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Chair

Mr. Andy Fillmore

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• (1540)

[English]

The Chair (Mr. Andy Fillmore (Halifax, Lib.)): We'll come to order. Thank you very much everyone for being with us today.

We'll start as always by acknowledging that we're meeting today on unceded Algonquin territory.

We have guests today from the Office of the Auditor General. I'm very pleased to welcome Michael Ferguson, the Auditor General of Canada; Jerome Berthelette, assistant auditor general; and Joe Martire and Glenn Wheeler, principals.

Thank you for joining us today.

We have 50 minutes to spend with you today. I'd like to offer you 10 minutes to present collectively, however you would like to distribute that among yourselves. Then we'll move into questioning and finish 50 minutes from now.

I'll be holding up a yellow card when there's a minute left in the 10 minutes, and a red when we're right out of time. When we get into questioning, I'll be extending the same courtesy to our questioners and guests when answering. That way we can try to be fair with the time and get everybody out of here on time.

Thank you very much, and perhaps you would like to take the floor.

Mr. Michael Ferguson (Auditor General of Canada, Office of the Auditor General of Canada): Mr. Chair, we're pleased to be here today to provide an overview of our role and mandate and to outline some key points from our past audit work that may be of interest to your committee.

Our office has a mandate to audit operations of the federal and territorial governments, and we provide Parliament and the legislative assemblies with independent information, assurance, and advice regarding the stewardship of public funds.

We conduct performance audits of federal departments and agencies, and we conduct annual attest audits of the financial statements of the government and of crown corporations. On a cyclical basis, we also conduct special examinations of the systems and practices of crown corporations.

For the three territories, my office reports performance audits directly to each legislative assembly. We also conduct annual audits of the financial statements of territorial governments and annual audits of territorial corporations.

[Translation]

In our performance audits, which we hope help the work of your committee, we examine whether government programs are being managed with due regard for economy, efficiency and environmental impact. We also look to see if there are means in place to measure the effectiveness of programs. Although we may comment on policy implementation, we do not comment on policy itself.

The Auditor General Act gives our office discretion to determine which areas of government to examine through performance audits. Our selection of audits is based on risks, significance and relevance to Parliament.

The performance audit process takes between 12 and 18 months to complete. The results of our audits are usually presented to Parliament twice a year, in the spring and fall.

In the past 15 years, the Office of the Auditor General has audited a broad range of federal programs and activities that affect First Nations and Inuit communities.

[English]

In 2011 we published a status report on the government's progress toward achieving the commitments it made to address recommendations from seven reports we issued between 2002 and 2008. Although we found that progress had been made in implementing some of our recommendations, we noted that many conditions and challenges faced by first nations communities had worsened.

For example, the education gap among first nations individuals and other Canadians had widened, the shortage of adequate housing on reserves had become more acute, and the presence of mould on reserves remained a serious problem.

Mr. Chair, that situation led us to consider some of the factors that inhibited progress.

In the preface to our 2011 audit report, we identified four structural impediments that we believed had negatively affected the delivery of programs and services to first nations individuals and communities.

The first impediment was a lack of clarity about service levels. The federal government supported services on reserves that were provided by provincial and municipal governments off reserves, such as education and drinking water. However, it was not always clear what the federal government was aiming to achieve because it had not clearly defined the type or level of service it committed to supporting.

•(1545)

[Translation]

The second impediment was the lack of a legislative base. Unlike similar provincial programs, the programs on reserves were not supported by legislation in such key areas as education, health and safe drinking water.

Instead, the federal government developed programs and services for First Nations on the basis of policy. As a result, the services delivered under these programs were not always well defined, and there was confusion about federal responsibility for funding them adequately.

The third impediment was the lack of an appropriate funding mechanism. The federal government used contribution agreements to fund the delivery of many programs on First Nations reserves. Often, the contribution agreements had to be renewed yearly, and it was not always certain whether funding levels provided to First Nations in one year would be available the following year. This situation created a level of uncertainty for First Nations and made long-term planning difficult.

The fourth and final impediment was the lack of organizations to support local service delivery. There were often no organizations in place—such as school boards, health services boards and social service organizations—to support local delivery of programs and services. In contrast, provinces had established such organizations. Indian and Northern Affairs Canada, now Indigenous and Northern Affairs Canada, had started to work with groups that represented more than one First Nation, but much remained to be done.

[English]

Mr. Chair, since 2011 we have audited several programs for first nations and Inuit communities, including the nutrition north program, policing programs, emergency management, access to health services for remote first nations communities, and the implementation of the Labrador Inuit Land Claims Agreement. We found that structural impediments continue to hinder effective service delivery. I should note, however, that we have not followed up on whether the recommendations made in these audits have been implemented. Currently we are conducting audits on first nation-specific claims and on the reintegration of aboriginal offenders.

For your convenience, we have attached to this statement a list of our most recent tabled federal and territorial audits, along with a brief summary for each. You will also note that in 2015 we tabled a report on the efforts of British Columbia first nations, Health Canada, and the Province of British Columbia to overcome the impediments in establishing the First Nations Health Authority in British Columbia. For example, the funding agreement between the federal government and the authority provides a level of funding certainty. It covers a 10-year period and includes an annual escalator to account for rising health care costs. In addition, the authority has increased support to local service delivery through training and expansion of access to electronic health services.

In addition, we identified two factors that contributed to the successful negotiation of the agreement. The first factor was a sustained commitment by leaders from first nations, as well as the federal and provincial governments, to the development of a new

model for providing health services to first nations in British Columbia. The second factor was the decision by first nations to establish a single point of contact for negotiations with the federal and provincial governments.

[Translation]

Mr. Chair, if First Nations are to experience more meaningful outcomes from the federal funding of programs and services they receive, these structural impediments will have to be addressed.

Doing this requires the political leadership and will of all involved—the federal government, the First Nations leadership, and provincial and territorial governments.

This concludes my opening statement. We would be pleased to answer any questions the committee may have.

Thank you.

•(1550)

[English]

The Chair: Thank you very much, Mr. Ferguson, it's much appreciated.

We're going to go right into our first round of seven-minute questions, and the first question goes to Mike Bossio, please.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you, Mr. Chair, and thank you for being here, Mr. Ferguson, and all the rest of you as well. We really appreciate your coming to present to our committee today.

In the 2011 audit report, the Office of the Auditor General set out four structural impediments that limit the delivery of public services to first nations communities: the lack of clarity of service levels; a lack of legislative base; a lack of appropriate funding mechanisms; and a lack of organizations to support local service delivery.

What changes in practices and approaches should the federal government take to address these structural impediments?

Mr. Michael Ferguson: The first think I'd like to say on this is that in 2011 we were looking back, because we were noticing that even though departments were trying to put in place responses to the recommendations we had made in past audits, the results with first nations weren't changing. We were trying to figure out why. Why could there be things going on, but with no improvement in the results? We identified those four impediments. The first thing is that the government needs to be aware of those impediments and then try to deal with them.

When we did the study and audit looking at the British Columbia First Nations Health Authority, we looked at it because it was an organization that was able to get established, and we wanted to identify how they dealt with these four impediments. In fact, they were successful in overcoming them. So it is possible, with the will of everybody involved, to find ways around these impediments and come to an agreement and a better solution on some of these services.

Therefore, I really think the first thing is awareness. The second thing is making sure that the will is there on the part of everybody involved—the government, the provincial government if needed, and the first nations governments as well. Make sure the will is there on the part of everybody involved and the commitment is there, and then find ways around these four impediments that we've identified.

Mr. Mike Bossio: You found that the use of contribution agreements to fund the delivery of services on first nations reserves could lead to delays in funding, uncertainty about the level of funding and lack of clarity about who is accountable for achieving improved outcomes. What changes in the funding mechanisms should occur?

Mr. Michael Ferguson: Mr. Chair, I'll start with the response and then I'll ask Mr. Martire to speak to what we found in our audit on policing services.

The issue here is making sure that there is certainty of funding. When you're trying to provide services to people and you have a responsibility to provide those types of services, you need certainty about what the funding is going to be. We found that sometimes these contribution agreements aren't put in until late in the year. So how can you know what types of services to provide?

I'll ask Mr. Martire to expand on that, because it was particularly something that we found in the audit on policing on remote first nations.

Mr. Joe Martire (Principal, Office of the Auditor General of Canada): As the Auditor General indicated, this is one of the issues that was problematic for the communities that were under the policing agreements. Most of them were one-year agreements, and it made it difficult for them to plan if they didn't know when the agreement was going to be renewed.

When we did the audit, we noted that at the end of March there were a number of communities affected by these policing programs that still hadn't received the funding and didn't know whether the agreement would be put in place. That caused a lot of problems for them going forward, in not knowing whether they had to lay people off and whatnot.

These contribution agreements range from one to five years, depending on the type of agreement. The vast majority of them are one-year contribution agreements, so it makes it difficult for people to plan and have some level of certainty about the level of funding they can expect to provide the services under those agreements.

Mr. Mike Bossio: If we look at the funding mechanism today, a portion of the funding is grants and a portion is operational. Would you agree that if you were to eliminate the grant aspect of funding this contribution, and put it on more of an operational basis, saying this is the level of funding that you have, and you establish the priorities that are important to your communities....? I say this because we see that there is such a broad range of priorities across all reserves, across all nations. Would you agree that this would be a very good step towards solving some of these funding issues?

• (1555)

Mr. Michael Ferguson: As auditors, we don't try to prescribe the policy that should be put in place or exactly how the department should resolve the issues. We make recommendations.

I think that in terms of funding, we're not trying to prescribe a specific way of dealing with the funding issue. What we're trying to say is that there needs to be certainty with the funding. There needs to be a way that the different services can be planned for in the long term. Regardless of how that's done, it's more the end result—that there's certainty and an environment whereby that long-term planning can be done—that's important from our perspective.

Mr. Mike Bossio: Do I still have time?

The Chair: You have one minute left.

Mr. Mike Bossio: How would changing the funding mechanism provide greater certainty about the level of funding and clarity about who is accountable for achieving improved outcomes?

Mr. Michael Ferguson: Well, in a funding agreement, if what you are dealing with is multiple-year funding.... Again, in the case of the British Columbia First Nations Health Authority, they put in place a 10-year agreement. In that agreement, they also had a number of years of an escalator, so the B.C. First Nations Health Authority knows how much money it's going to get over that 10 years and knows how that's going to escalate. That allows them to do that type of planning.

Then, within that agreement, if you know what the services are that are supposed to be delivered, you know what the time frame is, and you know how the funding is going to be delivered, you have all the bases you need in order to have the accountability.

Mr. Mike Bossio: Thank you very much, Mr. Ferguson.

The Chair: Thanks to both of you for that.

The next questioner is Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thanks to you and your team for being with us here today, sir. I know that the work you do is much more comprehensive, but I just want to go back.... The audited financial statement is one of the gold standards of general reporting for any government. Would that be accurate?

Mr. Michael Ferguson: Again, in our work we do a lot of audits of financial statements, and yes, we express an opinion on those, and we expect to express a clean audit opinion without reservation. That's what we would like to see and what the organizations we audit would like to see.

Mrs. Cathy McLeod: So you would probably also agree that when auditors do that reporting system, it should be widely and publicly available. It shouldn't be hidden away, I guess would be the accurate thing to say.

Mr. Michael Ferguson: Our office is all about promoting accountability and transparency. Whether that's accountability and transparency for financial information or performance of programs, those are the types of things that we are always looking for and promoting.

Mrs. Cathy McLeod: I think it would be fair to say that first nations communities deserve that same kind of accountability and transparency from the structures, whether it be the Department of Indian Affairs or the audited statements of the money that's transferred through contribution agreements.

Mr. Michael Ferguson: Again, accountability I think is something that is very important. If you look at the study and the audit we did on the British Columbia First Nations Health Authority, you will see that one of the things we noted was that in setting up that organization, they had some issues around governance and some transparency issues. In order for that organization to be successful, we identified that it was very important for them to have those types of governance structures.

They were successful in overcoming the obstacles we identified in 2011 in order to establish that organization. The organization was put in place, but for that organization to be able to do what it needs to do in the long term, it needs to have appropriate governance structures in place, including the transparency. Again, we're not going to try to tell anybody how to do that, but we certainly are always promoting accountability and transparency.

• (1600)

Mrs. Cathy McLeod: We know that the current government has appropriately committed significant dollars that are going to go into education. I guess there are a number of different ways to approach that.

Obviously, we approached it in trying to have, in partnership, a legislative framework, and that faltered—there's no question that it faltered. It was done in partnership, but it did not get to fruition. In terms of that overcoming of the structure, again, is the gold standard legislation with appropriate regulations? Would that be how you would like to see this move forward in terms of how the additional support for education gets structured?

Mr. Michael Ferguson: Again, I'm not going to try to sort of dictate any policy direction. I think in terms of the whole issue of accountability in reporting for first nations, a number of years ago we did an audit that looked at the reporting burden on first nations. I think we identified that there were something like over 160 reports that government departments at that time were requiring from first nations, some of them being very small. That was a report that we did in 2002. So it was quite a while ago, and things may have changed since then.

It is very much a matter of understanding the two-way street between the government as providing funders, and the first nations as governments that are part of that service-providing continuum, between the federal government providing services and the role of first nations in providing services.

It's very much a two-way street to try to identify the appropriate mechanism for accountability and transparency to exist within that framework.

Mrs. Cathy McLeod: Coming from British Columbia, of course, I am very proud of the First Nations Health Authority. Certainly there are going to be some growing pains along the way and your audit, appropriately, identified some of the challenges ahead. We talked about one being perhaps a legislative regulatory framework. This is in some ways a way to create some structure without legislation. Do you see this as something that potentially could get emulated, or is it really that every single community and every province is going to have to be very different?

Mr. Michael Ferguson: The reality is probably that different jurisdictions will be different. Essentially, what happened in British

Columbia, as I understand it, was that, from a legislative point of view, it was more a matter of pointing to pieces of legislation that already existed and saying, "Okay, we are going to abide by that." It wasn't that there was a new legislative base put in place. The B.C. health authority itself was sort of the organization for delivery, the delivery mechanism. Again, that was an obstacle that we identified didn't exist often, and there was a 10-year funding agreement put in place.

Again, fundamentally, we were looking at that from the point of view that they were able to overcome those obstacles. I'm going to put a lot of emphasis on those four obstacles that we identified in 2011, because I think those are the things that the government, when it's dealing with first nations issues, needs to make sure that it's getting past.

Where is the funding coming from? How certain is it going to be? Who's going to do the service delivery? What's the standard that we are going to deliver those services at? What is the legislative base for which people can expect to get those services? Those are the things that need to be concentrated on. Then, in addition to that, there needs to be the commitment on the part of all of the political people involved to try to move it forward.

In the B.C. situation, the other success factor we identified was the fact that British Columbia first nations put together sort of one point of contact for the governments, so that they knew who they were negotiating with and who was going to be able to speak for that side of the table.

The Chair: Thank you both.

You're out of time, Cathy.

The next question goes to Georgina Jolibois.

Ms. Georgina Jolibois (Desnethé—Mississippi—Churchill River, NDP): Thank you very much.

It's sad to hear. The report is very dismal. We live in Canada, and the standards of living in all reserves across Canada should be really up to par, but they aren't.

You've identified that education, health, drinking water, and other sectors do not have a board or structures in place to make improvements on reserves.

Do you think that we need a legislative basis for these areas on all reserves across Canada?

• (1605)

Mr. Michael Ferguson: Again, one of the obstacles that we identified was that there was a lack of legislative base, that oftentimes these types of services are just based on policy, and that wasn't always consistent, so some way of bringing certainty to the legal foundation for providing services to first nations is very important.

Whether that's a matter of passing new laws or regulations or whether that's a matter of just making sure that it's clear which legislation applies, again, I'm not going to try to proscribe that, but we need to make sure that there is certainty about what legislation does apply. If that certainty does not exist, then there would be a requirement to look to new legislation or regulations. Fundamentally, people have to be able to look at some type of legislative base that underlies the provision of those services.

Ms. Georgina Jolibois: The Canadian Human Rights Tribunal has found the government racially discriminates against indigenous people. To what extent is the federal government accountable for poor outcomes for indigenous peoples across Canada?

Mr. Michael Ferguson: Our role in the whole accountability mechanism is that we go in and audit government programs that are being delivered to first nations. We've audited a lot of them, as I said in my opening statement. Whether it be policing services, or health services, or the nutrition north program, or drinking water, or housing, we've done many audits over the course of the years.

What our audits are doing is identifying areas where the departments are not delivering on the services they are supposed to be delivering. We are certainly trying to make sure the information is available to people so that organizations like this, and committees like this, can hold the government accountable for the performance. I can think of the audit we did on health services in remote first nations, where the Department of Health itself identified that the registered nurses they had in place, because they were operating in remote areas, needed to have additional training in certain areas. The department had identified all of that training that those nurses needed. When we did the audit, we identified that out of 45 nurses, only one of them had completed all of that extra training the department itself had said those nurses needed.

Accountability is important, and what we are trying to do with our audits is bring forward areas where the departments are not living up to the delivery of the services they have established for themselves, and the departments and the government need to respond to that.

Ms. Georgina Jolibois: As you know, recently Attawapiskat and a few other communities have declared states of emergency, yet your report has indicated a number of failures throughout Canada. How can we make progress and make improvements for our first nations across Canada?

Mr. Michael Ferguson: Unfortunately, that was the question we were asking ourselves in 2011. We had done a number of audits going back more than 10 years on first nations issues. We had identified places where the programs were not delivering the services at the level they should have been delivering them. We were making recommendations about those. We did follow-up audits to see whether the government and the departments were implementing changes to their processes because of the recommendations we had made. We found that they were doing that. They were making changes. They were trying to respond to our recommendations, but the results weren't any better. The results among first nations were getting worse.

In 2011 we posed that exact question: what is causing this? That's when we came up with those four obstacles. If it's not clear what level of service the government should be delivering to first nations. Nobody knows who's supposed to be getting what if there isn't a

clear legislative base to say, "This is what has to be provided". It's the same type of issue: if the funding isn't there, you can't do long-term planning. If it's annual funding, you can't do long-term planning. If there aren't the organizations on the ground who are responsible for delivering those services, then the quality of those services is going to suffer. We identified those four obstacles. Based on the audits that we've done since then on policing, disaster assistance, and health services to remote first nations, we've found that those same obstacles continue to exist. I think fundamentally there needs to be a focus on those four things that we identified then, if government is to figure out how to remove those obstacles.

•(1610)

Ms. Georgina Jolibois: I'm thinking of ways to make improvements, and you've identified... but at some point there's a gap between your report and the solutions. What are the steps?

Mr. Michael Ferguson: I think the first step would be to identify and to commit to a level of service. Whether it's in health services, policing services, or whatever services, what's the level of service that's going to be delivered to those first nations? I think that's the first thing.

The second thing is to make sure there is a predictable and long-term approach to funding, so everybody knows how much funding is going to be put into those services and how long that's going to be there for. These are things that happened in British Columbia in establishing the British Columbia First Nations Health Authority, so it can be done.

The Chair: We're out of time. Thank you both for that.

The final seven-minute question goes to Matt DeCoursey, please.

[*Translation*]

Mr. Matt DeCoursey (Fredericton, Lib.): Thank you very much Mr. Chair.

Mr. Ferguson, thank you very much for your presentation.

First, I'd like to say that it's an honour for me to have the opportunity to represent the riding of Fredericton and to follow in the footsteps of Andy Scott, who was the minister of Indian Affairs and Northern Development Canada when the Government of Canada signed the Kelowna Accord with the country's Aboriginal leaders.

[*English*]

It's important for me to think back to where we were 10 years ago, and be ready to embark on a partnership with indigenous Canadians and to make sure that we address some of the gaps that we still see 10 years later. I can tell you that, in my conversations with indigenous leadership in my community—and I have two first nation communities with strong leadership—they see some of the issues that you talk about, and they've seen it get worse over the last number of years. They've seen more unpredictability with their funding. They characterize it as smaller and smaller pots of project funding, as opposed to stable, long-term program funding.

You talk about the impediments of unstable contribution agreements and unstable funding agreements. You also talk about the impediment of a lack of a legislative base. I wonder if, through your audits and the work of your office, you've seen particular instances in which services were ill-defined, maybe due to the rolling back or shrinking of project allotments or programs over the last number of years.

Mr. Michael Ferguson: I'm not sure if I can untangle all the causes and effects, but, again, we found a number of different areas where the services were unpredictable, where it was unclear what the services were supposed to be. I couldn't even try right now to explain to you all the different types of contribution agreements that exist for funding different first nations' policing services. It's not as if there is just one type of contribution agreement that applies to all first nations. There are many different types, and it takes a bit of work to get your head around all the different contribution agreements.

Again, I think you just have to look at any of the audits. I'll go back to the audit on health services, related either to the extra training for the nurses or the fact that of some of the facilities that medical practitioners were supposed to use didn't work. In fact, one of them, a septic system, didn't work. The visiting health care physicians couldn't go there because they didn't have a place to stay while they were there. We've seen very significant impacts on services because all of the infrastructure and support necessary for those services doesn't exist for those first nations.

Again, I can't get into trying to tie it back to what sort of change might have caused some of that, but certainly, we've seen confusing amounts of contribution agreements. As Mr. Martire mentioned, some of them are for just for one year. How do you do long-term planning if that's the case? I think there's no question that has had an effect on some services.

• (1615)

Mr. Matt DeCoursey: I think what I did hear was maybe a broad recommendation that it has to move more toward long-term stability in programming for first nations, as opposed to the one-off project funding initiatives that may be in place now.

Mr. Michael Ferguson: There's always some room for specific project funding, but I think certainty of funding in core areas, an understanding of what services are supposed to be provided, and how they're going to be funded, and then some certainty around that funding.... Again, that's what we identified happened in the B.C. First Nations Health Authority situation. A 10-year funding agreement was put in place, with a predictable escalator, so that everybody knows what funding's going to go there. That allows for long-term planning. There'll always be room for some one-off project funding, so it's not all or nothing, but the primary thing is making sure that there's some certainty around the core services.

Mr. Matt DeCoursey: Mr. Chair, I'll split the rest of my time with Mr. McLeod.

The Chair: Great. Okay, so there are two minutes left.

Mr. Michael McLeod (Northwest Territories, Lib.): Your statement, which addresses the levels of service and long-term and predictable funding, is certainly music to my ears. It is something that the aboriginal people have been saying for a long, long time.

The only consistency we have seen in the last 10 years from the Conservative government has been cuts, cuts, and more cuts.

I come from the Northwest Territories. As you know, a lot of times the money that is allocated is rolled in with the Government of the Northwest Territories, and it becomes very blurry as to what is actually earmarked for aboriginal people. As we watch housing deteriorate to a point where the government is bringing in 10 trailers a year, I think, from Alberta, and that is our housing program, it becomes very concerning. We are reaching a housing crisis. We have our non-insured health benefit funding overdrawn. We recognize that the previous government has been off-loading to the provincial and territorial governments.

The Chair: You have one minute, Mike.

Mr. Michael McLeod: We can't afford it.

I'll just end there with a question that has been troubling me for some time now. Would you be able to look at how fair the funding for aboriginal people in the northern territories is, compared to the rest of Canada? We don't have dollars that are specifically earmarked. We don't have programs that come from Indigenous Affairs. We have high social issues across the territories.

Mr. Michael Ferguson: I am not going to commit to doing any particular audit right here, but certainly you have raised an issue. We are always interested in trying to understand all of the issues that exist, and you have raised another issue around how funding is allocated. Certainly, we can do some work to take a look at that to see if there would be something that we could audit. Again, I am not going to commit right now that we will end up doing an audit, but having that type of input to help us understand what the issues are is always helpful.

The Chair: We are out of time, thank you.

We are moving into the five-minute round of questions. The first question goes to Arnold Viersen, please.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you to our witnesses today. I really appreciate the work you do.

As I look through the list of all the reports that you've put out, it looks like you are busy people, so thank you for making time to come and address us today.

One of the things that we were proud of in our term as government was the First Nations Financial Transparency Act. I was just wondering if you could comment on how that rollout went, and if you did a study on how it was approached by the communities. What kind of take-up did we have with that piece of legislation?

Mr. Michael Ferguson: We didn't do an audit of that piece of legislation or how it was implemented, so I can't really comment on that.

• (1620)

Mr. Arnold Viersen: We talked a lot already today about the various contribution agreements and you talked specifically about the health area in B.C. Are there other layers of government, municipal or provincial, that have similar contribution agreements? Are there other layers of government where the same thing happens, where there isn't a contribution agreement and lack of funding?

Mr. Michael Ferguson: If the question is specific to the first nations file, I would say that there is a whole gamut of different types of agreements in place between various levels of government. Trying to categorize them would therefore not be particularly easy. We haven't really audited this from the perspective of all of the different types of programs that are out there.

What we identified in the British Columbia First Nations Health Authority situation was that it wasn't just long-term, stable funding from the federal government to the health authority, but that it also involved provincial government funding on a long-term basis for the health authority. That is a case where we have seen it. I don't think any of the other audits....

Did we see it? Okay, Mr. Martire can speak to another case.

Mr. Joe Martire: As the Auditor General mentioned in his opening statement, in order to make movement in a lot of these files, there has to be the will and coordination among all three players.

For example, the policing program is funded 52% by the federal government and 48% by the provinces, and they have different types of agreements, which we talked about. We saw there that it's very important that these programs be coordinated.

When you talk about health services in remote communities, again, on that whole issue of the delivery health services to people in those communities, from the first nations' point of view, it's very important that they get the health services from all the players.

Coordination is a very important issue that has to be managed by all three parties.

Also, on the emergency management issue, there's provincial funding that takes place there, until an emergency is of such a magnitude that the federal government has to kick in.

In a lot of these programs, the federal government normally has the lead, but from the service delivery point of view, all three players have to be involved, and the services themselves are actually delivered by many first nation organizations.

Mr. Arnold Viersen: You noted that many first nation reserves lack organizations to support service delivery, such as school boards and health service boards. Did you come across any reasons that those boards don't exist? Is it because of the different structure in government, or is there just not the expertise in the area?

Mr. Michael Ferguson: Again, I think it's probably difficult to generalize. I don't think we were necessarily looking at why they didn't exist. I think what we identified was simply that when there is a gap or absence of those types of organizations to make sure that services are delivered, it's harder to make sure that those services are getting to people.

I think it was more just a matter of identifying that in order to make sure that those first nation members were getting access to those types of services, it's important to have somebody whose job, on the ground, is to make sure that those services are actually being delivered to people.

The Chair: Thanks. We're out of time there.

The next question goes to Gary Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): With respect to the overall audit function that you perform on the first nations' file, what process do you use to ascertain the priorities? Is it something that's mandated on a cycle by the department? If so, on rulings such as the one that was referenced earlier with respect to child welfare, what role would you play in furthering and supporting the department in understanding the breakdown that led to the systemic failures within the system?

• (1625)

Mr. Michael Ferguson: I'll speak first to the audit mandate, and then I may look to one of my colleagues to talk about the child welfare issue.

Fundamentally, again, I think it's important for everybody to understand that under our legislation, we choose whatever we want to audit. Our audits are not dictated by any department or anyone else. We choose whatever it is that we want to audit. The way that we select audits is by doing what we call a strategic audit plan. We try to identify where the risky areas are. There are issues in first nations, so we have identified them as one of our priorities.

We do a lot of outreach. We have an advisory committee, for example, on aboriginal issues. We will get them together periodically to try to understand what people outside of government believe are the issues.

We have the work that we do in the three northern territories. From the point of view of the north and the aspect of services to the north, we're in the north a lot in each of those three territories.

Then we spend a lot of time working with all the departments involved to try to understand the issues and to try to set the priorities. One of the biggest challenges for us is figuring out where the risks are and what things need to be audited. We spend a lot of time trying to sort through that.

In terms of the child welfare, I'll ask Mr. Berthelette to provide you with more information on that.

Mr. Jerome Berthelette (Assistant Auditor General, Office of the Auditor General of Canada): Mr. Chair, we conducted an audit of the child and family services program a number of years ago. The issues that we identified in that audit were similar those that came out during the Canadian Human Rights Tribunal decision, related mostly, I think, to funding and the lack of support for family services within the communities.

We don't have a particular role to play in terms of the Canadian Human Rights Tribunal decision or the department's follow-up on that decision-making process, but because we have already done an audit on child and family services and because of this decision and the need for the department to do something further now, I suspect that at some point I will be going to the Auditor General and suggesting that a follow-up audit on child and family services would be appropriate. Exactly when that will happen will be determined as part of our audit planning process.

Mr. Gary Anandasangaree: On a similar note, the next speaker will be talking about correction issues. For the first time, the prison population in Canada in the federal prisons has surpassed 25% for the indigenous population. That number is staggering when you look at the indigenous women, who represent 37% of the prison population.

On something like that, what would trigger an audit? At what point do you say that it's ridiculous and you really need look at some of the structural issues and the failures in the system and come up with a report that maybe gives more insight or shines more light on these numbers?

The Chair: Just half a minute, please.

Mr. Michael Ferguson: We have a lot of respect for the work that's done through the correctional investigator. A number of our audits look at and rely on the work of the correctional investigator. In fact, right now we have an audit under way that's looking at aboriginal offenders and the sort of rehabilitation, or the handling, I suppose, of aboriginal offenders. We have already decided that's something we need to look at, and that audit is already under way.

The Chair: Thank you.

The next question is for David Yurdiga, please.

Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC): In our discussion on April 14 of the declaration of a health emergency on first nation communities in northern Ontario, we heard testimony from Mr. Michael Kirlaw that indicated there's a lack of a proper pharmaceutical inventory. Is this a matter of a lack of financial resources? Or, is there a supply-on-demand policy? I'm not sure if you ever audit that sort of issue, but it was brought up, and it was a concern to all of us.

• (1630)

Mr. Michael Ferguson: Again, I can't speak to that particular issue. I don't think it was something that we identified in any detail.

Before I turn it over to Mr. Martire, I'll just mention again that there might be a couple of aspects that need to be looked at there. Number one, would there have been a funding issue? A second one could again be this whole area of local service delivery that we've identified, right? In order to make sure there's an appropriate supply of medications or, again, other access to health services, having the appropriate organizations at the local level to ensure that would be something worth looking at.

I'll ask Mr. Martire if he has anything to add.

Mr. Joe Martire: Actually, that's a good example that would link to the impediments that the Auditor General spoke about. We looked at the access to health services in remote first nation communities. As the committee may know, the nursing stations are the first point of contact for health services. Therefore, when we did that audit, one of the things we looked at was what services these nursing stations are supposed to provide.

The good news was that the department was getting around to actually defining what services were to be provided. At that time, though, they didn't know the capacity of the nursing stations to actually provide the services. They had identified what services people could expect, but they didn't know whether any particular nursing station could actually provide, or had the capacity to

provide, those services. They didn't have the information at that point.

That issue was identified in the audit, and the department is working on it as we speak.

Mr. David Yurdiga: You were mentioning that the department is working on it. Once the report is completed and recommendations go back to the government to rectify the issue, what safeguards are there? Will there be pharmaceutical inventory control, dispensary procedures...? It's obvious that we don't want anybody in the situation of needing pain medication or morphine and there being none to be found in the inventory.

To what depth will you go to to ensure that these sorts of situations don't happen again?

Mr. Michael Ferguson: As Mr. Martire pointed out—and this goes back to the idea of having the right support at the local level—the first thing is to identify the availability of those drugs and how many are needed at these first nations nursing stations, and then make sure that the supply is happening, that the people know how to handle it, and all of these types of things.

Again, it goes back to making sure there's a definition of what level of, in this case, pharmaceuticals needs to be available at the nursing station and making sure there's a way to ensure that it's getting there and that the people there are handling it, so that you have the appropriate local support level to make sure, if people need that type of medication and should have access to it the nursing station, that it has already been defined, the nursing station knows how to handle it, and know how they are going to get it, and that somebody is making sure it is happening.

The department—in this case I guess it would be the Department of Health—needs to make sure that all of those components are in place, not just for pharmaceuticals or medication, but for all of the health services that they have identified should be delivered through those nursing stations.

The Chair: You're out of time.

I'm sorry. Please finish your thanks.

Mr. David Yurdiga: Thank you very much for those answers.

Some hon. members: Oh, oh!

The Chair: I'm sorry to cut you off there, my friend.

The final five-minute question for the Office of the Auditor General is going to Michael McLeod.

Mr. Michael McLeod: Once again I want to compliment you on some of the work you've done. It's really interesting, and I certainly will get copies of some of these documents to review further.

The one area I want to flag as a concern is the absence of fiscal arrangements. I'm from the Northwest Territories, and we've had quite a few land claims that have been settled. I think we have four large claims that have been concluded and signed off. The expectation would be that the tribal council or the aboriginal government would then move into the next stage of providing governance to its members. However, from my discussions after being elected to this position, I'm quickly realizing that many of the fiscal arrangements that were supposed to be part of the discussions have not moved forward, some going as far back as 2004.

The claim spells out the procedure for how both sides are supposed to work out the need and for providing programs, for land administration—all the different areas. The Conservative government in the last term decided to come out with a new policy, the harmonization policy, which brings forward a whole new set of rules that nobody expected and that would provide maybe one third of what the aboriginal governments need to govern their people, provide the programs, provide everything that's agreed to in their agreement for operations.

I'm wondering whether this is something you've looked at. I see you looked at the Labrador claim and its implementation and how that's working.

• (1635)

Mr. Michael Ferguson: In terms of the audit we did on the Labrador Inuit lands claims agreement, I think maybe what would be relevant was that part of—I believe it was the fiscal arrangement agreement....

Under its agreement, the Nunatsiavut government had been given and taken on, I suppose, responsibility for housing within the land claims area, but there was no actual mechanism for them to access any funding for a housing program. There wasn't a specific federal program that existed for that, so there was a situation in which there was of a land claims agreement with a fiscal arrangement agreement that was saying that the Nunatsiavut government was going to be responsible for housing, but there was no way for them to deliver on that housing obligation and responsibility.

The other thing we noted was that there had been about a 10-year disagreement between the Department of Fisheries and Oceans and the Nunatsiavut government over access to shrimp quotas. There was never any resolution to that problem. The agreement included a dispute resolution mechanism, but that dispute resolution mechanism was never used to try to resolve the dispute.

To me, when we look to that Labrador Inuit lands claims agreement, I think there are a number of things in there that the government needs to learn from in making sure that when an agreement is establishing a responsibility and a first nations government is taking responsibility for something, it's understood how they're going to be able to live up to that responsibility. Also, when there is a disagreement that happens over the course of an agreement, both parties need to be confident that they can go to the dispute resolution mechanism and accept its end result.

I think there were a number of things in that audit that, perhaps, point out some issues that need to be dealt with in future land claims agreements.

The Chair: You have about 40 seconds.

Mr. Michael McLeod: I want to flag a quick issue regarding police depots and nurses across the north and the high suicide rate. You can't have nurses in the community if you don't have the RCMP, and if you don't have the RCMP, you can't have nurses. So there's a real challenge there, and I think the high rate of suicides between Nunavut and the Northwest Territories...we have had 650 suicides over the last 15 years and we don't have any services.

I was going to go along that line of questioning, but I'm out of time.

Thank you very much.

The Chair: You have about 10 seconds if you'd like to make a quick remark.

Mr. Michael Ferguson: Again, I think that was the fourth impediment we identified, that having support at the local level is critical to being able to make sure that these services exist in a satisfactory manner.

The Chair: Thank you both for that.

Mr. Ferguson, Mr. Berthelette, Mr. Martire, and Mr. Wheeler, thank you very much for your time today and for your great preparation and sharing your expertise. The information you have left with us will serve us well as we move forward.

Thank you very much.

We'll suspend for about two minutes while we shift around and come right back to work.

Thank you.

• (1635)

_____ (Pause) _____

• (1640)

The Chair: If you take your seats, we'll resume our proceedings.

I thank the witnesses very much for joining us this afternoon.

We now have with us Howard Sapers, the Correctional Investigator of Canada, and Ivan Zinger, the executive director and general counsel of that same office. Thank you both for agreeing to come here this afternoon. Please take 10 minutes to speak, and then we'll go into rounds of questioning. You'll see me with my cards as need be.

Thank you.

Mr. Howard Sapers (Correctional Investigator of Canada, Office of the Correctional Investigator): Thank you very much, Chairman, and thank you, committee members, for inviting us to appear so early in the session. I really appreciate the opportunity to provide this briefing and answer your questions.

Of course, I am joined by Dr. Zinger, executive director of my office, who will make some remarks within mine. Feel free to direct questions to either of us.

We're going to give you a background briefing on our role, mandate, and priorities. Then, with respect to the specific concerns of this committee, I'll try to highlight some of the gaps and challenges facing indigenous people in federal corrections today and point to some directions for reform.

The Office of the Correctional Investigator was established in 1973 on the recommendation of a commission of inquiry that looked into the bloody five-day riot at Kingston Penitentiary back in 1971. A main finding of the inquiry centred on the lack of an effective and impartial outlet to redress inmate complaints and grievances.

In 1992, the office's mandate was entrenched into legislation—part III of the Corrections and Conditional Release Act. It's interesting that the lack of an effective and expeditious grievance process continues to be a number one concern of the office.

Under part III of the CCRA, the office is mandated to conduct investigations into the problems of federal offenders related to decisions, recommendations, acts or omissions of the Correctional Service of Canada.

The office is an oversight, not an advocacy, body. Staff members don't take sides when resolving complaints against the Correctional Service. The office independently investigates legitimate complaints and ensures that federal offenders are treated fairly and in compliance with the legal and policy frameworks. We view corrections through a human rights lens and we make recommendations to the Correctional Service to ensure safe, lawful, and humane correctional practice.

My staff has complete and unfettered access to all federal facilities, CSC documents, staff, and offenders. I consider offender access to my office, including ensuring staff presence and visibility, to be a priority when fulfilling my mandate. Investigative staff regularly visit federal institutions to meet with both offenders and staff, and I can tell you they are a very busy group.

With respect to the issues and concerns of this committee, in January of this year, my office reported that the federal correctional system had sadly achieved an ignominious milestone, with 25% of the inmate population in federal penitentiaries now comprising indigenous people. That percentage rises to more than 35% for federally incarcerated women.

To put these numbers in some perspective, between 2005 and 2015, the federal inmate population grew by about 10%. Over the same period, the aboriginal inmate population increased by more than 50%, while the number of aboriginal women inmates almost doubled, being one of the fastest growing subpopulations in federal custody. My office estimates that indigenous people are incarcerated at a rate seven to ten times higher than the national average.

For young indigenous people, the criminal justice system has become what residential schools were for their parents and grandparents. In 2014-15, aboriginal youth between the ages of 12 and 17 accounted for 33% of all admissions to youth custody in Canada. Indigenous girls accounted for 44% of female youth admitted to custody last year. Unfortunately, many of these people find their way into the adult correctional system.

• (1645)

[*Translation*]

Dr. Ivan Zinger (Executive Director and General Counsel, Office of the Correctional Investigator): Good afternoon, Mr. Chair and committee members.

Over the last decade, the Prairies region has led growth in the incarcerated population in federal corrections. It is now the largest region, both in geography and offender population. It also has the largest concentration of the Aboriginal inmate population in federal corrections. Today, 47% of inmates in the Prairies are indigenous. Some institutions in the prairie provinces can be considered “indigenous prisons”.

A history of disadvantage follows indigenous peoples of Canada into prison and often defines their outcomes and experiences there. Indigenous inmates are more likely to be classified as maximum security, spend more time in segregation and serve more of their sentence behind bars compared to non-Aboriginal inmates. Indigenous offenders are far more likely to be detained to warrant expiry or returned to prison for a technical violation of their release conditions.

Aboriginal people under federal sentence tend to be younger, less educated and more likely to present a history of substance of abuse, addictions and mental health concerns. A recent file review of the social histories of indigenous women offenders indicates that over half of the women reporting having attended or having had a family member attend residential school. With respect to childhood events, two-thirds of their parents had substance abuse issues, and 48% of the file sample had been removed from the family home. Almost all of the women's files indicated the existence of previous traumatic experiences, including sexual and/or physical abuse, as well as substance abuse problems.

The latest year-end performance and accountability report for Aboriginal Corrections prepared by the Correctional Service indicates several areas that require improvement in reducing the gap in correctional results and outcomes between Aboriginal and non-Aboriginal offenders.

For example, in spite of faster entry into correctional programs and higher program completion rates, indigenous offenders are still being released later and revoked much more often than their counterparts.

The percentage of indigenous offenders receiving day or full parole on first release is declining, while the percentage of indigenous offenders released on statutory release is increasing. Last fiscal year, nearly 70% of all indigenous persons released from a federal penitentiary were by statutory release.

Parole hearings and decisions are much more likely to be withdrawn or waived for indigenous offenders.

Challenges continue to exist in the application of Aboriginal social history in significant decisions affecting indigenous offenders, including segregation, security classification, penitentiary placement and return to the community.

• (1650)

[*English*]

Mr. Howard Sapers: In September 2013, my office released an investigative report called “Risky Business”. It looked at the most prolific self-injuring women in federal custody. We found that aboriginal women who engage in chronic self-injury have a distressingly similar profile. Most were a victim of physical or sexual abuse. Most had spent their childhood in group homes and foster care. They were estranged from their families and had little, if any, existing social supports at the time of their incarceration. Many had spent time in a mental health or a psychiatric institution prior to their term in federal custody.

Reflecting the growing seriousness and urgency of the issues facing aboriginal people in federal corrections, in March 2013 my office released “Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act. It was tabled as a special report in Parliament, one of only two special reports in the more than 40-year history of my office. The report looked at specific aboriginal provisions of the Corrections and Conditional Release Act, which were designed to enhance aboriginal community involvement in federal corrections and address the overrepresentation of aboriginal people behind bars. At the time of that act, that overrepresentation was around 17%. It's now 25%.

I can't finish this in the time allotted, but I'll do my best.

More than 20 years after its enactment, we found some troubling gaps between the law and practice. For example, since 1992 only four agreements under this authority had been concluded between the government and aboriginal communities. There were no healing lodges operated by aboriginal communities in northern Canada, Ontario, Atlantic Canada, or British Columbia. We also found limited understanding of aboriginal people's culture and approaches to healing within federal corrections. There are also funding and contractual limitations that impede work and access to elders. Insufficient attention is paid to the urban realities and demographics of aboriginal people in conflict with the law.

The previous government's response to my report and its 10 recommendations was disappointing and not at all responsive to the findings and recommendations of “Spirit Matters”. Overall, while acknowledging the problem, the position taken was largely to defend the status quo. The history of the tabling of this special report and the nature of the response it generated are both quite interesting. I'd be happy to elaborate on its history during the question and answer period, if it's of interest to the members.

The problems I've discussed demand focus and sustained attention, and a real commitment to change and reform. This is why I continue to call for the appointment of a deputy commissioner for aboriginal offenders to ensure an indigenous perspective and presence in correctional decision-making. Movement on this issue, which goes to corporate focus and political direction for federal corrections, is simply long overdue.

Some very important calls to action are contained in the Truth and Reconciliation Commission's final report that pertains to corrections. First is the call for the elimination of the overrepresentation of aboriginal people and youth in custody; second, the implementation of community sanctions that will provide realistic alternatives to imprisonment for aboriginal offenders; third, the elimination of barriers to the creation of aboriginal healing lodges within the federal correctional system; fourth, the enactment of statutory exemptions from mandatory minimum sentences of imprisonment for aboriginal offenders, particularly those affected by fetal alcohol spectrum disorder; and fifth, reduction in the rate of criminal victimization of aboriginal people.

These are ambitious goals. We should be under no illusions. Confronting and repairing the harm visited upon aboriginal people as a result of colonialism and restoring a relationship among equals will not be easy. Ending the cycles of intergenerational violence and abuse and discrimination that bleed into our prisons will require deliberate and sustained action.

• (1655)

The Chair: If you could finish up, Mr. Sapers, thank you.

Mr. Howard Sapers: As the commission reminds us, we don't advance as a society by avoiding or ignoring uncomfortable truths about our collective past.

Mr. Chairman, thank you for the invitation. I'm sorry this is rushed. There is a lot to say, and I look forward to your questions.

The Chair: Thank you for that, and I hope you'll agree to leave behind a copy of your notes for our records. That'll be wonderful. I'm sure what you didn't say will come out in the questioning.

The first round of questions is seven minutes, and the first question goes to Don Rusnak, please.

Mr. Don Rusnak (Thunder Bay—Rainy River, Lib.): The issues in our correctional institutions across this country are just deplorable. It's really sad, the correlation between the last 10-year increase in the aboriginal prison population and the cuts to funding of indigenous programs by the previous government. This has been troubling to me.

In a number of your reports you made a number of recommendations. One of the recommendations was for a deputy commissioner of aboriginal corrections. Your reports have consistently called for culturally appropriate programming and staff training.

To your knowledge, what training is currently provided to the correctional service officers to assist with their interaction and dealings with indigenous offenders?

Mr. Howard Sapers: Of course, the Correctional Service of Canada is best placed to directly answer the question about their training. I can tell you that they do make training available.

If training were the answer in and of itself, it would be easy to tackle. It's sustained learnings from that training and applying them day-to-day operationally that really is the issue, and that gets to the question of cultural awareness and cultural competency. It's more than just what the training syllabus is. This leads directly to the recommendation for having a senior executive at the executive committee table making sure that there is sustained focus and direction and accountability for that happening.

When it comes to aboriginal-specific programming, I can tell you again that the Correctional Service of Canada has developed some absolutely excellent, culturally appropriate aboriginal correctional intervention programs.

The problem is that 70% of aboriginal offenders who took any programs last year didn't take those programs. They took the general programs. Only about 30%, generally speaking, of the programs undertaken by aboriginal men and women are those culturally appropriate programs, and even that's being undermined to some extent by a new program delivery model that has been rolling out over the last number of years.

Mr. Don Rusnak: As a follow-up to that, why aren't they taking the culturally appropriate programming? Is it because of a push by correctional staff to make sure they don't get it, or is it something else?

• (1700)

Mr. Howard Sapers: There are a number of reasons. One has to do with the availability of programs and competent program delivery staff to deliver those programs within the time frame of sentence, so that the offender is given access to those prescribed programs.

This new, integrated correctional program model that I spoke about is an attempt to address some of those roadblocks and issues. Part of it also has to do with where the offender is housed. What we saw over the last number of years with all the construction projects at the CSC sites were a lot of involuntary transfers across the country, with people's periods of custody being disrupted.

It could be that over the next five years those numbers will be less dramatic in terms of the misalignment of program need and program capacity. I have some degree of optimism about that, but certainly if we simply look at the past, if we look backwards, you'd question that.

Dr. Ivan Zinger: If I can just add to Mr. Sapers' comments, part of the issue is also where the programs are being delivered. The best programs that are the most relevant for aboriginal people are being delivered in minimum security institutions. Only 10% of the aboriginal inmate population resides in minimum security institutions.

The healing lodges, which are very good environments to deliver an effective program, are only capturing 10% of the aboriginal population.

Maximum security prisons, unfortunately, do not have the capacity to deliver aboriginal-specific programming.

Mr. Don Rusnak: I have a little bit of experience with aboriginal offenders. I was a former prosecutor and defence lawyer in Thunder Bay, and a prosecutor in Alberta. I know that you can't disconnect the issues.

We have huge problems in indigenous communities, and you touched on some of them: the legacy of the residential school program, the lack of or low funding of education, and isolation all across this country.

Getting back to the culturally appropriate program and staff training, in your view, are the current training measures adequate within the penitentiaries and federal institutions?

Mr. Howard Sapers: The most simple answer is no, which is why, even though training in and of itself won't solve the problem, training is part of cultural change. The provision of training is an expression of leadership and commitment.

As I say, the training has to be sustained. It can't just be during correctional officer intake. It can't just be an online refresher course. It's not enough to simply say, "Well, we have aboriginal cultural awareness." That would be like saying, "We have European cultural awareness." There are lots of indigenous cultural practices that people would need to become familiar with in different regions of the country, as coastal, northern, prairie, and central first nations have different traditions that need to be respected.

Dr. Ivan Zinger: If I can add another element to this, the Correctional Service Canada exceeds the aboriginal employment equity requirement. About 10% of the CSC's workforce is aboriginal. Unfortunately, we have penitentiaries where the inmate population is 50% or 60% aboriginal, and there's an issue about how to connect with aboriginal people if your workforce isn't as representative as possible.

The other issue we have made note of is that the aboriginal people within Correctional Service Canada are not equally represented at all levels of the organization in positions of leadership and management. That also, I think, is something that should be addressed.

• (1705)

The Chair: The next question to David Yurdiga, please.

Mr. David Yurdiga: This is a very important topic, and we have to do better. We're all here and want our correctional system to be a lot more efficient and a lot more sensitive to our indigenous people's needs.

I understand that your office acts or serves an ombudsman role. Does your department also deal with provincial issues, provincial prisons, or are you just mandated for federal correctional institutes?

Mr. Howard Sapers: It's for federal corrections only. Thank you for the question.

Provincial ombudsman offices typically handle a fairly high volume of complaints from federal and territorial jails, and remand centres.

Mr. David Yurdiga: Obviously you report to some level of government. Is it multi-reporting, or is it just reports to the government, or to the justice minister? How does that work?

Mr. Howard Sapers: We're mandated under the Corrections and Conditional Release Act to produce an annual report that's given to the Minister of Public Safety in June of every year. The minister is then required by law to table it within 30 sitting days of Parliament. All members of Parliament and senators receive our report. We also have the ability to issue special reports when, in my opinion, the issue is so urgent that it cannot wait for an annual report, which is why we tabled "Spirit Matters" in Parliament. We also issue public interest reports, typically based on our systemic or thematic investigations. You will see reports that will be dealt with in public that won't necessarily be tabled in Parliament.

Mr. David Yurdiga: How are the cultural and traditional beliefs incorporated into the Office of the Correctional Investigator's mandate? Is there a document? Does it migrate into programming in the jails or prisons?

Mr. Howard Sapers: I think I may have missed a key word in your question. Did you talk about indigenous policing?

Mr. David Yurdiga: No, it was about indigenous programs. Obviously when people are incarcerated, we want to somehow incorporate their culture and their traditional beliefs.

Mr. Howard Sapers: Okay, so how is the aboriginal culture reflected in correctional programming?

Mr. David Yurdiga: Yes.

Mr. Howard Sapers: There are actually many ways. The Correctional Service of Canada has published a lot of good information on this, and I can tell you that things have gotten better over the years in recognizing the importance of bringing culturally specific programming and initiatives inside. There are institutional elders, community elders who come into the institutions. There are aboriginal liaison officers and program officers. There is the training we've already talked about. There are things called pathway units, which are units in which aboriginal offenders can reside, and they abide by a certain standard of conduct, and they participate in ceremonies. There are elder-assisted hearings, for example, operated by the Parole Board of Canada. There are ceremonial grounds on many institutions that allow for things like sweat lodges. There's a carving program for Inuit offenders at a particular institution in Ontario. So there are a number and a range of initiatives.

The question really is what all of that is leading to. Sadly, when it comes to the real litmus test of this business of corrections, it's the reintegration and return to the community and the success people have in the community. All of those measures, in spite of those initiatives and those programs, are trending in the wrong direction. Aboriginal offenders as compared to non-aboriginal offenders tend to spend longer in custody before release. When they are released, they're usually burdened with more conditions, such as residency requirements, for example, on statutory release. They're more frequently revoked or suspended on conditional release if they are released in the community. Clearly, something's not working. There's a disconnect between all of that activity and the outcome, which is safe and timely return to the community.

• (1710)

Dr. Ivan Zinger: Just to perhaps complete Mr. Sapers' comments, it's important to note that the Corrections and Conditional Release Act has very specific provisions dealing with aboriginal people. There's a statutory requirement imposed upon the service to deliver

programming that meets the needs of aboriginal people. There's a provision that deals specifically with providing religious and culturally sensitive provisions such as the elders. There's a requirement to establish an aboriginal advisory committee. Finally, there are two provisions that allow the Government of Canada to strike agreements with aboriginal communities for either the care or the custody or the supervision of aboriginal people in aboriginal communities. The problem becomes one of implementing those provisions, and I think that's where the biggest gap is, that those 1992 provisions haven't been fully implemented.

Mr. David Yurdiga: Obviously, everybody wants more funding. In your view, what percentage are we lacking? Do you need double your budget? Where do we have to go? Obviously, we want more funding, but what's the number?

Mr. Howard Sapers: I don't have a number. I would leave it to the Correctional Service of Canada to give you a number and tell you what the specific budget implications are. I can tell you that I don't believe that this is essentially a problem of budget. I think this is essentially a problem of focused leadership and attention on the issues.

The Chair: The next question goes to Randall Garrison, please.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): It's good to see Mr. Sapers and Mr. Zinger again. As the NDP public safety critic and vice-chair of the public safety committee, I've had the privilege of hearing your testimony many times.

I'd like to start by thanking you for the work that you and your office have done to identify issues of special concern about the treatment of first nations people in our correctional system. Since you've been appointed, you've been particularly attentive to this problem. Your two special reports, which you mentioned, I really recommend to all the members, the 2013 report, "Spirit Matters" and also "Risky Business".

What's important to me is that both of those highlight the social factors and historical context that underlie the relationship between first nations people and the justice system. Of course, that was recognized in the Gladue decision, and it's now a legal requirement that those circumstances be taken into account.

In your presentation, you mentioned the five recommendations of the Truth and Reconciliation Commission, and I guess I'd start by asking, how, other than by implementing the Gladue principles, you can accomplish these five recommendations. Is there any other alternative?

Mr. Howard Sapers: Gladue and subsequent rulings by the Supreme Court, like Ipeelee, are absolutely essential to making progress.

The Correctional Service of Canada has a responsibility to use a Gladue lens in correctional decision-making. What we see, though, is that it happens a little haphazardly. One piece of research that the Correctional Service conducted for itself, I think indicated that in 98% of the case files they reviewed, there was attention paid aboriginal life history. Therefore, there was some documentation that the decision-makers had looked at the life history of the individual before them. That would suggest they had looked at that through a Gladue lens.

However, there was really no conclusion at all that their consideration of the aboriginal person's life history had translated into any kind of differential decision-making, or any mitigation. That's the problem. What the court perceived would be something that would lead to restraint in the imposition of a sentence or a lengthy period of incarceration or difficult conditions of incarceration has, in correctional practice, translated into just the opposite.

Certainly, there is a fear that those same factors don't mitigate and don't lead to restraint. In fact, they lead to just the opposite. Those factors lead to higher security classifications, longer times in custody, delays in release, etc.

• (1715)

Mr. Randall Garrison: We had a lot of discussion of culturally appropriate programming. You and I have discussed this before, that we really can't say, in terms of the profile of the population, that culturally appropriate programming is available. The amount of culturally appropriate programming simply does not match the number of first nations people in the system.

Mr. Howard Sapers: The capacity doesn't match needs. That's absolutely true. As I say, there are many reasons why there are program delays and why people don't get in.

We haven't even talked about the complexity of individuals who are getting their sentences shortened, who then waive their hearings, or are encouraged to postpone their hearings for conditional release because they haven't been able to get into correctional programs. Their institutional parole officer, or their case management team, tell them, "You won't get our support for a positive recommendation because you haven't done X, Y, or Z." However, the problem is that X, Y, and Z weren't available at the time they needed them to be available.

The complexity of factors that go into that can be overwhelming, and they can be overwhelming for the men and women who are trying to navigate their way through the system and get to safe and timely release.

Mr. Randall Garrison: Another problem is that we usually focus on people in institutions when we talk about corrections, and forget that a lot of corrections takes place in the non-institutional context.

The Truth and Reconciliation Commission talks about the impact of mandatory minimum sentences. I wonder if you could say something about the impact of mandatory minimums in excluding first nations people from more culturally appropriate forms of corrections that would be in the community?

Mr. Howard Sapers: The simplest thing to say about the effect of mandatory minimums is that they are the antithesis to the Gladue ruling. How can you instruct the court to use discretion and then impose a series of mandatory minimums that eliminate judicial discretion? They are fundamentally incompatible.

Therefore, when you have an overrepresentation of people who are in conflict with the law coming into contact with the police, coming into our court system, being dealt with by our crown, ending up in provincial jails, and then federal penitentiaries, that process only accelerates when you have mandatory minimums.

Then at the other end, because all of those things follow an individual into prison and have an impact on their release decisions, we're seeing more and more individuals being released at their statutory release date with a residency requirement. That overburdens community halfway houses. Those halfway houses are no longer available to people on day parole, because those beds are all being used by people on statutory release, which backs up the whole system. It also diminishes the opportunities for those community rehabilitation programs that the TRC would like to see operate. It diminishes the potential for those to work and have the capacity to deal with the men and women coming out.

Mr. Randall Garrison: We know that the Canadian Human Rights Tribunal stated categorically that Canada discriminates against first nations children when it comes to education and child protection. Given the younger age structure of the first nations population involved in the corrections system, could you comment a bit on the experience of those young first nations people in that system?

Mr. Howard Sapers: I'm absolutely not expert on young offenders and youth offending. What I can tell you is that we know that crime more or less is a younger person's folly. A younger demographic tends to be more caught up in the criminal justice system. We also know that the average age of an aboriginal offender in a federal penitentiary is younger than the average age of a non-aboriginal offender in a federal penitentiary. That demographic in the general community tends to translate into the carceral population as well.

The Chair: Thank you both. We're out of time on that one.

I'll just pause and do some traffic-keeping for committee members.

The way the timing is going, I'd like to get through two more questioners, Matt DeCoursey and Cathy McLeod. Then we have a little bit of committee business to take care of. If you want to stay for the drafting instructions, we will be here till about 5:45 p.m. We're about 15 minutes late. I just wanted you to be prepared.

Let's pick it right back up again with Matt DeCoursey, please.

Mr. Matt DeCoursey: Mr. Chair, it was my understanding that Gary might ask the next question.

The Chair: By all means.

Mr. Gary Anandasangaree: Thank you to my colleague.

Mr. Sapers and Dr. Zinger, thank you very much for the very important information you're sharing with us.

On March 21 of this year, I had the opportunity to host an event for the International Day for the Elimination of Racial Discrimination. Kim Pate and Don Nicholls presented there. Kim Pate is with the Elizabeth Fry Society. She's worked extensively with the indigenous population. Don is in charge of the Cree Nation justice system. Their approaches seemed quite different, and their outcomes were quite different.

I'm wondering if you could maybe share your experience with respect to justice that is internal, in the sense of the Cree Nation, and how that compares with what we have in the overall criminal justice system.

I have a number of other questions as well, so perhaps you would keep your answers brief.

• (1720)

Mr. Howard Sapers: Thank you. I wish there were a brief answer to that.

I don't want to mislead this committee in any way. My expertise is not on indigenous justice systems. I can tell you that we see hope and opportunity in more community involvement, more cultural involvement, more elder involvement, more spirituality, more opportunities for reconciliation, a more restorative approach, and more engagement of the broader community.

We know that the best chance for these folks, once they are enmeshed in the criminal justice system, is to get disentangled from it as quickly as possible, to be returned to the community as soon as safely possible, and to be given the supports they need in the community to avoid those same criminogenic issues they were facing at the time of their index offence. That's dealing with a whole host of variables.

We know that's also tied into things like safe and affordable housing and vocational training and employment opportunities and educational opportunities—all of those other things that are well beyond the mandate of a correctional investigator.

Mr. Gary Anandasangaree: I can appreciate that. I think one of the most frustrating things, when you talk about all this, is that we've been talking about this stuff for 25 years. I don't see much movement. If anything, it's getting worse. I think we need to look at some serious structural changes.

One of the things that maybe we can consider, and I'd like to get your input, is something like a sentencing court. If you're saying the current court system is not able to look at the important factors in sentencing, maybe once a conviction takes place the actual sentencing process can be removed into a special sentencing court that can look at specific issues with respect to the indigenous population.

Mr. Howard Sapers: I think there's a whole range of tools and levers available to the architects and operators of the criminal justice system, starting with what happens with charging practice by crown counsel, police practice and how it's done, through to what happens with bail and remand. Bail reform is so important, as is having specialty courts that are really focused at diversion, whether they be mental health courts or community courts or Gladue courts, etc.

All of that is important, because all of that together should slow down the flow of people into penitentiaries. The Criminal Code of Canada already urges restraint in the use of incarceration. It's supposed to be the alternative to everything else. Sadly, we're seeing incarceration more and more being turned to as the first response and not the last response. That's contrary to the legal principles, really, that our system is founded upon.

Mr. Gary Anandasangaree: I don't want to misquote you, but the outset of your statement today, you compared the indigenous prison population to those in the residential school system, or something to that effect. You mentioned parallels.

What do we need to do now, with a sense of urgency, to address the issues you've highlighted? To suggest that 25% of our federal prison population is indigenous...I think it's a staggering number. What do we need to do? What immediate steps does the new government need to take in order to address it in a very meaningful way that will actually have some results?

Mr. Howard Sapers: I think the Prime Minister has made it clear in the mandate letters to ministers that this is going to be a priority of the Government of Canada. I think one of the ways that priority is being pursued is through the Truth and Reconciliation Commission. I certainly wouldn't presume to add to the work of now Senator Sinclair and that commission. I think that does spell the way forward, and I think Canadians have high expectations about this.

It's not going to be simple. Even in my little corner of that, which is federal corrections, and my bit of knowledge or insight into what I think may make federal corrections more appropriate for that population, there's still a lot of work to do.

Going back to things like the full implementation of sections 81 and 84 in the CCRA, looking at the role of the national aboriginal advisory committee that's mandated by law, and adding to the executive committee of the Correctional Service of Canada a deputy commissioner for aboriginal programs, I think those things, as bureaucratic as they may sound, are all going to be very, very important in the Correctional Service of Canada contributing its bit to that overall effort of the Government of Canada.

• (1725)

Mr. Gary Anandasangaree: Mr. Chair, I will yield to the member's question on prisons.

The Chair: Mr. McLeod.

Mr. Michael McLeod: I wanted to quickly mention that the comparison of the justice system to the residential schools certainly breaks my heart. It's not something that I really linked up until now, but there's a lot of truth in it, and I think the whole corrections system has to be reviewed and overhauled. There are so many gaps that we need to fill in making it a fair process.

The Chair: The last question for the Office of the Correctional Investigator will be from Cathy McLeod.

Mrs. Cathy McLeod: Thanks to all of you. I think it's the first time we've met. I don't think you have been to the health or finance committees.

I also want to mention the Truth and Reconciliation Commission. Obviously, you feel these are some good recommendations in the path forward. I'm looking at the 94 of them, and as I'm looking at recommendation numbers one through five, to me, number one is really a sort of goal, and maybe numbers two, three, and four are ways to move towards reaching that goal. Is that how you see numbers one through four? Number one is a goal to eliminate the overrepresentation, but it's not really a method to get there, whereas maybe two, three, and four are.

Mr. Howard Sapers: Thank you very much for your question. I think it is our first meeting, so hello.

In my reading of the TRC report and the "way forward" statements, it is of course clear that it's highly aspirational. It's also clear that this is a marker that has been laid down for not just this government but for governments to come. These things are not going to come quickly. There was the Royal Commission on Aboriginal Peoples in years past.... The TRC is certainly not the first report to make similar recommendations, but hopefully it will be the last one that's necessary to make these recommendations.

I think intermixed with those 94 statements are some highly aspirational goals, and also some really specific prescriptive actions that need to be taken. Clearly, it's now the government's job to figure out how to parse that and how to move forward.

Mrs. Cathy McLeod: Let's assume that number one is an aspirational goal. Would you say that numbers two, three, and four perhaps would be some of the most effective ways to get to number one? Or are there other things you believe should be...?

Mr. Howard Sapers: I'm just going to go back to—

Mrs. Cathy McLeod: Or are there other things that you believe should be...?

Dr. Ivan Zinger: Perhaps you'll let me comment on this.

I think personally that if I were asked to pick only one performance indicator on whether the actions of the Government of Canada were improving the situation of aboriginal people in Canada, I would take the incarceration rate. Let me tell you that in social sciences, it's very rare that you have an actual linear relationship between time and a particular event.

Thirty years ago, 10% of the federal inmate population were aboriginal. Twenty years ago, it moved up to 15%. Ten years ago it was 20%; and now we're at 25%. If the government can actually stop or, even better, reverse that trend, it will mean that it has made some

gains in other areas, such as social, economic, cultural, and political rights, and that you will have seen better employment, better education, better health care, better self-determination. I think this is where the government should focus its attention, so as to see that whatever it's doing, more of the same will not reverse the trend.

My prediction is that it will be at 30% soon.

• (1730)

Mrs. Cathy McLeod: From recommendation number 3, which is probably one of the areas you'd be more familiar with, are there institutions that have good aboriginal healing lodges in place? Has there actually been research and some studies concerning their effectiveness? Are reports of those on your website, or could you table them with the committee?

Mr. Howard Sapers: Yes, and in fact, thank you for that. I was going to focus on recommendation 3 and healing lodges and to point out that the "Spirit Matters" report, the special report tabled in the fall of 2013, is in large part about eliminating the barriers to healing lodges. In some ways, for this current recommendation by the Truth and Reconciliation Commission, you already have a road map on how to get there. All of these TRC recommendations are big. It will take, I think, many, many steps to operationalize any of them. I can tell you that for healing lodges, you have a pretty good road map in the "Spirit Matters" report.

Unfortunately, we did not get the kind of response we wanted from Correctional Service Canada or the government when it was tabled. There's a place to go to look at those responses and to see what needs to be done.

The Chair: Thank you for the question and the responses.

In fact, Mr. Sapers and Dr. Zinger, thank you very much for your time today and the information you're leaving behind. As I mentioned, if you could leave your opening speaking notes, it would help our hard-working analysts a great deal, to have them at their disposal.

Thank you.

Mr. Howard Sapers: Thank you. It's been a pleasure to be here today.

The Chair: Committee members, rather than suspend for a moment, I'd like to keep rolling here and go right into committee business.

May I have a motion to go in camera.

An hon. member: I so move.

(Motion agreed to)

[*Proceedings continue in camera*]

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