



Canada

A NEW APPROACH: Co-Development of a New Fiscal Relationship Between Canada and First Nations



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Executive Summary

The existing fiscal relationship between First Nations and the Government of Canada is not working – for anyone. For the benefit of First Nations and of Canada as a whole, it must be changed.

This report describes the co-development journey taken by officials from the Assembly of First Nations (AFN) and Indigenous Services (IS) over the past 17 months under the Memorandum of Understanding (MOU) signed in July 2016. The report articulates a shared vision for a new fiscal relationship for First Nations, reviews the ideas explored and lessons learned throughout the collaborative process, and presents recommendations for action.

In committing to work together on co-development of a new fiscal relationship, AFN and IS officials embraced the following shared vision:

- That the new fiscal relationship should constitute a regime that by design recognizes and is responsive to First Nations’ **right to self-determination** – a recognition-of-rights approach;
- That the new fiscal relationship should strengthen First Nations’ exercise of their right to self-determination by supporting **First Nations-led capacity enhancement**;
- That the new fiscal relationship should be a learning, evolving and empowering relationship – a conscious break from rigid colonial structures - with **whole-of-Government approaches** that address the realities of all First Nations;
- That a new fiscal relationship will ensure **sufficient** funding;
- That the new fiscal relationship will empower First Nations to plan and invest based on their own priorities, by ensuring greater **predictability**, flexibility and autonomy of funding arrangements;
- That the new fiscal relationship should be founded on a **mutual accountability** relationship whereby First Nations governments operating under the auspices of the *Indian Act* are primarily accountable to their own citizens, while the Government of Canada and First Nations governments hold one another mutually accountable for the commitments they make to one another and work together to achieve results for First Nations citizens; and,
- That a new fiscal relationship will underpin **progress toward the elimination of socio-economic gaps** between First Nations citizens and other Canadians.

At the July 2017 AFN General Assembly, Minister Bennett and National Chief Bellegarde announced that the department will provide greater access to carry over effective April 1, 2018 for programs such as Infrastructure, Education and Land Management. By April 1, 2019, all programs will offer carry over. In addition, the Government of Canada has committed to reforming the funding model for operations and maintenance support for infrastructure.

To support the establishment of a New Fiscal Relationship with First Nations, officials from the AFN and IS recommend that the Government of Canada commit to the following actions:

1. Establish a permanent advisory committee that could be appointed by Order in Council that would reflect regional circumstances and interests. By April 1, 2019, core areas of advice from the Advisory Committee will include:

- a. Recommendations for a new Fiscal Policy Framework to address sufficiency and identify priority funding areas;
 - b. Recommendations to increase revenue generation opportunities for First Nations, developed in collaboration with provinces and territories;
 - c. Recommendations to finalize new funding arrangement policies to strengthen the commitment to flexible and predictable funding, the reduction of reporting burdens and a shift from program to outcome-based reporting, and the elimination of General Assessment Scoring of First Nation communities in favour of First Nations-led tools; and,
 - d. Recommendations to finalize a Mutual Accountability Framework, including a national outcome-based framework aligned with United Nations Sustainable Development Goals.
2. Take immediate action to create ten-year grants for qualified First Nations to leverage full flexibility under the Policy on Transfer Payments, to be implemented on or before April 1, 2019. A plan will be prepared for the orderly preparation and inclusion of additional First Nations over time, based on a co-developed approach between the Government of Canada, the AFN, and First Nation Fiscal Institutions.
 3. Co-develop an approach to repeal the *First Nations Financial Transparency Act* in 2018 and replace it with a co-developed mutual accountability framework supported by First Nations Institutions-led audit and statistical functions.
 4. Replace the Default Prevention and Management Policy (DPMP) with a new, proactive, approach that includes continued work under the First Nations Financial Management Board pilot project to move First Nations out of third party management and direct funding from the Government of Canada to pay for third party managers.

1 – The Journey: Resetting the Relationship

Technical matters such as fiscal models for programs or funding arrangement models for First Nations may, at first glance, appear to constitute a small subset of the changes needed for the Government of Canada to succeed in its stated goal to renew the relationship with Indigenous peoples.

However, particularly for First Nations operating under the auspices of the *Indian Act*, it is in the process of accessing, allocating, and accounting for financial resources, that the full spectrum of challenges in the relationship with the Government of Canada is most deeply felt. A new fiscal relationship that enhances sufficiency, predictability, flexibility and autonomy of funding, would bring immediate benefits to the lives of First Nation citizens. As National Chief Perry Bellegarde has observed, the goal in working to build a new fiscal relationship ought to be “ensuring First Nations governments can provide services based on the real needs of our communities and families.”¹

In December 2015, then Indigenous and Northern Affairs Minister Carolyn Bennett announced a halt on enforcement measures related to the *First Nations Financial Transparency Act*. In announcing this decision, the Minister spoke of the need for discussions between First Nations and the Government of Canada on funding and accountability regimes to be “based on recognition of rights, respect, co-operation and partnership.” For the Government of Canada, this announcement constituted a crucial first step in resetting the relationship with First Nations leaders across the country, in the hope of moving away from a confrontational approach and towards genuine collaboration on fiscal policy issues.

As noted, at the AFN’s Annual General Assembly in July 2016, the National Chief and Minister Bennett signed a MOU concerning the development of a new fiscal relationship. The parties agreed to share information in their possession and agreed to jointly produce proposals, options, and recommendations on:

- replacing the 2% cap and identification of cost drivers in First Nations communities;
- closing existing socio-economic gaps, including appropriate metrics and performance indicators;
- funding approaches and financial transfer mechanisms required to support a government-to-government relationship;
- engagement strategies for seeking First Nations’ input and participation in developing options for a new fiscal approach; and,
- such other mutually agreed recommendations that are deemed appropriate by the Joint Committee.

The MOU specified that options and recommendations for a new fiscal relationship were to be presented for review by the Chiefs-in-Assembly and by Minister Bennett before December 31, 2017. A copy of the MOU is attached as Annex 1.

¹ Statement by Assembly of First Nations Chief Perry Bellegarde on occasion of announcement of changes to funding policies, 26 July 2017.

This report describes the co-development journey taken by officials from the AFN and IS over the past 17 months, articulates a shared vision for a new fiscal relationship for First Nations currently operating under the auspices of the *Indian Act*, reviews the ideas explored and lessons learned throughout the collaborative process, and presents recommendations for action as specified in the MOU.

1.1 – A Whole of Government and Coast-to-Coast Relationship

Substantive work under the MOU began in the fall of 2016. That November, the AFN drafted a paper titled “Canada - First Nations Fiscal Relations: Scope and Framework for Technical Working Groups” to provide scope for discussions with the Government of Canada. The paper called for the formation of technical working groups (TWGs) to address each of three themes, i.e., sufficiency of funding, predictability of funding and mutual accountability/sustainability.

Regular meetings of the three TWGs began in January 2017. In addition to IS and the AFN, TWG participants included representatives from the Department of Finance, the Treasury Board Secretariat of Canada, Privy Council Office, Health Canada, Fisheries and Oceans, Economic and Social Development Canada, Public Safety, Canadian Heritage, Department of Justice and other departments. A list of the core participating departments and organizations for each TWG is attached as Annex 2.

The TWGs met frequently to establish a common understanding of the objectives being pursued under the MOU, the common challenges existing in the current fiscal relationship and to begin to identify preliminary options and recommendations for addressing those challenges and attaining those objectives. Each TWG also tasked out several research questions to independent consultants, with draft reports due in fall 2017. A complete list of joint research projects undertaken by the TWGs is attached as Annex 3.

To ensure leadership oversight, the AFN reconstituted the Chiefs Committee on Fiscal Relations (CCFR) to oversee the implementation of the MOU for the AFN. Under this process, the CCFR members were responsible for keeping First Nation governments in their respective regions apprised of the status of the new fiscal relationship initiative and for bringing forward input and guidance from the communities. IS officials were similarly supported by an interdepartmental Assistant Deputy Minister-level Oversight Committee; this particular committee was also tasked with providing federal oversight for the parallel collaborative fiscal policy development initiative involving the Government of Canada and Self-governing Indigenous Governments.

Collaboration between officials from the Government of Canada and IS was not limited to these structures. As cross-cutting issues began to emerge, the TWG’s were increasingly brought together in combined meetings to ensure more comprehensive discussions. Federal ministers and other senior representatives from the Government of Canada attended some sessions and made presentations at CCFR meetings, and the Minister and National Chief addressed issues relating to the New Fiscal Relationship Initiative during their presentations to the Annual General Assembly in July 2017. Information on the new fiscal relationship co-development work was also presented to: a session of the Assembly of First Nations of Quebec and Labrador on May 3, 2017, a session of the British Columbia First Nations Summit on June 8, 2017, a meeting of the Atlantic Policy Congress in September

2017, meetings of AFOA Canada in September and October 2017, and a meeting of the First Nations Health Managers Association in November 2017.

1.2 Regional Engagement Sessions

Building on the commitment in the MOU to an open and collaborative process, a series of regional engagement sessions was held across Canada during October and November 2017. The regional sessions were designed by the CCFR representatives in consultation with Regional Chiefs, and hosted by local First Nations and/or regional First Nations groups. Each session featured a joint presentation by representatives from the AFN and IS, which is attached as Annex 4.

The ideas emerging from the exchange between participants and the joint presenters from AFN and IS provide the basis for the options and recommendations in this report. IS engaged the firm of Hill + Knowlton Strategies to produce summary reports for each session. Session participants were invited to provide additional reactions, suggestions and comments online. The AFN established an email address (fiscalrelations@afn.ca) to receive additional input from First Nations. A synthesis report summarizing key findings from the regional engagement sessions, prepared by Hill + Knowlton Strategies, is attached as Annex 5. The regional session reports will be posted online in January 2018.

2 - Shared Vision for the New Fiscal Relationship

In working together on the New Fiscal Relationship, officials from the AFN and the Government of Canada took cues from the Prime Minister, the National Chief, recent Government of Canada policy announcements, and all stakeholders who have engaged in the process thus far. Of particular note, the United Nations Declaration on the Rights of Indigenous Peoples, Article 4 states that:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

The Government of Canada's *Statement of Principles respecting the Government of Canada's relationship with Indigenous peoples*, released in July 2017, notes that "The Government of Canada recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development."

The *Statement of Principles* goes on to say:

"The Government of Canada recognizes that the rights, interests, perspectives, and governance role of Indigenous peoples are central to securing a new fiscal relationship. It also recognizes the importance of strong Indigenous governments in achieving political, social, economic, and cultural development and improved quality of life. This Principle recognizes that a renewed economic and fiscal relationship must ensure that Indigenous nations have the fiscal capacity, as well as access to land and resources, in order to govern effectively and to provide programs and services to those for whom they are responsible. The renewed fiscal relationship will also enable Indigenous peoples to have fair and ongoing access to their lands, territories, and resources to support their traditional economies and to share in the wealth generated from those lands and resources as part of the broader Canadian economy. A fairer fiscal relationship with Indigenous nations can be achieved through a number of mechanisms such as new tax arrangements, new approaches to calculating fiscal transfers, and the negotiation of resource revenue sharing agreements."

As Prime Minister Justin Trudeau said to the Chiefs-in-Assembly in December of 2015, "It's time for a new fiscal relationship with First Nations that gives your communities sufficient, predictable and sustained funding. **This is a promise we made, and a promise we will keep.**"

In committing to work together on co-development of a new fiscal relationship, officials from the AFN and the Government of Canada embraced the following shared vision:

- that the new fiscal relationship should constitute a regime that by design recognizes and is responsive to First Nations' **right to self-determination** – a recognition-of-rights approach;
- that the new fiscal relationship should strengthen First Nations' exercise of their right to self-determination by supporting **First Nations-led capacity enhancement**;

- that the new fiscal relationship should be a learning, evolving and empowering relationship – a conscious break from rigid colonial structures - with **whole-of-Government approaches** that address the realities of all First Nations;
- that the new fiscal relationship should be founded on a **mutual accountability** relationship whereby First Nations governments operating under the auspices of the *Indian Act* are primarily accountable to their own citizens, while the Government of Canada and First Nations governments hold one another mutually accountable for the commitments they make to one another and work together to achieve results for First Nations citizens;
- that a new fiscal relationship will ensure **sufficient** funding;
- that the new fiscal relationship will empower First Nations to plan and invest based on their own priorities, by ensuring greater **predictability**, flexibility and autonomy of funding arrangements; and,
- that a new fiscal relationship will underpin **progress toward the elimination of socio-economic gaps** between First Nations citizens and other Canadians.

3 - Shared Understanding of Challenges Facing First Nations

Minister Bennett's comments on the halt to enforcement measures of the *First Nations Financial Transparency Act* underscore a key concern First Nations have with the current fiscal relationship: that it is not based on recognition of rights, respect, co-operation and partnership. Instead, the current fiscal relationship creates and amplifies a flawed accountability structure that obscures the reasons why results for First Nations people are not improving as they should.

The challenges with the current system are reflected in the persistent socio-economic gap between First Nations and the rest of Canada. First Nations citizens are faring worse than other Canadians on many indicators of well-being. The negative effects on First Nations of existing fiscal and legal structures – shorter life expectancy and higher incidence of many illnesses; inadequate water, housing and infrastructure; lower educational attainment and more – have been well-established. These socio-economic gaps also hurt Canada as a whole: numerous analyses have shown that closing the gap in levels of employment and income between First Nations citizens and other Canadians would be a boon for the Canadian economy, adding as much as \$27.7 billion per year to Canada's GDP².

While a new fiscal relationship would not, by itself, close socio-economic gaps, the proposals in this report have the potential, once fully implemented, to significantly accelerate progress by enhancing funding and services, re-imagining the accountability relationship and strengthening First Nations' capacity to exercise their right to self-determination.

In short, the current fiscal relationship is not working – for anyone. For the benefit of First Nations and of Canada as a whole, it must be changed.

Based on discussions via the TWGs, as well as input from First Nations leaders across Canada during regional engagement sessions, Government of Canada and AFN officials arrived at a common understanding of the challenges faced by First Nations operating under the auspices of the *Indian Act* and the current fiscal relationship. These challenges are summarized below under the following five headings:

1. Insufficient Transfers;
2. Insufficient and Under-Utilized Revenue Generation Opportunities;
3. Inflexible and Unpredictable Funding Arrangements;
4. Excessive Administrative and Reporting Burdens; and,
5. Excessive Focus on Compliance Rather than Results.

3.1 - Insufficient Transfers

The issue of insufficient program funding was raised consistently and passionately by First Nations leaders at the different regional sessions. In Vancouver, Regional Chief Terry Teegee spoke about how First Nations, on a daily basis, dealt with pressing needs that could only be addressed with additional funding. These needs ranged from inadequate funding for education-related costs like teachers'

² Analysis by the National Aboriginal Economic Development Board (2016).

salaries, for sufficient housing in growing communities, and for other infrastructure costs. Across the country, multiple participants noted a lack of sufficient funding for a variety of needs, including education, water treatment facilities, adequate housing, training, and competitive salaries. As one participant in Saskatoon observed, “we spend years training good people and they get taken away, because they get offered triple the money of what we can offer on-reserve.” Other participants noted that First Nations in remote and isolated areas face higher costs.

In several engagement sessions, participants stressed that transfers should be understood as a debt owed to First Nations for the financial benefits that have accrued to Canada from the use of the land and its resources. This observation led to suggestions for financial transfers based on the value of the land and resources, such as providing a percentage of the Gross Domestic Product or other arrangements that relate fiscal transfers to a fair share of the wealth created.

For many programs and services, current funding levels do not compare equitably with funding available to other levels of government and are insufficient to allow for progress in reducing socio-economic gaps between First Nations citizens and other Canadians.

In working towards solutions to address the issue of insufficient funding, it was demonstrated both in discussions at the TWGs and in regional engagement sessions that the Government of Canada must address:

- The effects of both historic and current underfunding, and the need for First Nations governments to catch up with the rest of the country at a foundational level in terms of programs, services, infrastructure and operations;
- The need for appropriate escalators to ensure that First Nation governments keep up with the rest of the country on an ongoing basis; and,
- The importance of supporting administrative capacity via specific investments in First Nations governments, as well as in First Nations-led institutions and service providers that provide support to First Nations governments.

3.2 - Insufficient and Under-Utilized Revenue Generation Opportunities

Transfers are not the only means by which First Nation governments are financed. Revenue generation by First Nations can play an important role in building a stronger fiscal relationship, reducing reliance on federal transfers and strengthening First Nations self-determination.

There are several means by which First Nations can generate revenue, including:

- Increasing economic development by growing First Nations businesses;
- Resolving comprehensive and specific land claims and additions to reserve;
- Creating and increasing resource revenue sharing;
- Increasing other forms of revenue sharing, such as gaming; and
- Taxation.

In Vancouver, Manny Jules, President of the First Nations Taxation Commission, spoke of his vision of making a fiscal power oriented relationship available for all types of First Nation governments. In

particular, Mr. Jules argued that the *First Nations Fiscal Management Act* framework and institutions should be expanded to support greater jurisdictions and a new fiscal relationship. In Saskatoon, Yellowknife and Halifax, engagement session participants called for First Nations to be provided greater access to revenue generation tools, including taxation.

In Edmonton and Winnipeg, participants stressed the importance of respecting Treaty provisions regarding the use and benefit of the land and the positive result this would have on First Nation revenue generation. At all sessions, we heard from participants who had generated economic development funds and spoke of how those are applied to supplement and support improved program delivery where financial transfers are insufficient.

3.3 - Inflexible and Unpredictable Funding Arrangements

Both the MOU that launched this work and the *Statement of Principles respecting the Government of Canada's relationship with Indigenous peoples* call for the Government of Canada to implement a government-to-government fiscal relationship with First Nations, but the existing grants and contributions structure that provides financial transfers to First Nations, and the risk management regime that supports it, does not allow for this kind of relationship.

In the existing system, the Government of Canada determines how much money will be available, when and how it will be made available, and to what purposes it will be put. As a result, there is little opportunity for First Nations governments to make longer-term plans, set their own priorities or implement local strategies. This prevents First Nations from governing in the best interests of their citizens, restricting those governments to the role of administrators of Government of Canada policies and programs.

Other deficiencies in the existing structure are also evident. The DPMP, which is intended to deal with financial governance problems, does not effectively prevent default or quickly lead First Nations governments out of default when it is applied³. Similarly, the General Assessment tool, which is intended to assess governance capacity, is neither adequately accurate nor informative as to how to support capacity development.

In every engagement session, participants confirmed the need for more flexible arrangements, such as longer-term block funding or a permanent and reviewable funding agreement with the federal government, mirroring the permanency of treaties. Regardless of the precise nature of the models to be implemented, participants felt strongly that First Nations should have greater flexibility to determine how to spend their funds. In some sessions, it was recommended that funding agreements be structured so as to align with community investment plans.

3.4 - Excessive Administrative and Reporting Burden

³ Discussed in a report by the House of Commons Standing Committee on Indigenous and Northern Affairs: Default Prevention and Management (2017).

The excessive administrative and reporting burden placed on First Nation governments by the existing structure of financial transfers has been extensively documented, most significantly by multiple reports by the Auditor General of Canada⁴, and efforts over the years by the Government of Canada to alleviate these concerns have been insufficient. First Nations are required to make funding proposals or applications for much of the funding they receive, often annually negotiating new contribution agreements. Terms and conditions that accompany that funding require individuated administrative processes in order to manage these funds. And all funding received comes with multiple reporting requirements. The burden this structure places on First Nation governments is onerous and the strain it places on the delivery of good governance is unjustifiable.

The issue of excessive administrative burden was raised at every engagement session. In several engagement sessions, participants noted that when a First Nation interacts with the federal government, the First Nation representative must often deal with numerous government officials resulting in an inefficient use of time. This could be simplified if the federal government offered a single point of contact for each First Nation, and if there was simply one “funder”, the federal government, as opposed to several funders for several programs.

Overall, movement to a single policy and funding authority or to statutory funding would alleviate the requirement for applications, provide a single set of terms and conditions and reduce the reports required to one. By contrast, the current web of terms and conditions applied to contribution agreements serve mainly to inhibit First Nations from exercising their right to self-determination.

3.5 - Excessive Focus on Compliance Rather than Results

In addition to imposing a costly administrative burden, the current system of program-based reporting does not support a collaborative approach to measuring results. For the most part, the reports filed by First Nations governments only serve to confirm that they have complied with the terms and conditions of the funding agreement. Little of this reporting measures the effectiveness of the programs being funded in closing the socio-economic gaps and improving the well-being of First Nation peoples. Consequently, the Government of Canada does not have the information required to provide effective policy and program guidance, while the administrative burden of those programs distracts the First Nations governments’ scarce resources from focusing on improving policies and programs. In the end, this structure prevents results on the ground for First Nations citizens from improving and the socio-economic gap between First Nations citizens and other Canadians cannot be closed.

As confirmed in every regional engagement session, the existing fiscal relationship is not government-to-government but rather government-to-administrator. The relationship the federal government has with the provinces and territories, on the other hand, is government-to-government. It is one of respect, with legislation setting out fiscal transfers that support the exercise of jurisdiction by those other levels of government and a set of mutual commitments between the two levels of government that make each accountable to the other, including the transparent sharing of information that allows for accountability on the subject matters identified in an agreement.

⁴ See in particular reports by the Auditor General of Canada pertaining to Management of Programs for First Nations On Reserve in 2006 and 2011.

Meanwhile, it is understood in a government to government relationship that each government is first and foremost accountable to its own citizens, that those citizens determine the expectations, receive reporting information and decide whether their governments are providing the results expected adequately or not. Many First Nations do not have the resources to provide results-based reporting to their community members in addition to the thousands of pieces of data currently provided to the GOC under the requirements of contribution agreements.

First Nations also lack the tools needed to provide such reporting. Data and statistics on the effectiveness of programs and services are frequently unavailable or insufficient. Without reliable measurement of progress, First Nation governments are prevented from managing for results in their own communities, being accountable to their members and the Government of Canada is prevented from providing reliable reporting to Canadians on the effectiveness of Canada's policies as they pertain to First Nations.

4 – Options and Recommendations for a New Fiscal Relationship

With a shared vision and a shared understanding of the challenges presented by the existing structures, *we move to a summary of options and recommendations for a new fiscal relationship.* In some instances reforms have already begun, while others could be undertaken immediately or within the short term. In still other instances, opportunities for deeper policy reforms are identified for a subsequent phase of co-development involving a wider range of stakeholders and experts.

4.1 – Moving Towards Sufficient Transfers

Guided by their collaborative explorations over the past year, officials from the AFN and IS agreed that funding levels must increase to a point where First Nations can not only catch up with respect to historic underfunding, but keep up, with evidence-based escalators built into funding formulae going forward.

Significant steps have already been taken, through the federal budgets of 2016 and 2017, with a cumulative investment of \$11.8 billion by fiscal year 2021-22, and the process of identifying strategic investments through the annual budget cycle continues. One important area of investment for the new fiscal relationship is support for strengthening governance capacity. In October, the Government of Canada took a concrete first step by announcing an additional \$24 million in each of fiscal years 2017-18 and 2018-19 for band support funding. As progress is made on other fronts – particularly in terms of outcomes frameworks and data development, the empirical case for new investments will be strengthened. In addition, the Government of Canada has committed to reforming the funding model for operations and maintenance support for infrastructure.

A number of research projects were commissioned via the TWGs to support moving towards sufficient funding transfers. In addition, the Government of Canada committed to reforming the funding model for operations and maintenance support for infrastructure, including examining the requirement of First Nations to provide independent financial contributions.

More work is required to advance and operationalize the research conducted to date. To make significant and sustainable progress in this area, Canada and First Nations will need durable structures that have the mandate and capacity to co-develop a fiscal model that addresses revenues, expenditure needs and funding gap-closing along with a mechanism to review and assess adequacy of funding levels. Provinces and territories will need to be engaged on issues relating to program and services funding access and revenue sharing. Finally, a new fiscal policy model would need to be effectively integrated with other changes, particularly in the areas of funding flexibility and mutual accountability.

Priority Recommendation

- **Establish a permanent advisory committee that could be appointed by Order in Council that would reflect regional circumstances and interests. By April 1, 2019, core areas of advice from the Advisory Committee will include:**
 - a. **Recommendations for a new Fiscal Policy Framework to address sufficiency and identify priority funding areas;**
 - b. **Recommendations to increase revenue generation opportunities for First Nations, developed in collaboration with provinces and territories;**
 - c. **Recommendations to finalize new funding arrangement policies to strengthen the commitment to flexible and predictable funding, the reduction of reporting burdens and a shift from program to outcome-based reporting, and the elimination of General Assessment Scoring of First Nation communities in favour of First Nations-led tools; and,**
 - d. **Recommendations to finalize a Mutual Accountability Framework, including a national outcome-based framework based on United Nations Sustainable Development Goals.**

4.2 – Enhancing Revenue Generation Opportunities

Guided by their collaborative explorations over the past year, officials from the AFN and IS agreed that Canada and First Nations both have a role to play in creating and increasing revenue generation opportunities and can take steps to improve economic development opportunities within the bilateral relationship.

During the regional engagement sessions, officials from the AFN and the Government of Canada heard from numerous First Nations leaders and institutions with expertise in the area of First Nations revenue generation opportunities, including many First Nations who were generating own source revenues and supplementing federal transfers in order to improve the quality of programs and services. Also represented were institutions such as the First Nations Taxation Commission, the First Nations Financial Management Board and the First Nations Finance Authority. As work continues on these issues, AFN and Government of Canada officials should be able to continue to turn to these First Nations and centres of expertise for guidance.

With respect to taxation matters, the AFN and the Government of Canada agree that generating revenues through taxation can play an important role in supporting a renewed fiscal relationship. The AFN and the Government of Canada will continue to explore approaches to pursuing taxation-related discussions in a forum that would meet the interests of the parties. The Government of Canada has proposed establishing a taxation working group, led by Finance Canada, which would be distinct from the proposed permanent advisory committee. This working group would explore taxation matters and, if possible, identify joint Government of Canada and AFN/First Nations recommendations on taxation-related matters. For their part, the AFN has expressed a strong interest in policy co-development in this area. Therefore, Government of Canada and AFN officials will engage in further discussions and report, by March 31, 2019, on their progress in identifying approaches to taxation discussions that support deeper collaboration in this area.

Given existing arrangements between the Government of Canada and provinces and territories, it is also clear that provinces and territories should be encouraged to participate actively in dialogues on enhancing revenue generation opportunities and capacity. In short, progress on this issue will require continued extensive collaboration involving multiple stakeholders.

Priority Recommendations

- **Pursue co-development on recommendations to increase revenue generation opportunities as specified in Section 4.1 above.**

4.3 – Moving Towards Flexible and Predictable Funding Arrangements

At the July 2017 AFN General Assembly, Minister Bennett and the National Chief announced that the department would provide greater access to carry over effective April 1, 2018 for programs such as Infrastructure, Education and Land Management. By April 1, 2019, all programs will offer carry over.

Other measures can be taken under the existing Policy on Transfer Payments, including greater access to block funding and grants. Many of these changes can be implemented relatively quickly, providing ongoing benefits to First Nations, while co-development continues on other measures to enhance autonomy.

Moving towards a simplified, single-window model for federal First Nations funding, including authorities, funding agreements and reporting, would open the door to significant benefits to First Nations in terms of funding autonomy, reduced administrative burden and a shift from program-based reporting to community-based reporting with a focus on socio-economic and well-being outcomes rather than on compliance. In August 2017, the Prime Minister announced that Indigenous and Northern Affairs Canada would be split into two new departments, one responsible for Crown-Indigenous Relations and Northern Affairs, the other for Indigenous Services. The establishment of IS, and the relocation of more federal programs for First Nations under a single Ministry, will create opportunities to further enable and accelerate improvements in this area.

Another key area of interest involves reducing IS's direct role, via the General Assessment, in measuring governance capacity, and moving instead towards a model whereby First Nations-led organizations are empowered to support First Nations governments in assessing and, identifying governance capacity needs while the federal government focuses on providing access to funding to support capacity development.

Among the issues explored by the TWGs were alternatives to replace the current General Assessment and Default Management systems. By working with First Nations-led institutions, new approaches to capacity measurement and strengthening would provide First Nations with a policy leadership role and eliminate funding processes widely viewed by First Nations as counterproductive or punitive. With respect to Default Management specifically, reforms should provide for:

- A shift from “disciplining” the community in default for perceived failures in managing funding agreement, to helping the community, through First-Nation led targeted capacity enhancement assistance to support them to overcome the challenges that have led to default circumstances; and

- A shift from a reactive approach to a proactive one, focusing on early engagement and support to prevent defaults.

In addition, capacity development strategies need to focus more broadly on the entire range of challenges and unique circumstances faced by communities.

Longer term agreements that support and align with First Nations' long-term plans are essential to both renewing the fiscal relationship and closing of the socio-economic gaps. First Nation plans, whether initiated with the support of IS's comprehensive Community Planning funding or not, reflect the long-term vision and true needs and priorities of each community.

Priority Recommendations

- **Take immediate action to create ten-year grants for qualified First Nations to leverage full flexibility under the Policy on Transfer Payments, to be implemented on or before April 1, 2019. A plan will be prepared for the orderly preparation and inclusion of additional First Nations over time, based on a co-developed approach between the Government of Canada, the AFN, and First Nation Fiscal Institutions.**
- **Replace the DPMP with a new, proactive, approach that includes continued work under the First Nations Financial Management Board pilot project to move First Nations out of third party management and direct funding from the Government of Canada to pay for third party managers.**
- **Pursue co-development on recommendations to finalize new funding arrangement policies as specified in Section 4.1 above.**

4.4 – Eliminating Excessive Administrative and Reporting Burdens

One of the benefits of acting immediately on maximizing flexibility under the current Policy on Transfer Payments is reducing administrative and reporting burdens. Program officials are also reviewing program terms and conditions to identify additional opportunities to simplify funding arrangements and reduce reporting requirements.

Research commissioned by the TWGs has explored the potential role of strengthened First Nations-led audit and statistical functions in supporting a shift away from program-based reporting. Moving forward, greater support for and recognition of First Nation self-governance could generate opportunities to further reduce the administrative burden on First Nations, particularly if a simplified federal program architecture under the new Department of Indigenous Services can be successfully aligned with recognition of First Nations-centered plans and a shift from program- to outcome-based reporting.

Priority Recommendation

- **Pursue co-development of an approach to repeal the *First Nations Financial Transparency Act* in 2018 and replacing it with a co-developed mutual accountability framework supported by First Nations Institutions-led audit and statistical functions.**

4.5 – Moving to Managing for Results

Guided by their collaborative explorations over the past year, officials from the AFN and IS agreed that First Nation governments should be primarily accountable to their own citizens based on First Nation priorities. What is needed is a paradigm shift from compliance to real mutual accountability, based on the principles explored by the working group. This approach would make First Nations-centered governance the foundation for accountability to First Nations citizens and embrace First Nations-led approaches to capacity assessment and capacity building, including support for First Nations-led audit and statistical institutional capacity as described above. Finally, this approach would be supported by a national outcomes-based framework aiming at ensuring progress is being made on reducing socio-economic disparities and improving the well-being of all First Nations peoples, and with all measures to be implemented in a manner consistent with the agreed upon principles of mutual accountability, and drawing on internationally-recognized values and approaches, such as the United Nations Sustainable Development Goals.

Priority Recommendations

- **Pursue co-development on a Mutual Accountability Framework, including a national outcome-based framework, as specified in Section 4.1 above.**

5 – Continuing the Journey: Co-development of a New Fiscal Relationship

This report represents the main deliverable identified in the MOU signed by National Chief Bellegarde and Minister Bennett, which terminates on December 31, 2017. As set out in section 14 of the MOU, both the AFN and IS will follow their own internal approvals processes to set the direction moving forward. For the AFN, this means the National Chief will seek the direction of the Chiefs-in-Assembly, to be provided via a resolution of the Chiefs during the Special Chiefs Assembly in Ottawa in December 2017. Similarly, for IS, the Government will ultimately determine Canada's approach to future implementation and co-development.

Section 2 of the report set out a series of principles that constitute a shared vision for the New Fiscal Relationship. Here we take a moment to expand on how those values will shape future collaboration between officials from the AFN and the Government of Canada on the New Fiscal Relationship.

Commitment to a recognition-of-rights-based approach

The work of developing a new fiscal relationship is but one of many collaborative processes currently under way between the Government of Canada and First Nations. There are ongoing discussions on rights, treaties, reconciliation, specific programs and self-government, among other issues.

Officials from the AFN and the Government of Canada have agreed that this work should be undertaken in the spirit of respect for the right to self-determination. As noted in the *Statement of Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*: "It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination."

The Government of Canada acknowledges that, in the past, the interests of individual First Nations and Treaty organizations, as the rights holders, have not been accorded appropriate respect. This must change if a new fiscal relationship is to be developed that works for all concerned. It is therefore the first principle for continuing the co-development of a new fiscal relationship that, consistent with Canada's commitments respecting the United Nations Declaration of Rights of Indigenous Peoples, no steps will be implemented without the free, prior and informed consent of the rights holders.

Commitment to broad outreach, open and transparent process

In their future collaborations, officials from the AFN and IS are committed to demonstrating that the messages delivered by First Nations leaders during the regional engagement sessions have been heard and receive appropriate action.

Co-development requires transparency and open dialogue. Research reports commissioned under the new Fiscal Relationship process are being made publicly available and First Nations continue to have opportunities to provide input at their convenience via the AFN email address (fiscalrelations@afn.ca) and through national and regional gatherings.

Moving forward, co-development of a new fiscal relationship would feature enhanced engagement that involves First Nations more deeply and provides appropriate recognition of regional differences. This would include both national technical tables – for example providing detailed examination of the

particular issues faced by isolated and remote First Nations governments – and enhanced collaboration with both individual First Nations governments and Treaty organizations as rights holders, as well as tribal councils and regional organizations, to direction needed to address the full range of issues pertinent to the continued co-development of a new fiscal relationship.

Commitment to ongoing dialogue

The AFN and First Nations leadership have expressed a strong preference for a funding transfer model that resembles the regime currently in place between the Government of Canada and the provinces – that is, single statutory transfers. Pursuing this objective will require extensive dialogue between First Nations, the Government of Canada, and provincial and territorial governments. The combination of greater access to flexible long-term funding, First Nations leadership in the area of capacity assessment and enhancement, alignment of funding with First Nation community governance, First Nation-centered reporting based on mutual accountability, and simplified federal funding under IS, can lay a foundation for a truly collaborative and respectful relationship between the Government of Canada and First Nations as dialogue continues on transfer models.

With respect to taxation matters, the AFN and the Government of Canada agree that generating revenues through taxation can play an important role in supporting a renewed fiscal relationship. The AFN and the Government of Canada will continue to explore approaches to pursuing taxation-related discussions in a forum that would meet the interests of the parties. The Government of Canada has proposed establishing a taxation working group, led by Finance Canada, which would be distinct from the proposed permanent advisory committee. This working group would explore taxation matters and, if possible, identify joint Government of Canada and AFN/First Nations recommendations on taxation-related matters. For their part, the AFN has expressed a strong interest in policy co-development in this area. Therefore, Government of Canada and AFN officials will engage in further discussions and report, by March 31, 2019, on their progress in identifying approaches to taxation discussions that support deeper collaboration in this area.

It is recognized that the final form of actions to be undertaken by the Government of Canada will be informed by policy development conventions and practices designed to ensure the integrity of both the federal public service and democratically elected officials. Cabinet will take into account multiple considerations, including the Government of Canada's agenda for reconciliation, the intersection with other co-development initiatives with Indigenous peoples, and financial considerations. Additionally, support for these proposed initiatives by the Assembly of First Nations is ultimately subject to deliberations by Chiefs-in-Assembly.

Commitment to effective implementation and progress measurement


This would include regular reporting to Ministers and the Chiefs-in-Assembly on progress in implementing recommendations and ongoing co-development. These reports could be aligned with the schedule set under the MOU on Joint Priorities between Canada and the AFN as well as with the AFN general assemblies.

Recommendations for the Co-development of a new Fiscal Relationship

As noted throughout the report, it is recommended that the co-development process continue under a permanent advisory committee. Technical tables and an enhanced engagement network with rights holders and other representative bodies would provide support to this advisory committee. These mechanisms are needed to continue the effort to implement the actions above and to continue the co-development of a new fiscal relationship.

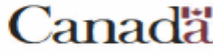
It is recommended that the next phase of co-development on a new fiscal relationship provide by April 1, 2019:

- a. Recommendations for a new Fiscal Policy Framework to address sufficiency and identify priority funding areas;
- b. Recommendations to increase revenue generation opportunities for First Nations, developed in collaboration with provinces and territories;
- c. Recommendations to finalize new funding arrangement policies to strengthen the commitment to flexible and predictable funding, the reduction of reporting burdens and a shift from program to outcome-based reporting, and the elimination of General Assessment Scoring of First Nation communities in favour of First Nations-led tools; and,
- d. Recommendations to finalize a Mutual Accountability Framework, including a national outcome-based framework aligned with United Nations Sustainable Development Goals.



MEMORANDUM OF UNDERSTANDING

BETWEEN THE
ASSEMBLY OF FIRST NATIONS
AND
INDIGENOUS AND NORTHERN AFFAIRS CANADA



Whereas the Assembly of First Nations and Indigenous and Northern Affairs Canada (hereinafter referred to as the "Parties") are committed to supporting the renewal of a nation-to-nation relationship between First Nations and the Crown based on the recognition of rights, respect, co-operation and partnership;

Whereas the Parties recognize the need for action to improve the economic and social outcomes and the overall well-being of First Nations as nations, communities and citizens and steps towards these goals must include the joint establishment of proper and fair intergovernmental fiscal relations;

Whereas the Parties have agreed to work together to eliminate disparities and inequalities in the socio-economic conditions between First Nations and other Canadians;

Whereas First Nations have established governance structures and their governments must fully participate in the design and delivery of essential programs and services to First Nations citizens including supporting fiscal arrangements;

Whereas the Assembly of First Nations, in its 2015 "Closing the Gap" priorities document, called for a lifting of the 2% cap on annual funding increases to First Nations and the establishment of a new fiscal relationship with the Government of Canada, including new fiscal transfer arrangements with equitable escalators for ongoing funding;

Whereas, the Prime Minister mandated the Minister of Indigenous and Northern Affairs to work with the Minister of Finance to establish a new fiscal relationship that lifts the 2% cap on annual funding increases and moves towards sufficient, predictable and sustained funding for First Nations communities; and

Whereas Canada is now engaging in parallel collaborative policy development processes with First Nations across Canada, including on reform of education and child and family services, on the renewal of the self-government fiscal approach, as well as other discussions, that will contribute to joint work on a new fiscal relationship;

Now, therefore, the Parties agree as follows:

Purpose

- It is intended by the Parties that this MOU will immediately initiate a process for Canada and First Nations to jointly undertake a comprehensive review of the existing fiscal relationship, research, and develop proposals and recommendations for the design of a new fiscal relationship that moves toward sufficient, predictable and sustained funding, and lifts the 2% cap on annual funding increases to First Nations.

Structure and Membership

- To advance this goal, the Minister and the National Chief will establish a First Nations – Canada Joint Committee on the Fiscal Relationship (Joint Committee).
- The Joint Committee will be comprised of two representatives from each Party, and will develop terms of reference for the operation of the Joint Committee.
- The Joint Committee will convene such Technical Working Groups, composed of representatives from each Party, as may be required to advance agreed upon work plans.
 - Technical Working Groups may be established to develop a review of the existing fiscal relationship, conduct research, and develop proposals, options and recommendations for the design of a new fiscal relationship.
 - Options, proposals, and recommendations developed by Technical Working Groups will require approval by the Joint Committee before being presented to the Minister and National Chief for their consideration.
 - Subject matter experts may be brought in, as necessary, by each Party.
 - Technical Working Groups will provide monthly progress reports to the Joint Committee on the respective work plan.
- The Parties will recognize and reflect the diverse and evolving relationships between First Nations governments and the Crown in implementation of this Memorandum of Understanding.
- The Parties agree to work together in a collaborative manner to achieve shared goals and collective commitments.
- Canada agrees to resource engagement with First Nations to meet the purpose and objectives of this MOU.

Other Membership

- With agreement of the Parties, other groups and/or representative organizations may participate in the process(es) laid out herein, including members of the re-established Chiefs Committee on Fiscal Relations who will provide political oversight to AFN's activities.

Mandate

- The Joint Committee will fully examine the current fiscal arrangements to identify areas/elements of the existing relationship that are impeding progress in moving towards a government-to-government relationship.
- The Joint Committee will also examine the mechanisms required to secure the consent of interested First Nations.

- The Parties agree to share relevant information in their possession, develop terms of reference for their work, an accompanying work plan, and jointly produce proposals, options, and recommendations on:
 - Options for replacing the 2% cap and identification of cost drivers in First Nations communities;
 - Options for closing existing socio-economic gaps, including appropriate metrics and performance indicators;
 - Funding approaches and financial transfer mechanisms required to support a government-to-government relationship;
 - Engagement strategies for seeking First Nations' input and participation in developing options for a new fiscal approach; and,
 - Such other recommendations deemed appropriate by the Joint Committee, and as may be added by mutual consent from time to time.

Reporting and Implementation

- Discussions of the Joint Committee shall result in joint proposals, options and recommendations for a renewed fiscal relationship to Parties by December 31, 2017.
- Those recommendations will be presented to the Minister of INAC, the AFN Executive and communicated to the Chiefs-in-Assembly.
- The Parties shall respect their respective internal decision-making processes.

Non-Derogation

- This MOU shall not diminish, derogate, abrogate or infringe any existing aboriginal, treaty, legal, inherent or any other rights of First Nations.
- This MOU is not intended to impede or replace any existing initiatives or processes of any First Nation.

Term


- This MOU shall be effective from the date of signature and will remain in effect until December 31st 2017 (the "term") and may be extended by agreement in writing.


General

- The parties may revise this MOU in writing during the term or any extensions.
- The Parties acknowledge that Canada is engaged in joint policy discussions with First Nations across Canada, and that nothing in this MOU precludes bilateral discussions or an agreement on any matter of mutual interest between a First Nation, groups of First Nations, and Canada or province/territory.
- Recognising the role and experience of provincial and territorial governments, where the Parties agree these governments may be requested to contribute in discussions to support the objectives of this MOU.
- The parties acknowledge that this MOU is not a legally binding instrument but rather a statement of common resolve to establish a joint process to examine the existing financial relationship, and develop proposal, options and recommendations for the design of a new fiscal relationship.
- All communication and notices to any of the Parties to this MOU shall be in writing and addressed as follows:

| | |
|------------|---|
| To AFN: | Assembly of First Nations Attn: Chief Executive Officer 55 Metcalfe Street, Suite 1000 Ottawa, ON K1P 6L5 |
| To Canada: | Indigenous and Northern Affairs Canada Attn: Deputy Minister Terrasse de la Chaudière 10 Wellington St., North Tower Ottawa, QC K1A 0H4 |

By the signatures affixed below, the Parties do hereby signal their understanding and acceptance of the provisions of the Memorandum of Understanding on this ____ day of July, 2015.

For the Assembly of First Nations

 National Chief Perry Bellegarde

For Indigenous and Northern Affairs Canada

 François-Philippe Champagne
 Minister of Indigenous and Northern Affairs

List of Technical Working Group Participating Departments and Organizations

Assembly of First Nations Chiefs Committee on Fiscal Relations

National Chief Perry Bellegarde, Chair

Chief David Jimmie, Vice-Chair, British Columbia

Chief Vernon Saddleback, Alberta

Chief Richard Sydney, Yukon

Richard Nerysoo, Northwest Territories

Vice-Chief Heather Bear, Saskatchewan

Chief David Crate, Manitoba

Chief Paul Eshkakogan, Ontario

Chief Connie Lazore, Quebec and Labrador

John G. Paul, Atlantic

Technical Working Group # 1 – Sufficiency

Assembly of First Nations

- Dan Wilson
- Ken Medd
- Roger Jones
- Don Drummond
- Ellen Rosenbluth

Crown-Indigenous Relations and Northern Affairs/Indigenous Services

- Catherine Blanchard
- Ralphe Jabbour
- Steven Singer
- Michael Ferguson
- Aidan Burgess
- Salena Brickey
- Chris Rainer
- Shannon Nix
- Brenda Shestowsky
- Jonathan Riou
- Lyle Henderson
- Melissa Dickey
- Terry Goertzen
- Robert Maguire
- Bernice Draper-Hickey

- Cheri Reddin

Treasury Board of Canada Secretariat

- Michael Berner

Finance Canada

- John Cuddihy
- Brent Almond

Employment and Social Development Canada

- Tony Haddad
- Jatinder Singh
- Althea Williams

Department of Fisheries and Ocean

- Robert Lamirande
- Kevin Fram
- Steven Purvis

Health Canada

- Mary-Luisa Kapelus
- Valerie Gideon
- Marie-Pierre Wallace

Public Safety

- Julie Melanson
- Ian Knight
- Mark Williams

External Participants

- John Lees (Orbis Risk Consultants)

Technical Working Group # 2 – Predictability

Assembly of First Nations

- Dan Wilson
- Ken Medd
- Terry Goodtrack
- Roger Jones

Crown-Indigenous Relations and Northern Affairs/Indigenous Services

- Renetta Siemens
- Martha Sharl
- Corrin Fisher
- Stephane Larouche
- Jean Philippe Simard
- Serge Beaudoin
- Kevin Murchie (AB)
- Hashm Nasser
- Wendy Rogers (BC)
- Mandy Crow
- Melissa Dickey
- Josée-Ann Paradis (QC)
- Caroline Garon (QC)
- Eric Marion
- Michael Ferguson
- Aidan Burgess
- Salena Brickey
- Chris Rainer
- Terry Goertzen
- Cindy LaForte
- Nelson Barbosa
- Neil Bernett

Treasury Board of Canada Secretariat

- Trina Bender
- Greg Steele
- Jacob Abella
- Michael Berner

Privy Council Office

- Lisa Demoor

Finance Canada

- John Cuddihy
- Brent Almond

Employment and Social Development Canada

- Adam Fritz
- Jason Won
- Damon Rourke
- Tara Yetts
- Althea Williams

Department of Fisheries and Ocean

- Robert Lamirande
- Kevin Fram
- Steven Purvis

Health Canada

- Paula Hadden-Jokiel
- Samantha Hards

Public Safety

- Kimberly Lavoie
- Annie Leblanc
- Kristin Solvason
- Martin Sampson
- Ian Knight

External Participants

- John Lees (Orbis Risk Consultants)

Technical Working Group # 3 – Mutual Accountability

Assembly of First Nations

- Dan Wilson
- Ken Medd
- Roger Jones

Crown-Indigenous Relations and Northern Affairs/Indigenous Services

- Gonzague Guéranger
- Kate Harrison

- Drew Duncan
- Jeanette Steffler
- Phil Dupuis
- Tamara Candido
- Rory O'Connor (Atl)
- Michael Obyrne (ON)
- Michel Burrowes (Man)
- Allyson Rowe (BC)
- Melissa Dickey
- Christopher Duschenes
- Eric Marion
- Shelie Laforest
- Aidan Burgess
- Salena Brickey
- Michael Ferguson

Treasury Board of Canada Secretariat

- Trina Bender
- Michael Berner

Privy Council Office

- Lisa Demoor
- Kevin Dobbie

Finance Canada

- John Cuddihy

Employment and Social Development Canada

- Adam Fritz
- Lyne Deschenes
- Amanda L. Powers
- Althea Williams

Department of Fisheries and Ocean

- Steven Purvis
- Robert Lamirande

Health Canada

- Mary-Luisa Kapelus
- Paul P. Pelletier

Public Safety

- Kristin Solvason
- Ian Knight
- Mark William

Statistics Canada

- Johanne Denis
- Marc Lachance

Justice Canada

- Karen Bron
- Catherine Thomson

Correctional Services

- Dena Derkzen

External Participants

- John Lees (Orbis Risk Consultants)

New Fiscal Relationship Secretariat

- Alain Grenier
- Catherine McBride
- Danny Jette
- Brigitte Raizenne
- Lucia Merchan

List of Completed Joint Research Projects

| Contractor | Subject |
|--|---|
| Canadian Audit and Accountability Foundation | Potential Roles for, Requirements of, a First Nations Auditor General |
| FMC Professionals Inc. (with Fiscal Realities) | Evolving First Nations Service Populations: Challenges, Impacts & Implications |
| Institute on Governance | Review of Accountability and Mutual Accountability Frameworks |
| Institute on Governance | Sufficiency: Comparability and Various Institutional or Other Arrangements for Implementing and Maintaining Comparability |
| Orbis Risk Consulting | Federal Horizontality |

Moving Towards A New Fiscal Relationship

Presentation for ----- Regional Engagement Session

October/November --, 2017

A CONTINUED DIALOGUE ON “DEFINING A NEW FIRST NATIONS FISCAL RELATIONSHIP WITH THE CROWN”

Address, city, province



fiscalrelations@afn.ca



Background

MOU signed in July 2016 by the Assembly of First Nations and the Government of Canada tasked both parties to:

- Jointly produce proposals, options, and recommendations to:
 - a) Replace the 2% cap and identify cost drivers in First Nations communities;
 - b) Close existing socio-economic gaps, including appropriate metrics and performance indicators;
 - c) Identify funding approaches and financial transfer mechanisms to support a government-to-government relationship; and
 - d) Identify engagement strategies for seeking First Nations' input and participation in developing options for a new fiscal approach.

- There have been three technical working groups working on this with ongoing participation from AFN and the Government of Canada.

Shared Commitments



Shared Vision for the New Fiscal Relationship

- A recognition-of-rights approach
 - A conscious break from rigid colonial structures and structural imbalances.
 - "Actions to improve the economic and social outcomes and the overall well-being of First Nations as nations, communities and citizens."
 - "(T)he design of a new fiscal relationship that moves toward sufficient, predictable and sustained funding."
 - "Establishment of proper and fair intergovernmental fiscal relations," including "funding approaches and financial transfer mechanisms required to support a government-to-government relationship."
- AFN-GoC Memorandum of Understanding on New Fiscal Relationship



Working In A Changing Environment

The Prime Minister recently announced the dissolution of Indigenous & Northern Affairs Canada and the creation of two new departments.

- **Uncertainty and complexity on whole-of-government approaches**
 - Significant structural and policy changes are underway on multiple fronts
 - Consultations coming on new Departments of Indigenous Services, Crown-Indigenous Relations & Northern Affairs
 - Benefits of New Fiscal Relationship will be available to all First Nations
 - Minister Bennett's mandate letter calls for her to "work with indigenous People to support them in their work to rebuild and reconstitute their Nations, advancing self-determination, and, for First Nations, facilitating the transition away from the Indian Act and towards self-government.
- **Engagement with provinces and territories**
 - Provinces and territories are developing their own approaches on reconciliation and the nation-to-nation relationship
 - Minister Bennett's mandate letter calls for a "whole-of-government strategy to include Indigenous representatives in meaningful ways in Canada's federal-provincial-territorial dialogues."
- **Essential features of new funding arrangements and policies**
 - Creation of Department of Indigenous Services expected to facilitate whole-of-government approaches.
 - Canada is engaged in parallel discussions with self-governing Indigenous groups to develop a new policy framework for self-government fiscal relations
 - There will be opportunities to determine how new funding policy models should be applied and ensure that discussions at one table do not constrain choices for others.

Shared understanding of challenges facing First Nations

Funding Sufficiency

- Funding levels do not address First Nations needs and opportunities

Dependency on transfers

- First Nation governments are highly reliant on federal transfers
- Insufficient economic development for many First Nations

Inflexible and Unpredictable funding

- Government of Canada decides program goals, funding levels and timing
- Limited ability for First Nations to set priorities and choose where and when money should be spent

Revenue Generation

- Unresolved lands and resource issues
- Revenue generation options such as taxation underutilized
- Provincial and territorial governments not participating fully

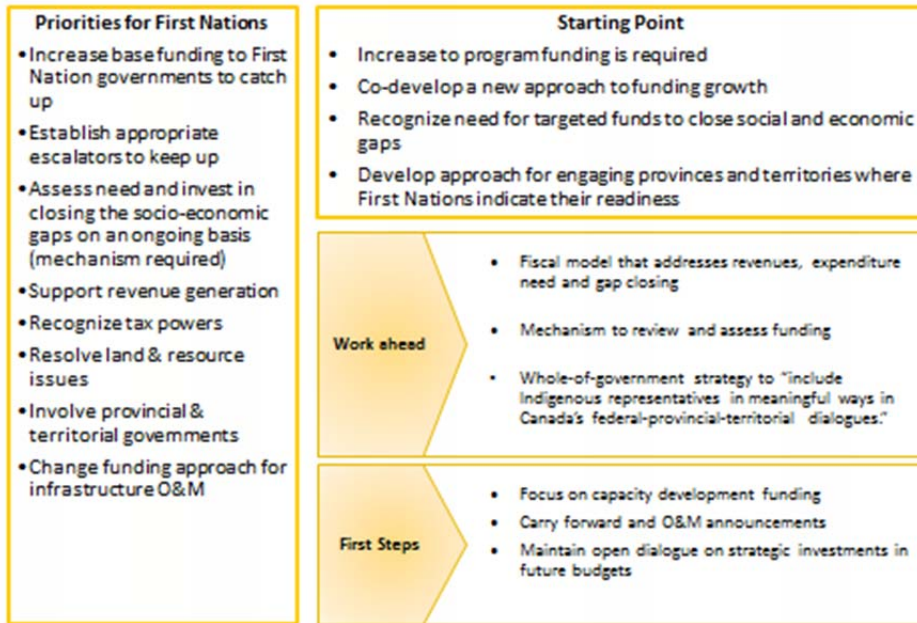
Administrative & reporting burden

- Program specific and overlapping reporting leaves burden on First Nation governments too high
- Too many application-based programs

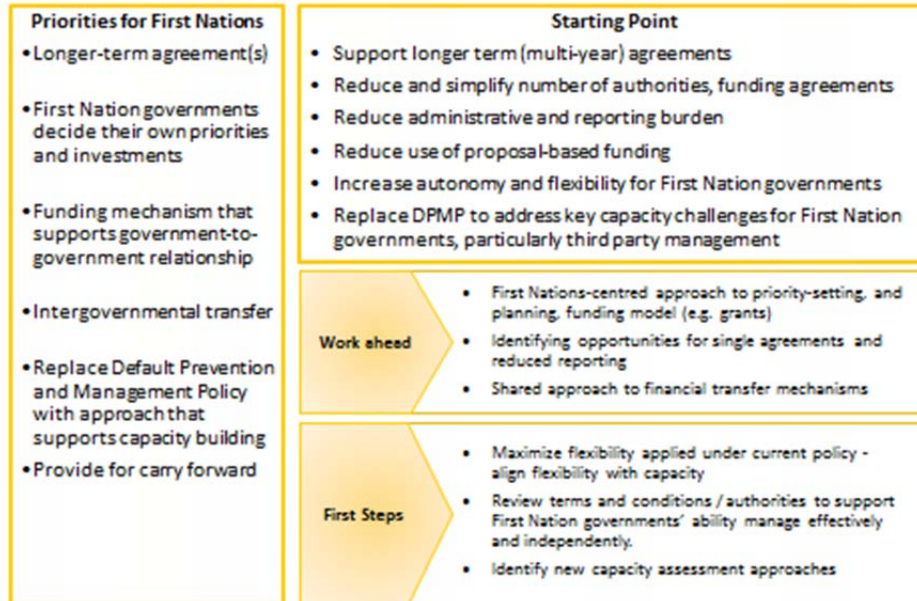
Focus on compliance not outcomes

- Accountability is compliance based, rather than focussed on outcomes
- Socio-economic gaps have not been closing

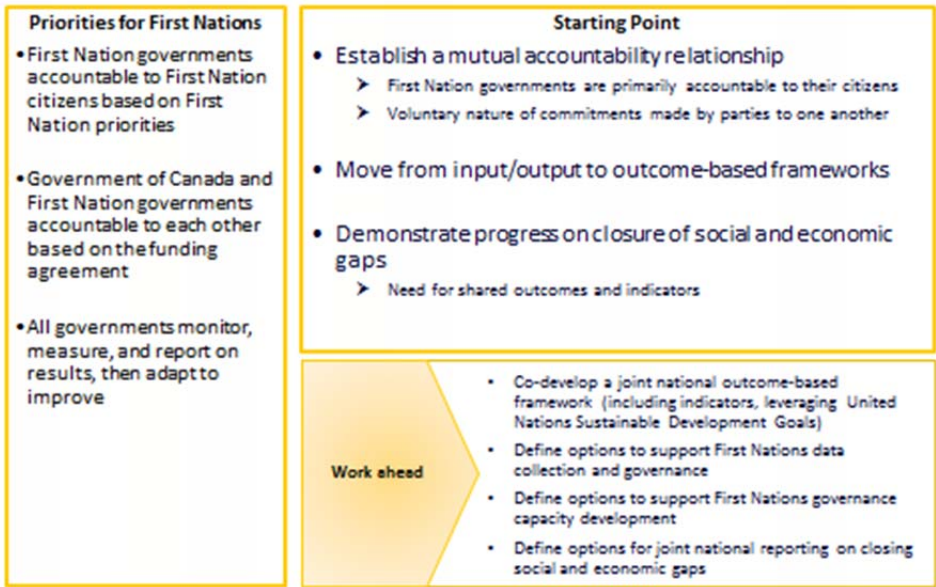
Discussion: Moving towards sufficient funding



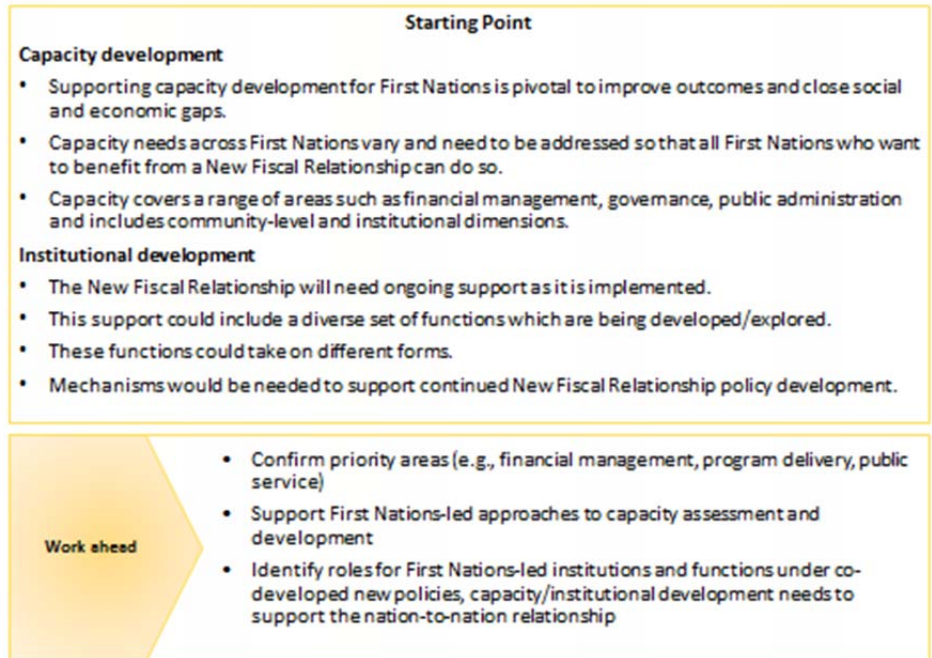
Discussion: Increasing autonomy, flexibility and predictability of funding



Discussion: Establishing a Mutual Accountability Framework



Discussion: Capacity and Institutional Development



Next steps

- Outcome of sessions – What was heard
- Options for continuing input
- Feedback from these sessions will inform the co-development of joint options and recommendations to be presented to the National Chief and Minister of Crown-Indigenous Relations and Northern Affairs in December 2017
- Work to further advance New Fiscal Relationship beyond 2017
- Research commissioned by the technical working groups will be shared

For Discussion Today:

- Your reactions to this presentation
- What did you like about the information presented
- What did you expect to see that was not addressed
- What should future engagement on this work look like



fiscalrelations@afn.ca



ANNEX

New Fiscal Relationship: Research

Sufficiency:

- Provincial Comparability (inputs, access, outcomes)
- Service population (on-off reserve)
- Remoteness
- Scale
- Fiscal models

Predictability:

- Indigenous School for Public Administration Capability:
- Transactional Relationship with Indigenous Communities:
- Horizontality in transfer payments to First Nations:
- Community Planning (joint research with other technical working groups):

Mutual Accountability:

- Review of Accountability and Mutual Accountability Frameworks
- Need and benefits of a First Nations Auditor General, its possible roles and functions and guiding principles
- Analysis regarding a First Nations statistical/information governance institute

Engagement on a New Fiscal Relationship between First Nations and the Crown

Synthesis Report

Introduction

In July 2016, the Government of Canada and the Assembly of First Nations (AFN) signed a Memorandum of Understanding to jointly undertake a comprehensive review of the fiscal relationship, to perform research, and to develop proposals and recommendations for the design of a new fiscal relationship. This relationship would involve moving toward sufficient, predictable, and sustained funding, and it would lift the two per cent cap on annual funding increases to First Nations.

Under the MOU both parties committed to seeking First Nations' input and participation in developing options for a new fiscal approach. From October 11 to November 20, 2017, Indigenous and Northern Affairs Canada (INAC) and the AFN met on nine occasions with First Nations leaders and technical experts around the country to seek their input on options to address predictability of funding, sufficient funding for program delivery, and mutual accountability.

The purposes of the engagement were:

- To allow Chiefs and financial experts from First Nations to learn about the proposals for a new fiscal relationship with First Nations;
- To receive feedback from participants on their priorities and major concerns; and
- To enable INAC and members of the technical working groups to hear diverse perspectives on the issues.

Methodology

A note-taker from Hill+Knowlton Strategies was present at all nine regional engagement sessions. Based on those notes, an individual summary report was prepared on each session. This synthesis report amalgamates all the feedback heard at each session, and presents a summary of what was heard across the country. Key themes are identified along with regional variances in comments.

Each session consisted of a joint presentation by INAC and the AFN which provided background on the work undertaken by the technical working groups and the results achieved to date. The remainder of the engagement session was earmarked for participants to provide comments and feedback (including their unique situations) to working group members in attendance. In some sessions, presentations were made by First Nations leaders or technical experts. All of this feedback was noted and contributed to the development of the summary reports and this synthesis report.

Who We Heard From

Engagement sessions ranged in size up to 140 participants, mainly consisting of Chiefs, councillors, and technicians from First Nation governments. Members of each of the three technical working groups attended each session (AFN and Government of Canada). Sessions were either one or two days in duration, with the exception of Ontario, where there were two shorter evening sessions. Sessions were held across the country in the following locations:

| Date | Location | Organizer |
|----------------------|-------------|--|
| October 11, 2017 | Saskatoon | Federation of Sovereign Indigenous Nations |
| October 13, 2017 | Vancouver | First Nations Summit |
| October 23, 2017 | Ottawa | Chiefs of Ontario |
| October 24-25, 2017 | Yellowknife | Dene Nation of the Northwest Territories |
| October 26-27, 2017 | Edmonton | Ermineskin Cree Nation |
| November 1-2, 2017 | Halifax | Atlantic Policy Congress of First Nations Chiefs Secretariat |
| November 8, 2017 | Quebec City | Assembly of First Nations Quebec-Labrador |
| November 14-15, 2017 | Winnipeg | Assembly of Manitoba Chiefs |
| November 20, 2017 | Toronto | Chiefs of Ontario |

What We Heard

Participants raised many points related to establishing a new fiscal relationship between First Nations and the Crown. Some directly related to the work of the three working groups encompassing, Sufficiency, Predictability, and Mutual Accountability. Other ideas were more cross-cutting, encompassing the work of multiple working groups. Finally, some issues brought up by participants were regionally-specific in nature, and were raised primarily or uniquely in one or a few regions only. Below is a summary of the points raised by participants from all regional engagement sessions.

Cross-cutting issues

How to arrive at a new fiscal relationship: Many participants offered comments which related to the process through which First Nations and the Crown would establish a new fiscal relationship. In their view, a clear framework is needed, along with joint decision-making on priority issues. This process would take time and thus a long-term plan is needed. This plan should identify priority issues, it should engage First Nations at the community, regional and national levels, and while the parties should not waste time, the process should not be rushed.

Clear communications need to be developed and disseminated in a clear, easily understood, manner so that all parties from community members, First Nations leadership, regional First Nation organizations, the AFN, and the Government of Canada are informed. Participants wanted more information and the opportunity to discuss what they had learned in the sessions with their communities. Communications tools which outlined Canada's commitment to First Nation communities, including a description of the fiscal relations exercise up to this point, would be useful in this regard.

Other points raised included:

- **The provinces and territories** must be involved in discussions moving forward.
- The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** could serve as a guide to the relationship between First Nations and the Crown. This would include respecting the right of self-determination.
- Implementing a new fiscal relationship must involve a **fundamental reshaping of the federal government**. “[W]e cannot integrate or amalgamate or assimilate as we are doing right now with First Nations, fitting into the existing government...”
- First Nations are eager for **results**. Consideration must be given to issues that require immediate attention and cannot wait for the full fiscal relationship to be developed.
- **First Nation languages** should be used more frequently in dealings between First Nations and the Crown.
- **Chiefs should meet with Canada’s political leaders**, rather than departmental bureaucrats.
- **INAC should be more consistent** in how it interacts with First Nations from its regional offices.

Characteristics of a new fiscal relationship: Many points were raised about what a new fiscal relationship should look like. Most common among them was that a ‘one-size-fits-all’ approach is not suitable. Participants expressed skepticism that a policy framework could be built that would address all First Nations. Each Nation and community has unique needs and circumstances (e.g. environmental, geographic, demographic, etc.) which must be taken into consideration. In addition, First Nations should have the choice to either opt-in to any new arrangements made possible by a new fiscal relationship or remain under the current funding regime.

A new fiscal relationship must be based on a true nation-to-nation, or government-to-government, relationship. While participants expressed a desire for the federal government to better define what it meant by this term, participants understood it to mean that First Nations should be seen and treated as governments. Participants noted that this ideal did not reflect the relationship between First Nations and the Crown currently. It was also noted that there were a variety of ways to define a “nation”.

Opportunity: Other comments focused on the unique window of opportunity presented by this engagement initiative. The development of a new fiscal relationship with First Nations was launched by the current government. After the next election, a new federal government could have other priorities. Consequently, time was of the essence. As one participant expressed, “I have to give credit to the willingness of Canada under leadership of Prime Minister Justin Trudeau and his colleagues, along with the leadership of National Chief Perry Bellegarde, to try to change the way in which Canada and First Nations develop their fiscal relationship.”

First Nation institutions: Participants throughout the engagement sessions recognized the importance of First Nation institutions, especially when it comes to the development of a new fiscal relationship. This came, however, with an acknowledgement that these institutions, including the AFN and regional First Nation organizations, must have clear mandates, respect local authority and deliver value back to every First Nation. The importance of clear communications was also raised in this context.

Building First Nation institutions, independent and accountable to First Nations themselves, was seen as a necessary step to increasing capacity, assuming greater jurisdiction, and implementing a new fiscal relationship. These institutions would provide standards, certification, sample laws, templates, training and support for capacity development. For First Nations to build institutions they would require the necessary funding and it was incumbent upon the federal government to provide this funding. A statistics agency is required to support

jurisdictions and better transfer payments. An infrastructure institute will be needed to support improved infrastructure. A First Nation public service is required to implement jurisdictions and grow economies. By endorsing UNDRIP, Canada had agreed to support First Nations in the development of their own institutions.

The importance of treaties: While not expressed in every region, for those under a treaty agreement, treaties were considered central to the relationship between First Nations and the Crown. Where a treaty applied, the federal government was obligated to acknowledge the treaty, honour its spirit **and** intent, and base any agreements between First Nations and the federal government on the treaty. When First Nations entered the treaty relationship with the Crown, they did not give up their sovereignty, their right to self-determination, nor their laws, practices and customs. Each Treaty group has unique relationships with the Crown, and they should not be “lumped together” or treated the same by the federal government.

Across all regions, the importance of acknowledging history was highlighted. Various practices of cultural genocide were named, including the *Indian Act*, residential schools, turning title to natural resources over to the provinces, the *US-Canada Migratory Birds Convention*, and the Sixties Scoop. The Doctrine of Discovery and its roots in the Bible were also reviewed. Participants noted that language and culture were of significant importance to First Nations and must be preserved. The importance of the “traditional economy” was also noted, which is centered around respect for the environment, sustainability, and a spiritual connection to the land.

Feedback related to the work of the three working groups

Sufficiency: It was universally accepted that funding for First Nations is insufficient. Participants in all regions also expressed their frustration with the two per cent cap on annual funding increases for First Nation on-reserve programming. Despite the federal government’s announcement that the cap was to be lifted, participants had seen little evidence that it was no longer in place, while First Nation populations continued to grow.

Funding for First Nations should be comparable to that available for off-reserve services. Participants suggested comparators to use to determine sufficient funding levels, including off-reserve service standards, salaries, and staff levels (e.g. for health care, accounting, operations and maintenance). Participants suggested that INAC could undertake a wage parity study. It was noted with concern, however, that when comparing First Nation standards to national standards the fact that many national standards were decreasing must be considered. In addition, costs were higher for isolated communities due to their remoteness. When making comparisons with the indicators chosen, the data on First Nations must be of comparable quality to that used to assess need in the rest of Canada.

Participants discussed the need to raise funding levels so that First Nations could “catch-up and keep-up”. Consequently, any costing models used should include escalator clauses. Funding for various specific needs was highlighted, including for:

- Housing
- Health care, including addictions
- Water, including water and sewage treatment facilities
- Roads
- Pipeline renewal where Nations had used an INAC program to develop gasification systems
- Other infrastructure

- Education, for both on-reserve schools and for post-secondary education
- Salaries competitive enough to retain qualified employees on-reserve
- Training
- Social programs, including child welfare
- Tribal councils
- Band support, including human resources; and
- Economic development.

While capacity levels varied across regions, generally capacity is insufficient and for many First Nations it was identified as the single largest challenge. Participants noted that funding for capacity is necessary to move the new fiscal relationship process forward, as many First Nations would be unable to participate in a new fiscal relationship without improved capacity. First Nation leaders noted how being a leader in a First Nation community often meant being on-call 24/7 due not only to severe needs among community members, but also to a lack of adequate staff to handle issues. “Because we’ve been managing poverty for so long, we don’t know how to manage wealth.” Participants at the Quebec City session proposed the application of restorative justice principles to financial management, which could replace the current third-party management system with one more focused on long-term capacity building.

Many participants felt that First Nations should have a direct relationship with the Treasury Board Secretariat (TBS), and not have to deal with a “middle-man” like INAC. A single point-of-contact, or a single “funder”, for each First Nation would also streamline interactions with the federal government. Direct transfers from TBS, similar to provincial funding transfers or grants, should also be considered. A “treaty-based agreement” would allow each First Nation to prepare its own budget and seek funding from TBS itself.

Funding agreements should be at least 5 years in length. Agreements with long terms would better support local community plans by allowing strategic targeting of investment over multiple years on services like fire departments and medical centres. Instead of a funding agreement with a set term, a permanent funding arrangement with the federal government could instead be put in place, mirroring the permanency of treaties. This arrangement could be reviewed every 5 years and altered if necessary. Participants spoke in favour of block funding arrangements and of being able to carry funding over into the next fiscal year, rather than having to scramble to spend it before the end of current the fiscal year in “March Madness”.

Other points raised included:

- Concerns were raised about **Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration)***. This bill would increase the number of Status Indians, but would not increase the amount of funding for First Nation governments which would have to support these new members.
- Participants indicated that **responsibilities that were devolved to the provinces and territories** regarding First Nation services, and the associated funding, should instead be provided to First Nations themselves. The Treaties were signed with the federal government, not the provinces.
- **Reconstitution of nations**, or groups of First Nations, could be a way to support the procurement of a First Nation bureaucracy and address capacity gaps.
- **Those First Nation citizens who live off-reserve** should also be part of the new fiscal relationship. On-reserve residency should not be a requirement for access to programs.
- First Nation governments should be allowed to go into **debt** like any other government.

- The requirement for First Nation governments to co-pay 20 per cent of infrastructure **operations and maintenance** costs should be eliminated.
- First Nation governments should not be required to maintain a “**replacement reserve account**” to replace assets when they depreciate.

Predictability: Participants frequently indicated that funding to First Nations should be both predictable and flexible. Restrictions on how funding could be spent should be removed. This would give First Nations the ability to allocate funds to address local needs and increase efficiency. When coupled with sufficient funding as discussed above, First Nations could set their own budgets and spend the funds as required.

The need for First Nations to have their own, independent sources of revenue was also discussed at length. Independent fiscal power and jurisdiction was needed, akin to how the *First Nations Fiscal Management Act* operated. Any jurisdiction even partly funded by federal transfers is potentially subject to transfer conditions and reporting requirements. Freedom from these conditions requires independent revenue sources and independent jurisdiction. Participants indicated that more taxation should be permitted, especially over natural resources. *Delgamuukw v. British Columbia*, the 1992 Supreme Court of Canada decision in which the court found that lands held pursuant to Aboriginal title have an inescapable economic component, was raised repeatedly. Participants felt that this ruling could be used for the benefit of First Nation members, specifically with regard to the generation of wealth from natural resources.

Fiscal power should be expanded to include resource taxation in First Nations’ traditional territories, taxation on tobacco and cannabis, and the cap on the First Nations Goods and Services Tax (FNGST) should be lifted. An Aboriginal Resource Tax (ART) was suggested by participants at the Vancouver session. The current model for sharing revenues from natural resource projects with First Nations would be replaced with a transparent tax regime applied to all resource projects over a given territory. Tax and fiscal coordination arrangements could be negotiated with both provincial and federal governments.

With own-source-revenue, First Nations could more easily set their own funding priorities, as the funds would not come from the federal government and be constrained by federal government imposed conditions. First Nations should have the autonomy to determine what is in the best interests of their own communities. This increase in fiscal power would then allow First Nations to assume jurisdictional responsibilities over infrastructure, language, care for children and elders, and other priorities. Additionally, own-source-revenue should not have to be accounted for to the federal government, nor should the federal government dictate its use.

Other points raised included:

- Other **investment restrictions** imposed by the federal government should also be removed, around land-based revenue, leasing, along with “red-tape” around contracting. Some of these changes would encourage entrepreneurialism and self-sufficiency.
- The designation of **urban reserves or business parks**, with tax incentives, would promote business development and allow First Nations people to be involved in business. The *Indian Act* model of urban reserves, however, is cumbersome and long.
- If any First Nation was considering signing an agreement under the *Indian Act*, they should **protect their revenue streams**, as they are linked to borrowing ability.
- The **British Columbia First Nations Health Authority** was a good example of First Nations having gained jurisdictional responsibility, allowing them to set their own priorities.

Mutual accountability: Across regions participants felt that the administrative and reporting burdens on First Nations should be streamlined. As one participant put it, “there is not a government in Canada that is more managed, administered and audited than First Nation governments.” Participants recognized that proposal-driven funding and related reporting requirements were not sustainable.

Rather than focusing on compliance with INAC-imposed terms and conditions, accountability should focus on outcomes. These outcomes and associated indicators should also be established by First Nations rather than INAC. Participants agreed that First Nations should be, and are, accountable to their members rather than to the federal government. In terms of a First Nation accountability mechanism, many participants were supportive of the idea of a First Nation Auditor General.

Accountability and transparency also applied to the federal government, along with regional First Nation organizations. Where funding comes from, how it flows, and who it is allotted to should be more transparent. This would apply to TBS, INAC, the AFN, regional First Nation organizations, and individual communities, among others. For instance, INAC should account publicly for how much money it has allocated for First Nation housing and infrastructure.

Regionally-specific issues

Lack of historical treaties: British Columbia (BC) lacks the same context of historical treaties as regions to the east. Consequently, most First Nations in BC do not fall under a treaty. While the feedback received at engagement sessions east of BC prominently featured the importance of treaties, this was not the case in BC. Many representatives from Nations in BC expressed their impatience to take on more fiscal power and jurisdictional responsibilities, while noting that much work remains to be done on outstanding challenges, as discussed above.

Lack of support for the MOU on a new fiscal relationship: Alberta Chiefs rejected the MOU process entered by AFN National Chief Perry Bellegarde in July 2016 to establish a new fiscal relationship between First Nations and the Crown. Alberta participants from Treaties 6, 7 and 8 felt that the AFN had overstepped its authority by signing this MOU.

An absence of trust in INAC was also noted by many at the Alberta engagement session, along with a concern that this engagement process was insufficiently focused on the treaty-based aspect of the relationship between First Nations and the Crown. Participants indicated that First Nations should have been notified before INAC was divided into two departments, and they identified other issues that required resolution before a new fiscal relationship could be established:

- the Natural Resources Transfer Agreement (NRTA);
- the payer of last resort with regard to health care;
- First Nation membership issues;
- the Administrative Reform Agreement (Arrangement for the Funding and Administration of Social Services)

Participants took issue with the wording in the presentation from INAC and the AFN which indicated that one of the challenges facing First Nations is a “dependency on transfers.” Funding was owed to First Nations, and

language around “dependency” promoted a misunderstanding of the relationship between First Nations and the Crown. In reality, provinces are dependent on the revenues they received from First Nation resources and lands.

Government of the Northwest Territories: Participants at the engagement session held in Yellowknife were particularly concerned about the fiscal situation of First Nations in the Northwest Territories. There, the territorial government is provided with the funds for First Nation needs from the federal government including health, education and housing, among others. The territorial government does not publicize how much money it received for these purposes. Participants wanted this funding to instead flow to First Nations directly, who would also decide how it was spent. This is a long-running issue that participants acknowledged would require political will to remedy, or, potentially, legal action.

A separate but related issue pertained specifically to housing. According to participants, there are large numbers of houses built for First Nations sitting empty because First Nation individuals cannot afford to purchase them or do not qualify for subsidized housing under rules established by the territorial government. These houses provoke frustration from community members who are often living in over-crowded conditions, and they often become vandalized.

Economic growth and business development: Participants in the Atlantic region were particularly enthusiastic about INAC “taking off the hand-cuffs” of First Nations, reducing red-tape and encouraging investment. One of the keys to this strategy would be allowing First Nations to access reserve land more easily. First Nations contribute billions of dollars to the Canadian economy, contrary to popular conception of First Nations as beneficiaries of government “hand-outs”, and allowing them to access land would spur growth.

Next Steps and Conclusion

It is expected that this engagement process would result in refined options related to predictability, sufficiency, and mutual accountability to be presented in a full report to the National Chief and the Minister of Crown-Indigenous Relations and Northern Affairs in December 2017.