42)</p>	<p>The Truth and Reconciliation Commission’s response. Agreed. The Commission is working with Canada to define the work to be completed by Canada to provide all relevant documents in its possession or control to the Commission, as required by the Agreement. There remain numerous other issues related to Canada’s documents, and there is a need to consider timing and budgetary constraints. The Commission hopes it will not be necessary to return to court for guidance on any of the outstanding issues.</p> <p>Aboriginal Affairs and Northern Development Canada’s response. Agreed. The Department agrees to work jointly with the Commission to develop a project plan for the provision of documents. Issues such as higher-quality digitization for photographs (approximately 2,000 to 3,000 photographs) will be considered as a priority, so that former students can better identify details they are searching for. Overall, the Department notes that the final cost of reviewing, coding, and digitizing documents could vary significantly from the estimates used in this chapter, depending on the volume of relevant documents. The Department’s actions will be in compliance with the direction provided by the Ontario Superior Court in its 30 January 2013 decision.</p>

Recommendation	Response
<p>Creating the national research centre</p> <p>6.48 The Truth and Reconciliation Commission should identify all the issues that affect the transfer of the historical record to the national research centre, and develop and implement a detailed plan to address them. In particular, the Commission and Library and Archives Canada should work closely on all matters relating to the disposition of the Commission's documents. (6.44–6.47)</p>	<p>The Truth and Reconciliation Commission's response. Agreed. The Commission is confident that all issues related to the establishment of the national research centre can be resolved in a cooperative manner. A detailed plan is being developed as discussions take place with the organization selected, federal government departments, and the Government of Manitoba. A detailed draft agreement has been reached with the selected organization for hosting the national research centre. Consultations with the parties to the Settlement Agreement related to this draft agreement, and detailed discussions to ensure that the records at the national research centre will be protected by appropriate privacy legislation, have occurred. The Commission has had detailed discussions with Library and Archives Canada with a view to ensuring that the National Archivist will provide a disposition authority, as intended by the Settlement Agreement.</p> <p>Library and Archives Canada's response. Agreed. Library and Archives Canada will work closely with the Truth and Reconciliation Commission on all matters related to the disposition of the Commission's documents. Specifically, Library and Archives Canada will continue to work with the Commission, including further discussions on document disposition matters and plans for establishing a disposition authority prior to the end of the Commission's mandate—in the fourth quarter of the 2013–14 fiscal year. In consultation with the Commission, Library and Archives Canada will undertake the evaluation process required for decisions about document disposition. Furthermore, Library and Archives Canada will provide feedback on any draft record transfer agreements as the Commission pursues the establishment of the national research centre—upon receipt of drafts from the Commission.</p>

