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# Ontario Native Affairs Secretariat

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## BACKGROUND

The Ontario Native Affairs Secretariat is headed by the Assistant Deputy Attorney General and Secretary for Native Affairs and supports the Attorney General and Minister Responsible for Native Affairs. The Secretariat employs approximately 60 staff, with a head office in Toronto and regional offices in Thunder Bay and Pembroke.

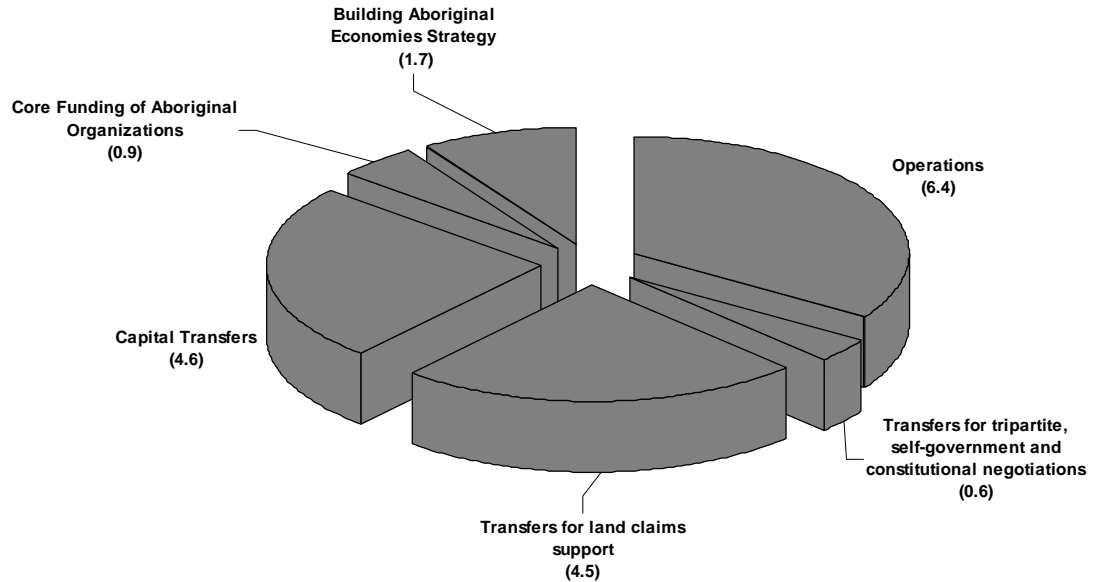
The Secretariat works with First Nations, Aboriginal organizations and businesses to build strong, prosperous and self-reliant Aboriginal communities. The Secretariat also represents Ontario in self-government negotiations between Canada and First Nations as required. Its core businesses are: negotiations, Aboriginal economic development, corporate coordination of Aboriginal affairs and internal business support. Under these businesses, key activities include:

- conducting land claim negotiations on behalf of the province and implementing land claim settlements;
- funding capital projects that are delivered by other ministries;
- providing core funding for eligible Aboriginal organizations; and
- promoting Aboriginal economic development.

The Secretariat's direct expenditures of \$18.7 million for the 1999/2000 fiscal year are detailed in the following graph:

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**Ontario Native Affairs Secretariat  
1999/2000 Expenditures  
(\$ millions)**



*Source: Ontario Native Affairs Secretariat*

The Secretariat also works with other ministries to provide cross-government coordination of Aboriginal affairs and provides advice to the government on Aboriginal matters. For instance, the Building Aboriginal Economies Strategy, which promotes economic growth and employment in Aboriginal communities, provides a framework for over 35 programs and services across 11 ministries. As part of the Strategy, the Working Partnerships Program encourages Aboriginal partnerships with the private sector.

Provincial programs and services delivered to Aboriginal residents are funded and delivered by over 16 ministries, with total expenditures exceeding \$370 million for the 1998/99 fiscal year. These expenditures were for such activities as First Nation welfare allowances and benefits, Aboriginal childcare, and health insurance and hospital services.

## **AUDIT OBJECTIVES AND SCOPE**

Our audit objectives were to assess whether the Secretariat's management practices adequately ensured that:

- internal policies and procedures regarding land claims were being complied with;
- secretariat programs and services demonstrated value for money over the long term, based on business goals, results and accountability; and
- coordination of Aboriginal affairs across the government met secretariat business plan commitments and that ministries received timely and useful information, guidance and feedback regarding their Aboriginal-specific programs.

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The scope of our audit included a review and analysis of relevant secretariat files and administrative procedures as well as interviews with appropriate staff at the Secretariat and a number of ministries. We also reviewed a number of files relating to capital programs that were being administered by other ministries.

Prior to the commencement of our audit, we identified the audit criteria that would be used to address our audit objectives and reviewed these with senior secretariat management. We did not rely on the work of internal audit because it had not issued any recent reports on the Secretariat.

Our audit work covered the period to March 31, 2000. Our audit was performed in accordance with the standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants and accordingly included such tests and other procedures as we considered necessary in the circumstances.

## OVERALL AUDIT CONCLUSIONS

We concluded that the Secretariat was generally complying with internal policies and procedures regarding land claims.

The Secretariat's internal operations were administered with due regard for economy and efficiency. However, we concluded that several aspects of the Secretariat's programs and services could not demonstrate value for money. Specifically:

- While land claim settlements were adequately supported by independent evaluations or other appropriate evidence, the Secretariat needed to better ensure the timeliness of reporting and accountability by First Nations for the use of secretariat land claim funding provided to them for their negotiating costs.
- For the two secretariat-funded capital programs delivered by two other ministries, which accounted for 45% of total secretariat expenditures, we found that secretariat monitoring was not supported by standardized formal reporting of sufficient detail and that the arrangement whereby the Secretariat funded but ministries delivered these programs added no discernible value and blurred the lines of accountability.
- In providing core funding to Aboriginal organizations, the Secretariat needed to better ensure that funding reflected changes in local needs over time and that audit management letters on recipients' operations were obtained and promptly addressed.

We concluded that the Secretariat's coordination of Aboriginal affairs across the government met secretariat business plan commitments. However, we were not satisfied that the Secretariat's database on provincial expenditures on programs and services delivered to Aboriginal people, which were over \$370 million for the 1998/99 fiscal year, was timely, accessible and detailed enough to be useful for cross-government program coordination or as a resource for ministries delivering Aboriginal-specific programs.

Finally, while we concluded that the Working Partnerships Program has been effectively implemented, the process for reporting on Building Aboriginal Economies results needed significant improvement.

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### **Overall Secretariat Response**

***The Secretariat is pleased that the Provincial Auditor's report contains positive comments about each of its core businesses: land claims, corporate coordination of Aboriginal affairs and Aboriginal economic development.***

***The Secretariat appreciates the suggestions and recommendations provided by the Auditor on ways to improve its operations. A number of improvements have already been made or are underway.***

***In the area of land claim negotiations funding, First Nations are increasingly using the funding guidelines first issued by the Secretariat in 1998. The Secretariat continues to work with funding recipients to enhance the level of documentation submitted and to improve the timeliness of their reporting.***

***The Secretariat agrees that good data on Aboriginal economic development is key to measuring the success of the Building Aboriginal Economies Strategy and is continuing to work with partner ministries to monitor access by Aboriginal people to programs and services and to improve data collection and reporting systems.***

***The Secretariat is committed to making further improvements to how it delivers on its core businesses in order to move closer to its vision of a future in which Aboriginal communities have stronger economies and are more self-reliant, and where relations between Aboriginal people and their neighbours are prosperous and mutually beneficial.***

## **DETAILED AUDIT OBSERVATIONS**

### **LAND CLAIMS**

A land claim is a formal statement to the federal or provincial government in which an Aboriginal community asserts that the Crown has not lived up to its commitments or obligations with respect to Aboriginal or treaty rights pertaining to land. There is little specific legislation governing land claims. Most Aboriginal land claim negotiations involve the federal government, which has primary responsibility for their resolution.

Under the *Constitution Act* the provinces are assigned legislative authority for Crown lands, private property and natural resources within their boundaries. As such, provinces may become involved because of the historical events that give rise to such claims and because many claims involve the assertion of rights with respect to provincial Crown lands, natural resources and private property. Other relevant legislation includes Ontario's *Indian Lands Agreement Confirmation Act* and its reciprocal federal statute.

The Secretariat participates in land claim negotiations on behalf of Ontario. The Secretariat's specific approach to land claim negotiation is set out in the province's *Aboriginal Policy Framework* as well as through several publicly available fact sheets.

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The land claim process can be protracted and contentious and can involve the interests of many parties, including private landowners. The process consists of four phases: pre-negotiations, which includes claim submission and evaluation; negotiations; settlement; and implementation. All four phases include elements of public involvement. The timeframes of land claims vary and can exceed 20 years. In most instances, the Secretariat contributes to the negotiation costs incurred by the Aboriginal community through contribution agreements.

The goal of a land claim negotiation is to arrive at a mutually agreeable settlement, one that balances the concerns of the province, the federal government, the Aboriginal community and all affected third parties. Settlements typically deal with such matters as land ownership, clarification of boundaries, future land usage and monetary compensations for loss of land use.

We concluded that the Secretariat was complying with internal policies and procedures regarding land claims and that land claim settlements were adequately supported by independent evaluations or other appropriate evidence. We further found that relevant activities of other jurisdictions were considered during the development of land claim policy and that third-party consultations were conducted on a timely basis.

However, we noted areas where improvements were needed. The Secretariat needed to better ensure accountability and timely reporting by First Nations for the use of secretariat land claim funding provided to them for their negotiating costs.

## **NEGOTIATION FUNDING**

Once a land claim has been formally accepted for negotiation, the Aboriginal community annually submits work plans and proposed budgets to the Secretariat for review and approval. Work plans set out such things as planned meeting and communication costs, and legal, consulting and technical costs associated with the claim that the Aboriginal community expects to incur. Following a review, the Secretariat and the Aboriginal community sign a contribution agreement.

Under the contribution agreement, the Secretariat initially provides 75% of the annual funding once all outstanding reports from the Aboriginal community related to prior years have been received and approved. The remaining 25% is released following the receipt of interim progress and financial reports, which are due on October 31. Final progress and financial reports are due shortly after year-end, with audited financial statements due by June 30. All unused funds identified by these reports must be returned to the Secretariat or deducted from contributions in the next fiscal year.

In order to effectively monitor the use of the Secretariat's funds and respond quickly to changing circumstances, timely reporting of results is essential. However, we noted that the reports needed for such monitoring were not being submitted by First Nations on a timely basis. For example, we found that while all final reports for ongoing claims were eventually submitted, they were, on average, late by more than 100 days.

More importantly, in the final year of a negotiation process where no funding for future years was contemplated, final reports were not received at all. Therefore, the Secretariat could not identify and recover any overpayments made.

We believe a general policy of holding back the final payment until after final reports and audited financial statements are submitted would solve this recurring problem. For instance, one

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possible mechanism would be to pay 75% of the Secretariat's agreed-upon funding, as under the current arrangement, with the remaining 25% held back until receipt of the final reports and audited financial statements following year-end. This could eliminate the need for interim progress reports and interim financial reports, saving effort for both the Secretariat and Aboriginal communities.

Our examination of land claim files also showed that the reports submitted by Aboriginal communities were often not useful and that the Secretariat's review of them, in some cases, was not documented. For example, there was no required format for reporting on the provincial funds provided. As a result, many of these reports did not provide sufficient detail to enable a comparison of actual expenditures to budget, identify significant variances for follow-up or allow the identification of any overpayments. We also found that variances over 25% from budget were not being pre-approved, as required by the contribution agreement, or adequately explained.

Secretariat practice is to fund negotiation costs only through the contribution agreement process. The final settlement is meant to address the value of the claim itself. The monetary component of a final claim settlement, once paid, is final. However, we noted two current cases in which estimated negotiation costs formed part of a final settlement and, accordingly, required no reporting of actual costs incurred. Specifically:

- In the first case, we found no documented evidence to support a \$550,000 payment for negotiation costs arising prior to 1993.
- In the second case, during the negotiation process, the Secretariat agreed to include projected negotiation costs of \$58,000 for a three-month period in the final settlement agreement. Before the agreement was signed, the Secretariat's own calculations indicated that over \$20,000 of this \$58,000 had not been spent yet the full \$58,000 was still paid out. The \$20,000 over-reimbursement cannot be recovered.

### **Recommendation**

**To improve accountability for the funding of Aboriginal land claim negotiation costs, the Secretariat should:**

- **consider holding back a percentage of each year's funding until it has received the required final reports and audited financial statements for that year;**
- **establish a standard format for financial reports and audited financial statements to facilitate analysis of significant variances from budget and identification of ineligible expenditures and funding surpluses; and**
- **fund projected negotiation costs only through the contribution agreement process.**

### ***Secretariat Response***

***The Secretariat will review the recommendation to hold back a percentage of the current year's funding having regard for the need to ensure that First Nations have sufficient cash flow to participate in negotiations.***

***The Secretariat reviews all of the reports submitted by First Nations and concurs that in some cases documentation of this process and resulting decisions and actions can be improved. The Secretariat continues to strengthen reporting requirements in the funding guidelines and will be developing:***

- ***a standard format for financial reports; and***
- ***requirements that audited financial statements contain sufficient detail to enable comparison to budgets set out in the funding agreements and identification of funding surpluses and expenditures that were not budgeted.***

***The Secretariat generally concurs with the recommendation to fund negotiation costs through the contribution agreement process only and will strive to do so in future. However, in certain situations, it may not be possible to achieve a final settlement and resolution to a longstanding claim without some flexibility in negotiation funding arrangements.***

***In both cases cited by the Provincial Auditor, the payments contributed to achieving final settlement of the claims.***

## **LAND CLAIM COSTING**

We found no system in place to track the total costs of individual land claims, which, as indicated previously, often take many years to resolve. Costs associated with specific land claims include professional services, legal and negotiation costs, third-party consultation costs and settlement implementation costs.

We acknowledge that the issues involved in land claims can be unique, making meaningful comparisons between different land claims difficult. However, we believe that a land claim costing system would be useful and would enable full public accountability for the management and reporting of the land claim process. Such historical data would be useful in future negotiations and help the Secretariat in resolving land claims more efficiently and effectively.

### **Recommendation**

**To assist with the evaluation of future land claims and enhance accountability for the cost-effectiveness of the program, the Secretariat should identify and track the total costs of each land claim.**

### ***Secretariat Response***

***The Secretariat has tracked transfer payments and costs for travel, equipment, meetings, research consultants, alternative dispute resolution and public consultation for each land claim for the past two fiscal years.***

***The Secretariat will examine the feasibility of tracking additional costs.***

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## PROGRAMS ADMINISTERED BY OTHER MINISTRIES

During the period of our audit, the Secretariat funded two major capital programs that were implemented by other ministries under the Aboriginal Community Capital Infrastructure Fund. These were the Canada-Ontario Infrastructure Agreement, which provides for retrofitting and service connections within Aboriginal communities and is administered by the Ministry of Northern Development and Mines (MNDM) and the Aboriginal Healing and Wellness Strategy, administered by the Ministry of Community and Social Services (MCSS). Total expenditures for these two programs in the 1998/99 fiscal year were over \$8.9 million, or 45% of the Secretariat's expenditures.

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We found that the arrangement whereby the Secretariat funded but another ministry delivered these programs added no discernible value and blurred the lines of accountability. In both programs, agreements were in place setting out the respective responsibilities of the Secretariat, the implementing ministries and other parties. However, we found little documented evidence that the reporting requirements of these agreements were being met. The result was that the Secretariat, which funds the programs, was insufficiently monitoring program delivery and often did not have sufficient documented evidence that funds were expended for the purposes intended.

We believe that accountability would be improved and administration streamlined by making the delivering ministries completely responsible for these programs, with legislative funding flowing directly to them. These ministries are in the best position to monitor program expenditures and to measure and account for program success. Duplication of effort would be avoided, and the Secretariat could concentrate its efforts on programs it delivers directly.

With respect to the Canada-Ontario Infrastructure Agreement:

- We found that the reports MNDM provided to the Secretariat did not satisfy the terms of the agreement that sets out their reporting relationship. Specifically, for the year ended March 31, 1999, the Secretariat had received only two one-page reports that did not contain any information on variances between budgeted and actual expenditures.
- We further found that the Secretariat had not collected any information as to the actual number of jobs created by the program. Therefore, it had no way of knowing whether its public claim that the program would create 3,000 jobs was being met.
- In reviewing MNDM project files, we found that the Ministry had ensured the retrofitting work was properly completed through periodic site visits. However, the Ministry was not ensuring that recipients submitted required financial reports on a timely basis, and we saw little evidence of systematic review of these reports. Further, there was no requirement to provide a separate reporting of retrofit costs in the audited financial statements of the community. Accordingly, MNDM had no independent assurance that the calculations of final project costs were complete and accurate, and, accordingly, whether any government monies should be recovered.

For the Aboriginal Healing and Wellness Strategy administered by MCSS, the Secretariat had not sufficiently reviewed backup documentation for reasonableness. Secretariat procedures were also inadequate to ensure funds paid were reconciled on an annual basis to budgeted amounts and capital reports submitted.



## **Recommendation**

**In order to eliminate unnecessary overlap of monitoring and administrative activities, the Secretariat should in future strive to avoid taking on funding responsibility for programs that more appropriately could be administered by other ministries.**

**While the current funding arrangements remain in place, the Secretariat needs to improve its monitoring of these programs in order to know whether they are functioning as intended or need corrective action.**

## ***Secretariat Response***

***The Secretariat was originally allocated the Aboriginal Community Capital Infrastructure Fund (ACCIF) in 1991 as the government wished to have such funds managed corporately in the Secretariat, rather than disbursing them among a number of ministries. Memoranda of Understanding between the Secretariat and its partner ministries clearly define respective roles and responsibilities. The Secretariat no longer provides capital funding for the Aboriginal Healing and Wellness Strategy.***

***The Ministry of Northern Development and Mines (MNDM) monitors its disbursement of ACCIF grants to First Nations while the Ministry of Community and Social Services (MCSS) has monitored its disbursements of ACCIF grants to Aboriginal organizations. Both MNDM and MCSS in turn report regularly to the Secretariat by means of verbal and written reports.***

***The Secretariat will work with MNDM to standardize regular formal reporting, the requirements of which will become part of an existing Partnership Agreement between the Secretariat and the Ministry.***

## ***CORE FUNDING FOR ELIGIBLE ABORIGINAL ORGANIZATIONS***

Under the Aboriginal Organizations Core Funding Program, the Secretariat provides funding for eligible administrative and operating costs for three Aboriginal organizations: the Ontario Native Women's Association, the Chiefs of Ontario and the Ontario Federation of Indian Friendship Centres. Each organization submits a budget and work plan for its upcoming year, which, following secretariat review and approval, forms the basis for a contribution agreement between the two parties. Funding recipients are required to submit interim financial reports at the end of October and year-end progress and financial reports 30 days after year-end. Audited financial statements are due 90 days after year-end.

For the 1999/2000 fiscal year, secretariat funding for this program amounted to \$877,072.

We found the Secretariat's controls over budget requests and approvals and the monitoring of program expenditures could be improved. Specifically:

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- Funding was historically based. Each organization received the same amount of funding from year to year, despite significantly changing expenditure patterns within the organizations themselves. For example, for periods where information was available, one organization's overall expenditures increased from \$1.2 million to \$3.1 million while another organization's overall expenditures decreased from \$14.8 million to \$5.9 million. In our opinion, core funding needs should be assessed in relation to total activity.
- In some cases, management letters on funding recipients' operations were available and should have been forwarded to the Secretariat as part of the terms of the contribution agreement, but were not. For these cases, we found no evidence that the Secretariat had made any effort to obtain them. In one case, the withheld management letter documented significant control problems at the funded organization, including unbudgeted expenditures within the core programs the Secretariat had been funding.

### **Recommendation**

**To improve the budgeting process and the monitoring of expenditures for the Aboriginal Organizations Core Funding Program, the Secretariat should ensure that:**

- **budget submissions are sufficiently detailed to enable the Secretariat to provide funding commensurate with the demand for and value of the services to be provided; and**
- **all management letters are obtained, relevant issues identified and significant control deficiencies are followed up on a timely basis.**

### ***Secretariat Response***

***The Secretariat agrees that budget submissions should be sufficiently detailed and ensures that they are.***

***As there have been cases in which management letters were not provided promptly, the Secretariat will highlight this requirement in the schedule of required reports appended to the contribution agreements. The Secretariat will continue to work to ensure that management letters are submitted with audited financial statements and that control deficiencies are addressed expeditiously.***

***The Secretariat is planning to conduct a review of core funding in 2000/01 and will take this recommendation into account.***

## **COORDINATION OF ABORIGINAL PROGRAMS**

### **INFORMATION FOR DECISION MAKING**

According to secretariat records, gross provincial expenditures at 16 ministries delivering provincial programs to Aboriginal residents were over \$370 million for the 1998/99 fiscal year.

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These expenditures were for such activities as First Nations welfare allowances and benefits, Aboriginal childcare, and health insurance and hospital services. In order to help fulfil its corporate coordination mandate, the Secretariat recognizes the need for and maintains a database of information on these programs. It uses the database to support the development of corporate Aboriginal policy and to manage its Aboriginal-specific relationships at both federal and provincial levels.

The Secretariat annually sends out a request for database information to each applicable ministry. These annual submissions are summarized and consolidated by the Secretariat into an Aboriginal Targeted Expenditure Summary.

At the time of our audit, the Secretariat was requesting only that ministries provide a description of each program and basic financial information. The ministries provided no explanations for major expenditure variances from year to year. There was also no reporting of program results or service information such as changes in demand levels, numbers of clients served, or relevant demographic trends or changes. Collecting this type of supplementary information would allow the Secretariat to better predict and plan for future Aboriginal-specific resource needs.

In our opinion, one way to improve the database would be to supplement it with the types of output-based program and service information being gathered through the Building Aboriginal Economies Strategy and the Working Partnerships Program. This would enhance the Secretariat's role as corporate coordinator and as a proactive policy advisor.

We also had concerns about access to the database. Although 16 ministries were contributing to it, the database was readily accessible only by the Secretariat. In our discussions with ministries' program staff, we were informed that such a database would be useful to them.

### **Recommendation**

**To improve the usefulness of its database as a tool for government-wide coordination of provincial programs and services with expenditures of over \$370 million delivered to Aboriginal residents, the Secretariat should:**

- **obtain information on program services and results in addition to the financial information it currently collects;**
- **integrate the information obtained on the Building Aboriginal Economies Strategy and the Working Partnerships Program into the database; and**
- **take steps to make the database directly accessible to program managers in the 16 ministries delivering programs and services to Aboriginal residents.**

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### **Secretariat Response**

***The Aboriginal database was intended to collect basic expenditure information, not to obtain output-based program and service information. The Secretariat will consider expanding the purpose of the database. This would require changes to the submission guidelines, plus increased work by the Secretariat and other ministries. The Secretariat would need to consider the value of this additional information in relation to the increased demand on corporate resources that collecting and managing it would require.***

***The database is made available directly to senior officials on a regular basis and to program staff upon request. The Secretariat acknowledges that database information could be more widely distributed to program managers.***

***The Secretariat agrees that there is utility in integrating the Aboriginal Expenditure Database with Building Aboriginal Economies and Working Partnerships performance results and has commenced work on this integration.***

## **BUILDING ABORIGINAL ECONOMIES STRATEGY**

The Building Aboriginal Economies Strategy (the Strategy) provides a framework for over 35 programs and services across 11 ministries. Its goal is to increase economic capacities and opportunities in Aboriginal communities and to promote self-reliance, growth and investment, an improved business environment and the creation of jobs.

The Secretariat reports on the Strategy to the Deputy Ministers' Committee on Aboriginal Issues. Its role is one of coordination, data gathering and provision of information. The Secretariat directly manages the five-year, \$11.8 million Working Partnerships Program, established as part of the Strategy in 1998 to encourage more Aboriginal partnerships with the private sector. Key program components include a Partnership Development Advisors Initiative, workshops and forums, partnership development resource kits, an Aboriginal business website, recognition awards and scholarships, and an Economic Renewal Initiative. We concluded that the Working Partnership Program has been effectively implemented.

The Secretariat also facilitates and oversees the development and implementation of the Strategy's performance measures. It compiles and analyzes periodic submissions by ministries on the results of the programs they deliver to Aboriginal residents. To this end, the Secretariat developed six generic performance measures that were intended to be adapted by ministries for reporting on their specific programs.

As of March 31, 2000, the Secretariat has compiled and prepared two reports on results of the Strategy from April 1, 1998 to September 30, 1999 based on reports submitted by the ministries. We found this process needed significant improvement, as most of the reported results were not attributable to the Strategy. Rather, they were often either results from programs in existence prior to the Strategy's launch or not from the period being reported on. For example:

- Forty-four percent of the jobs reported as created under the Strategy were based on a February 1996 ministry report on Aboriginal employment in the forestry industry.

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- One of the achievements listed was the completion of education and training programs by 7,452 Aboriginal people. However, 87% of those individuals had participated in these programs prior to the period being measured.

### **Recommendation**

**In order to properly assess the performance of the Building Aboriginal Economies Strategy, the Secretariat should ensure that reported results actually arise from Building Aboriginal Economies Strategy initiatives.**

### ***Secretariat Response***

***The Secretariat is aware of the need for good data in order to measure results of the Building Aboriginal Economies Strategy and is working with ministries to improve their data collection and reporting. In some cases, until ministries are able to provide actual data, estimates will continue to be utilized.***