

# SELF-GOVERNMENT AND FISCAL RELATIONS

## FUNDAMENTAL CHANGES IN THE RELATIONSHIP

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Update on Self-Government Negotiations  
and Fiscal Developments

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## Synopsis

In 1995, the Government of Canada recognized the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. Recognition is based on the view that Aboriginal people have the right to govern themselves in relation to matters that are internal to their communities and their unique cultures, and with respect to their special relationship to their land and their resources. This paper provides an overview on self-government negotiations and fiscal relations across Canada and the evolving approach to implementing self-government.

Experience across Canada shows that negotiations do provide a way forward. Implementing self-government extends beyond reconciling jurisdictions of Aboriginal and other governments. Negotiations must also address Aboriginal governments' structural and capacity challenges, new fiscal relationships and program delivery capacities, and do so within the framework of the Constitution. The key challenges in this process include: the participation of provinces and territories; limited public knowledge of self-government; the varying capacity of groups to take on self-governing functions; building financial institutions; the sustainability of self-government over time; Canada's need to fulfill its *Indian Act* responsibilities while participating in self-government agreements.

Canada's goal is the development of Aboriginal governments that are stable, legitimate and accountable to their people, that have the power and resources to solve problems locally, and that can provide programs and services comparable to those received by other Canadians. In turn, these governments would provide the foundation for stable, self-reliant communities that can participate in the social and economic growth of Canada.

## Preface

This paper has been prepared as a contribution to the Canadian Tax Foundation conference. It provides an overview on the status of self-government negotiations and fiscal relations across Canada and the evolving approach to the implementation of self-government.

In 1995, the Government of Canada recognized the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.

At the same time, the federal government set out its approach to the implementation of the inherent right and the negotiation of Aboriginal self-government. The Federal Policy Guide (Federal Policy Guide. Aboriginal Self-Government : The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, 1995) strongly advocates negotiation over litigation as the way forward. It sets out Canada's view in the following terms:

*The Government acknowledges that the inherent right of self-government may be enforceable through the courts and that there are different views about the nature, scope and content of the inherent right. However, litigation over the inherent right would be lengthy, costly and would tend to foster conflict. In any case, the courts are likely to provide general guidance to the parties involved, leaving it to them to work out detailed arrangements.*

*For these reasons, the Government of Canada is convinced that litigation should be a last resort. Negotiations among governments and Aboriginal peoples are clearly preferable as the most practical and effective way to implement the inherent right of self-government. (Federal Policy Guide. Aboriginal Self- Government : The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, 1995 : 3 )*

Experience in self-government negotiation processes across Canada over the past five years is showing that negotiations do provide a way forward. The recent Nisga'a treaty has demonstrated that self-government arrangements can be successfully negotiated.

In Yukon, work with First Nations is focussing on the capacity and programming challenges of implementing self-government agreements. More lessons about what self-government can look like and how it can be implemented are being learned on a daily basis in negotiations currently in progress across the country.

In these processes we have learned that the challenge of implementing self-government extends far beyond the legal techniques for reconciling jurisdictions or powers of Aboriginal, federal and provincial and territorial governments. Self-government negotiations must address not only the legal status and foundation of Aboriginal governments, but also their structural and capacity challenges, new fiscal relationships and program delivery capacities. Negotiations must also address mechanisms for managing these new, ongoing government to government relationships within the framework of the Canadian Constitution.

Studies around the world show that effective governance is a key factor in social and economic growth. Building understanding among the general public and the legal, financial and academic communities on the objectives of self-government and the accompanying challenges and opportunities is critical to success. It is hoped that this paper will contribute to that understanding by identifying the range of issues that are being addressed in self-government negotiations across the country. Without altering the federal policy, it also attempts to reflect evolving approaches and thinking on self-government.

## I Introduction

Aboriginal self-government is not a new concept. But, the recent generation of negotiations that result in agreements such as the Nisga'a treaty in British Columbia are ground breaking. And we continue to learn more as we go.

Self-government recognizes Aboriginal governments and their authority to make decisions over issues which are internal and integral to their people and communities. It is about the ability of Aboriginal people to determine and control their internal governance structures and systems. It is also about a new relationship between Aboriginal governments and federal, provincial and territorial governments.

The nature of the challenges we face in implementing self-government have been highlighted in the Report of the Royal Commission on Aboriginal People (RCAP) and in *Gathering Strength : Canada's Aboriginal Action Plan*. Self-government requires that Aboriginal people and Canadian society address the historic legacy of assimilationist policies and *Indian Act* administration that have dismantled traditional governance systems, disaggregated First Nations, and marginalized Aboriginal peoples socially and economically. At the same time, we face the challenge of implementing self-government in ways that can address the social and demographic needs of an Aboriginal population that is growing at twice the national average, that is significantly younger than the general population and that falls markedly below the national average on most social and economic indicators.

Studies in the United States and around the globe show that effective governance is the basis for sustained social and economic development. How Aboriginal communities structure their governments and are able to address their capacity to function effectively, will ultimately determine the success of self-government.

As a result, Aboriginal people are facing the challenge of rethinking and rebuilding their internal government structures as they negotiate self-government. This involves the transformation of Indian Act band councils, and Aboriginal community governments, tribal councils and political organizations into effective, accountable governments with the ability to assume jurisdiction, and the capacity to deliver programs and services to their citizens. In this regard, a significant number of the self-government processes under way are addressing issues of aggregation, rebuilding of nations or the creation of new levels of Aboriginal government.

Self-government also entails a fundamental restructuring of how Aboriginal people, federal, provincial and territorial governments relate to one another. Self-government agreements are not simply about providing a negotiated alternative to litigation over Aboriginal rights. Rather, they establish new government-to-government relationships within the framework of the Canadian Constitution.

Building new relationships through self-government agreements provides a means for Aboriginal governments to assume control over matters internal and integral to their communities and culture. Additionally, they provide a means for Aboriginal governments to participate in the social and economic life of the country in a manner which preserves cultural identity and integrity, while promoting harmonization with neighbouring communities.

Understandably, the negotiation of self-government arrangements is neither an easy nor quick process. It involves fundamental changes in attitude, by all parties involved. It alters existing relationships of dependency and control that are deeply entrenched. The fact that there is limited public understanding of self-government and its underlying objectives also presents a major challenge.

Given this context, this paper is intended to provide, from the perspective of the federal government:

- an update on the status of self-government negotiations across the country;
- an overview of the evolution of federal self-government policy;
- an outline of new policy directions in the negotiation of Aboriginal self-government and the establishment of new government-to-government relationships.

## **II Self-Government Negotiations Across the Country**

There is no single model for implementing self-government. Negotiation processes have had to adapt to the differing objectives, perspectives and situations of Aboriginal peoples, and the varying positions of provincial and territorial governments. As a result, while agreements have many common elements, they differ in terms of the specific needs they are designed to meet, as well as Aboriginal priorities for self-government jurisdiction.

The vast majority of First Nations and Inuit communities in Canada are involved in a self-government process in some way. A number of processes involve individual First Nations or Aboriginal communities. However, almost half of the processes involve groupings of Aboriginal communities, looking at issues of aggregation and the establishment of regional, tribal or province-wide institutions of government.

In British Columbia, Yukon, the Northwest Territories, parts of Quebec and Labrador, self-government is being negotiated in conjunction with comprehensive land claims. Comprehensive land claims are based on the assertion of continuing Aboriginal title to lands and natural resources.

Canada's land claims policy stipulates that land claims may be negotiated with Aboriginal groups in areas where claims to Aboriginal title have not been addressed by treaty or through other legal means.

In the Atlantic, the Prairie provinces, Ontario and parts of Quebec, self-government is being negotiated in a variety of stand-alone self-government negotiations - some

dealing with a comprehensive range of jurisdictions, others with a single jurisdiction or a limited range of subject matters.

The following brief overview is indicative of the range of negotiations and different approaches underway across the country.

British Columbia	Self-government and Aboriginal land claims are being negotiated on a tripartite basis through the British Columbia treaty process at forty-four tables. A number of tables are with single First Nations, others are with groups. While it is not a template for other agreements in British Columbia, the recent Nisga'a agreement demonstrates that it is possible to negotiate a treaty encompassing both self-government and land claims.
Yukon	Self-government negotiations in Yukon predate the federal inherent right policy and are based on a non-treaty self-government model. Seven self-government agreements have been concluded, while an additional seven are still under negotiation. Negotiations are tripartite and are conducted according to the Umbrella Final Agreement which provides a framework for individual self-government agreements. Lessons are being learned in the Yukon about the challenge of implementing agreements, including ongoing Program and Service Transfer Agreements and continued negotiations on jurisdictional areas involving taxation and administration of justice.
Northwest Territories	Self-government is being negotiated through processes that look at the relationship between evolving public government structures and new Aboriginal government structures. In some cases, self-government is being negotiated as part of land claims negotiations. In other cases, claims settlements are already completed. Each of the tables is negotiating structures that suit their respective communities. Negotiations are tripartite.
Alberta	The Blood Tribe, Canada and Alberta are engaged in negotiating a sectoral self-government agreement on the exercise of jurisdiction over child welfare on reserve. Discussions are also beginning with Treaty 8 First Nations in Northern Alberta through a process established to look at governance, jurisdiction and treaty-related issues.
Saskatchewan	Self-government and a new fiscal relationship are being explored on a province-wide basis via the Common Table



process, established in 1996 by the Federation of Saskatchewan Indian Nations, Canada and Saskatchewan. Two tables have been established (Governance and Fiscal). In their exploratory phase, the parties examined issues related to principles of governance, intergovernmental relationships and potential governance models and fiscal issues such as comparability of programs and services, sources of revenue and accountability. On May 27, 2000, the parties signed a Framework Agreement to guide them in governance and fiscal negotiations. They have agreed to focus initially on sectoral agreements on education and child and family services, and Umbrella Governance and Fiscal-Agreements-in-Principle. The Common Table process is also being informed by work at the Exploratory Treaty table which is examining common understandings of the historic treaty relationship. In a separate process, negotiations with the Meadow Lake Tribal Council are yielding a model of self-government for nine First Nations with a comprehensive range of jurisdictions.

#### Manitoba

The Manitoba Framework Agreement was signed in 1994 to look at recognition of First Nations' governments and restoration of First Nations' jurisdiction. This is a large and extensive self-government initiative, involving 62 First Nations and a wide variety of federal and provincial government programs. Extensive research and consultation at the community level has been done by the Assembly of Manitoba Chiefs and Manitoba First Nations. The parties are now attempting to move the process towards formal negotiations to arrive at agreement by 2004, the target date set in the Framework Agreement.

#### Ontario

A number of tables are addressing issues of implementing self-government on a regional or treaty-wide basis. Bilateral negotiations with the United Anishnabeg Councils are nearing a Final Agreement on a self-government arrangement involving eight First Nations. The Nishnawbe-Aski Nation (representing forty-six First Nations) and the Anishinabek Nation (involving forty-three First Nations) have focussed on addressing core governance systems as well as jurisdiction in education. The Grand Council of Treaty 3 is developing an approach to nation building.

Within Treaty 3, sectoral negotiations are also proceeding on jurisdiction over education. Akwesasne discussions have centred around a protocol to support the social and

economic development of the community as well as negotiating arrangements to facilitate the exercise of jurisdiction.

Quebec

A variety of negotiations are in progress, including those in a comprehensive claims context with the Atikamekw and Montagnais, and stand-alone self-government negotiations. The Canada/Kahnawake Relations process is producing an innovative legislative approach to implementing self-government through the progressive take-up of jurisdictions. Additionally, the Nunavik Commission is examining a form of public government for Inuit and non-Inuit in Northern Quebec. The Province of Quebec is involved in negotiations in a variety of ways.

Atlantic

Negotiations to date are in the context of comprehensive land claims with the Labrador Inuit Association and the Innu Nation. The Province of Newfoundland and Labrador is a participant. Some developmental work on models of self-government for small First Nations is ongoing with the Miawpukek First Nation in Newfoundland. Additionally, exploratory discussions to look at governance over social programs and services are taking place with the Atlantic Policy Congress, representing thirty-one First Nations in the four Atlantic provinces.

Aside from the negotiations noted above, the Federal Interlocutor for Metis and Non-Status Indians, a federal Minister, has the mandate to enter into self-government negotiations with Metis south of the sixtieth parallel and Indian people who reside off a land base.

These negotiations must necessarily involve the provincial governments concerned, consistent with the position of the Government of Canada that provinces have a primary responsibility for Métis and Aboriginal people living off-reserve.

Approaches for self-government arrangements in these circumstances may include, notably, the development of institutions providing services, advisory mechanisms, and forms of public government. Discussions can be sectoral in nature, and arrangements in a given sector can be implemented while the tripartite process continues on other subject matters.

Currently, tripartite negotiation processes are active in the four western provinces. Specifically:

Manitoba

Manitoba Métis Federation;  
Aboriginal Council of Winnipeg.

Saskatchewan	Métis Nation of Saskatchewan.
Alberta	Métis Nation of Alberta Association; Métis Settlements General Council.
British Columbia	Aboriginal Peoples Council (comprising the United Native Nations and the British Columbia Association of Friendship Centres); Métis Provincial Council of British Columbia.

Some forms of tripartite discussions are also taking place in the Atlantic provinces. While some processes had been developed in Nova Scotia, New Brunswick and Prince Edward Island, these approaches are being revisited.

The Office of the Federal Interlocutor for Métis and Non-Status Indians has concluded multi year funding agreements for bilateral processes and tripartite negotiations with the Métis Nation of Saskatchewan, the Manitoba Métis Federation, the Congress of Aboriginal Peoples and the Aboriginal Council of Winnipeg. Similar agreements are in the works and will be concluding with other recipients.

Federal departments have pursued their efforts toward restraining their reporting requirements, in order to lessen the administrative burden faced by Métis and off-reserve Aboriginal groups.

What is clear from this cross-country journey is that self-government is not about prescriptive models. Rather, it is about exploring the possibilities available in building a new relationship, developing approaches that are meaningful from a practical political, legal and cultural perspective, and determining how all the parties will work together in making that relationship function over time.

### **III Evolution of Federal Aboriginal Self-Government Policy**

Before talking further about some of the emerging policy thinking around Aboriginal self-government, it is worthwhile reviewing how federal policy approaches to self-government have evolved over time.

#### **A. Penner Report - 1983**

In 1982, the Standing Committee on Indian Affairs and Northern Development sought authority from Parliament to “...examine the government of Canada’s total financial and other relationships” with Indian people (Report of the Special Committee on Indian Self-Government, 1983:3). Pursuant to this authority, a Sub-committee on Indian Self-Government was appointed and then upgraded to a Special Committee by the House of Commons on December 22, 1982. The Special Committee submitted its report, commonly referred to as the “Penner Report”, in 1983.

The Penner Report drew a direct connection between the creation of a new relationship between the Crown and First Nations, Aboriginal self-government and the improvement of the social and economic well-being of Aboriginal people. Specifically, the Report said:

*A new relationship would be beneficial to Canada; it would eliminate the tensions, the inefficient use of funds and the unacceptable social conditions that keep Indian peoples from contributing to the country's progress. In a democratic age, it is incongruous to maintain any people in a state of dependency. ... Indian people would likewise benefit from a new approach. Ending dependency would stimulate self-confidence and social regeneration. Instead of the constant and debilitating struggle now faced by band councils, which are expected to administer policies and programs administered by the Department of Indian Affairs, Indian First Nation governments would get on with the business of their own governmental affairs.*

*Self-government would also simplify the political position of Indian leaders, who are caught between the demands of their electorate and those of the federal government, which funds their programs.*

(Report of the Special Committee on Indian Self-Government, 1983: 41).

To achieve this new relationship, the Report recommended a two-track approach to self-government. First, it recommended that “...*the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada,*” (Report of the Special Committee on Indian Self-Government, 1983: 44), and second, while recognizing that “...*the surest way to lasting change is through constitutional amendments, it* (i.e., the Committee) *encourages both the federal government and Indian First Nations to pursue all processes leading to the implementation of self-government, including the bilateral process.*” (Report of the Special Committee on Indian Self-Government, 1983: 46).

#### *A. Community-Based Self-Government - 1985*

Partly as a response to the Penner Report, the federal government announced its community-based self-government (CBSG) policy in 1985. The policy had the overall objective of creating a new relationship between the Crown and Aboriginal people outside of the *Indian Act* through the negotiation of self-government arrangements with First Nations.

Implementation of agreements would be through self-government legislation which would delegate a range of jurisdictions to individual First Nations on reserve and replace the *Indian Act*. It would also provide legal capacity to bands and provide for new First Nation constitutions.

While there was a high participation rate by First Nations in CBSG negotiations, agreements were few. A number of variables contributed to the lack of success. Politically, the policy was unacceptable to most First Nations because the jurisdiction was to be delegated rather than premised on the inherent right of self-government. In addition, the policy provoked concerns of federal “off-loading”. Often, the objective was perceived as transferring jurisdiction and responsibility to First Nations without addressing capacity building and financial arrangements that would build sustainable First Nation governments that could meet the needs of First Nation citizens.

#### B. *The Charlottetown Accord - 1992*

In parallel to CBSG negotiations, a process aimed at constitutional recognition of the Aboriginal right of self-government proceeded at the First Ministers level. It ended in 1992 with the failure of the Charlottetown Accord which contemplated a constitutional amendment to recognize that the Aboriginal peoples of Canada have an inherent right of self-government. The draft Accord further proposed that the recognition of the inherent right should be interpreted to recognize Aboriginal governments as one of three orders of government in Canada, paving the way for the negotiation of a set of Aboriginal governance authorities whose source would have been the inherent right.

### **IV Inherent Right Policy - 1995**

It was against this backdrop that the inherent right policy was adopted by the federal government in 1995. Its underlying objectives are to build a new partnership with Aboriginal peoples and to strengthen Aboriginal communities by enabling them to govern themselves.

But it represented a major step forward with the federal government’s general recognition of the right of self-government as an existing Aboriginal right within the meaning of section 35 of the *Constitution Act, 1982*.

The inherent right policy is characterized by a number of elements. In addition to recognizing the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*, it:

- proposes that legal and constitutional debates be set aside to focus on negotiation of practical self-government arrangements within the Canadian constitutional framework;
- provides for application of the Canadian Charter of Rights and Freedoms and laws of overriding national importance;
- requires agreement among Aboriginal governments and federal, provincial, and territorial governments on the relationship of their laws and the rules for resolving conflict to provide clarity for all the parties

- provides for constitutional protection of aspects of self-government agreements, where the Aboriginal group, federal and provincial/territorial governments agree.

The negotiation of self-government does not lead to the exclusion of federal and provincial or territorial laws. Rather, federal, provincial, territorial and Aboriginal laws apply concurrently.

Negotiated rules of priority may provide for the paramountcy of Aboriginal laws in many cases although federal and provincial or territorial laws of overriding national or provincial/territorial importance will prevail over conflicting Aboriginal laws.

The implementation of self-government is not expected to be uniform. Arrangements are to be designed to meet the unique needs of Aboriginal groups, as well as respond to their specific situations from a political, legal, financial, historical, cultural and social standpoint. Likewise, self-government can be given effect through a variety of different means, including treaties, legislation, contracts and non-binding memoranda of understanding.

There is a strong federal preference that self-government agreements be tripartite. The federal policy envisions a provincial or territorial role in self-government to provide a secure legal basis for arrangements, ensure harmonious jurisdictional relationships, and provide stability within the Canadian constitutional context. Federal policy requires that provinces are party to arrangements affecting their jurisdictions or that create modern treaty rights within their borders. The policy does allow for the negotiation of bilateral self-government arrangements in areas of federal jurisdiction only, although the province is consulted and its views and support are sought.

## **V Emerging Policy Context**

In the five-year period since the inherent right policy was announced, federal approaches to negotiating and implementing self-government have evolved in response to a number of factors including, the recommendations of the Royal Commission on Aboriginal Peoples (RCAP), the implementation of *Gathering Strength: Canada's Aboriginal Action Plan*, experience obtained at negotiating tables across the country, and pressure in Aboriginal communities for improved governance and accountability.

### *C. Royal Commission on Aboriginal Peoples*

In its 1997 report, RCAP called for a new relationship between the Crown and Aboriginal peoples based on the principles of mutual respect, mutual recognition, mutual responsibility and sharing. While RCAP called on government to recognize the right of Aboriginal people to self-determination and the inherent right of self-government, it suggested that these rights rested at the level of Aboriginal nations, noting that the exercise of jurisdictions by local communities may not always lead to effective or sustainable governments in the long term. It further called attention to the legacy of the disaggregation of nations, inadequate governance capacity and

dependency fostered by over 100 years of *Indian Act* administration. Finally, it noted the social and economic challenges facing First Nations and the challenge of rebuilding nations and governments with power, legitimacy, resources and capacity to deliver adequate programs and services to their members.

These recommendations have influenced the federal approach, to look beyond the jurisdictional components of self-government to the challenges of building strong, legitimate Aboriginal governments with the capacities and resources required for meaningful self-government.

#### D. *Gathering Strength*

*Gathering Strength*, the federal government's response to the RCAP report, was announced in January 1998. It identified four themes for changing the Crown/Aboriginal relationship, consistent with the recommendations of RCAP:

- renewing the partnership;
- strengthening Aboriginal governance;
- developing new fiscal relationships;
- supporting strong communities, people and economies.

To strengthen Aboriginal governance, the federal government supports the concept of self-government being exercised by larger groupings of Aboriginal peoples and is helping to foster moves in that direction. We now include a focus on capacity building in the negotiation and implementation of self-government.

Amongst other things, the federal government is helping to establish governance resource centres, promote capacity development in the areas of administrative and financial management, ensure the involvement of Aboriginal women in self-government processes, and professional development in financial, land and resource management.

Similarly, the federal government is working with Aboriginal leaders to develop new fiscal relationships which provide for more stable and predictable financing, better information systems, improved accountability, and the internal generation of own-source revenues. New transfer arrangements aim at ensuring that programs and services provided by Aboriginal governments are reasonably comparable to those provided in non-Aboriginal communities.

*Gathering Strength* situates self-government negotiations as part of a broader range of efforts to build new relationships with Aboriginal people. It recognizes that the historical experiences of Aboriginal people has left major governance challenges, and that a sustained commitment is required to support the re-building of strong and effective Aboriginal governments. While *Gathering Strength* does not change the basic parameters of the inherent right policy, it has had a significant impact on the federal government's approach to negotiations.

Efforts to strengthen Aboriginal governance and build new fiscal relationships are seen as critical to building stronger, healthier communities which can participate, contribute to and share in the economic growth of Canada.

#### E. *Experience and Application at Negotiation Tables*

Prior to *Gathering Strength*, the federal approach to self-government negotiations was heavily modelled on the experience of CBSG negotiations: the achievement of a legal, jurisdictional framework to replace the *Indian Act*.

Since the launch of *Gathering Strength*, self-government agreements are now seen as one step in a continuum of activities required to strengthen Aboriginal governance, build new fiscal relationships, and, as a result, improve the lives of Aboriginal peoples and their communities.

At one end of the continuum are those communities that operate under the *Indian Act* with no delegated authorities or responsibilities for service delivery. At the other end, are Aboriginal governments exercising a full range of self-government powers and delivering a complete slate of programs and services to their citizens. All Aboriginal groups in Canada fall somewhere between these two ends of the continuum and vary in terms of their needs and capacities as well their governance aspirations and objectives. There is no right or wrong place to be. While many will choose to exercise full self-government powers as their ultimate objective, others may choose alternative or more incremental governance options.

Capacity building is no longer seen as a post-agreement implementation activity but as a range of investments to strengthen governance during the negotiation and implementation of self-government. Additionally, this includes investing in strengthening governance systems and capacity building for Aboriginal communities for which self-government agreements may be some time off.

Likewise, the focus of negotiation has broadened from jurisdictional recognition to the more holistic challenge of setting a framework for new, ongoing and evolving government-to-government relationships, focussing on five key, interacting components:

- |                  |  |
|------------------|--|
| Core governance: | What is the nature of the Aboriginal government Canada is entering into a relationship with? Who does it represent and govern? How is it constituted? Who in it has authority to manage intergovernmental affairs with Canada? |
| Jurisdiction:    | What law-making powers and authorities does the Aboriginal government have? What is the relationship of its laws to federal, provincial and territorial laws?  |



Fiscal:	What types of fiscal relationships will the Aboriginal government have with federal, provincial and territorial governments to address issues such as financial transfer systems, data, comparability of services, accountability, own source revenues, cost-sharing and taxation?
Programming:	What programs and services will the Aboriginal government deliver to its members? What are the linkages to federal, provincial, and territorial programs, services and funding arrangements and standards?
Implementation	What are the one-time and ongoing obligations of the parties for bringing the self-government agreement into effect? What are the mechanisms for managing the ongoing government-to-government relationship?

Overarching these five components, there is a further need to explore bridges between self-government agreements and historic treaties or land claims agreements. The federal government does not propose to re-open, change or displace existing treaties through the negotiation of self-government agreements. Rather, new self-government agreements with Treaty First Nations can build on and be harmonized with the relationship established by the treaties and they can receive constitutional protection where the parties agree. Further work is needed to find mutually agreeable ways of accomplishing this.

In essence, this approach is reflective of a more pragmatic and developmental approach: the focus cannot simply be on jurisdiction without addressing in some way the other fundamentals of effective governance. There is a need to ensure that governance structures and systems will be in place to sustain a government-to-government relationship and, more importantly, that they have the capacity to work.

The importance of good governance to social and economic development cannot be underestimated. Research has consistently found that secure powers of government, combined with capable institutions of management and administration are indispensable keys to successful long-term development. These linkages have yet to be tested thoroughly in the context of Aboriginal self-government in Canada; they are nonetheless instructive.

In keeping with the trends in research, there has recently been a much stronger federal focus, through *Gathering Strength*, on investing in governance capacity in a number of interrelated areas, by:

- Advancing self-government negotiations to produce workable models of self-government:
  - in comprehensive claims agreements, such as the Nisga'a Treaty;
  - in stand-alone self-government agreements, both comprehensive and sectoral;

- in fostering broad framework or nation building approaches, such as in the Saskatchewan Common Table process, and with the Grand Council of Treaty 3.
- Encouraging other related institutional development to ensure that appropriate systems are in place to support Aboriginal governments and promote information sharing and best practices, including, for example, a governance transition centre.
- Demystifying “federal/provincial/municipal” governance regimes through benchmarking and modelling and projects to assist First Nations in realizing modern comparable governance regimes which are sensitive to culture and situation, for example, in Alberta where work is proceeding on financial, access-to-information and privacy regimes.
- Undertaking program reform initiatives which build governance capacity. For example, the overall objective of the Income Security Reform Initiative is to transform the on-reserve welfare regime from passive income support to an active, case-managed system of integrated programming which promotes self-sufficiency. Under this initiative, First Nations, through demonstration projects, can develop and test innovative responses to local needs as well as build capacity to implement and manage a reformed income security system.
- A significant investment of effort to develop a new fiscal relationship, including the fostering of greater accountability (see following section).

#### *F. Developing a New Fiscal Relationship*

We are working with our Aboriginal partners to create and support more stable, transparent fiscal models and strong accountability processes that will strengthen the operations of Aboriginal governments – including enabling self-reliant Aboriginal governments to benefit from opportunities such as taxation and other revenue generation. We know that economic development and self-sufficiency go hand in hand; recognizing this potential means that we are truly investing in the future.

#### *Strengthening Fiscal Accountability*

Fiscal accountability programs include developing the fiscal mechanisms that promote accountability (such as improved accounting and auditing standards, and strengthened accountability frameworks for governance and program delivery) and building professional capacity in the area of administrative, financial and fiscal management in Aboriginal governments and institutions. They also help reconnect First Nations members with their own governments by recognizing federal transfers as community resources that give more emphasis to informing community members while still satisfying the reporting needs of funding agencies.

*Fiscal Mechanisms* – First Nations are conducting standardized *Community Accountability and Management Assessments* in order to identify areas requiring capacity building. As of January 2000, 97% of the community assessments across the country were complete, and work is proceeding in accordance with management development plans.

*Regional Accountability Workshops* – First Nations across most regions organized a new type of workshop to explore ways and means to update their accountability regimes based upon principles common to governments in Canada but equally respectful of their culture and appropriate to their situation. These workshops clear the air around accountability issues, including improving follow-up on complaints of members, and allow for discussing difficult and sensitive issues such as the separation of political and administrative functions in a small local government setting.

*Canada/First Nations Funding Agreement* – This national model agreement has been completed, and will be implemented with First Nations that have the capacity and willingness to manage under this agreement. This multi-year agreement clarifies the accountability relationship between the parties, and offers a funding mechanism through which other government departments, in addition to DIAND, can flow funds to First Nations.

*Benchmarks and Modelling* – A major research study was commissioned to identify the key components of the federal and provincial financial systems, in order to develop a First Nations financial code which will be recognized as comparable to other governments. Four demonstration projects were launched in the Alberta region to test the model. Similar projects were launched on access to information and privacy, and on codes of ethics and conflict of interest.

*Other Working Tools* – encompass special projects focussing on opportunities for change, such as learning to exploit technology. One example from 1999-2000 is an automated First Nations Fiscal Planning Calendar, in which generic planning, budgeting and accountability cycles are set out on a wall chart, and accompanied by an interactive CD-ROM reference.

*Capacity Building Through Professional Training* – We are investing in professional development and an Aboriginal public service, for example, through work with the Aboriginal Financial Officers Association (AFOA) and professional development opportunities in land and resource management. The AFOA was incorporated in July 1999 to increase professional development opportunities for First Nations people and professional support for First Nations governments. The AFOA held its first annual conference in February 2000 which attracted 300 delegates from across Canada.

This conference was also the occasion of awarding the first Certified Aboriginal Financial Manager (CAFM) designations, a valuable hiring standard for First Nations and a measure of capacity for funding agencies and financial institutions.

*Auditor General* – We have worked with the Auditor General to replace a past federal “command and control” orientation with the reciprocal accountability of partnership arrangements, while recognizing that Ministerial accountability to Parliament remains in this more “hands off” environment;

*Accounting and Reporting Standards* – The Assembly of First Nations/Certified General Accountants Association of Canada Accountability Project released its second draft of *A Guide to First Nations Accounting and Report Standards*, which will soon be followed by its best practices manual. The two manuals will help First Nations strengthen their annual financial statements and better present financial information to their members.

### *New Fiscal Arrangements Support Community Development*

The development and adoption of new fiscal arrangements will support Aboriginal governments as they move towards increased autonomy and self-reliance. In turn, this will allow First Nations peoples to more fully benefit from and participate in the Canadian economy (The reader may also want to refer to the paper on Federal Perspectives on First Nations Taxation.).

Together with the governments of Canada and Saskatchewan, the *Federation of Saskatchewan Indian Nations* has successfully completed exploratory fiscal relations discussions, with topics that include accountability, transfers, the treaty relationship and revenue options, such as taxation and First Nations’ own-source revenues.

As more First Nations move along the self-government continuum towards greater jurisdictional autonomy, there is an equally important move, among First Nations, towards greater economic self-sufficiency. The goal of creating First Nation-controlled national institutions is to support this drive towards greater financial independence. This is achieved by supporting revenue generation, through taxation and other means, and by clarifying policies, roles, and responsibilities.

Canada and the Assembly of First Nations have signed a Memorandum of Understanding establishing a *National Table on Fiscal Relations* (NTFR), through which the parties will work together to share information, establish national First Nations fiscal institutions and develop models of government-to-government transfer systems. This will not only strengthen the First Nations’ capacity for good governance through information development and sharing, and better financial management and accountability; it will also use new technologies to share best practices and work to secure more stable revenues so that First Nations can provide better services and infrastructure to their communities.

National fiscal institutions will provide First Nations with an important arm's length relationship, free from political interference, while at the same time supportive and sensitive to First Nations needs and aspirations. The development of national institutions through the NTFR will also give the federal government and First Nations an opportunity to clarify roles and responsibilities through a clearly articulated legal and policy framework. Clear and understandable standards and policies in the areas of statistics and information development, taxation, borrowing, and financial management will facilitate the work of First Nations to strengthen accountability as well as increasing investor confidence. While just one part of strengthening the fiscal relationship, the creation of national fiscal institutions is a positive, concrete step forward towards increased economic independence through information sharing, revenue generation and strengthened accountability.

## **VI Conclusion**

The foregoing has provided an overview of how self-government negotiations have been unfolding over the past five years and how experience at tables has had an impact on the federal approach to implementing self-government.

While lessons are being learned and agreements such as Nisga'a are being achieved, numerous challenges remain, both for bringing agreements to completion and in building understanding and support for the process. This includes:

- Provinces and territories, while generally supportive of the concept of self-government, have varying views on the degree to which they wish to participate in its negotiation and implementation.
- Public education on self-government has been limited, resulting in a lack of knowledge of self-government in both Aboriginal and non-Aboriginal communities. This can result in resistance to change and greater difficulty in bringing some agreements to conclusion. Public education efforts underway are beginning to result in improved understanding but informing and enhancing the public's knowledge is not a short-term activity.
- The capacity of Aboriginal groups to take on self-governing functions varies widely throughout the country, requiring that work be undertaken to develop capacity during the negotiations process to ensure that agreements can be successfully implemented when they come into effect.
- There are questions about the sustainability of self-government, requiring a more thorough exploration of the concept of nation building, and the development of structures of government which are large enough to exercise self-government powers.

- The federal government, as an organization, needs to consider how it operates in order to continue to fulfill its *Indian Act* responsibilities while at the same time, planning for and participating in new self-government relationships.

The overview of experience and application at negotiation tables indicates that the federal government is not acting alone, but is simply one of a number of partners in developing self-government. Aboriginal groups and communities have been at the forefront in initiating a more pragmatic approach and are taking ownership of initiatives related to re-building and reinstating their governance systems, in partnership with other key players such as provinces, territories, the private sector, and professional associations, among others.

Working with Aboriginal people and other governments in Canada, we continue to find a way forward. In many respects, we are in the early stages of evolution and are still coming to terms with very significant issues. Self-government, and indeed governance generally, is not a static concept and is not formulated in a vacuum. Our understanding continues to grow and evolve as negotiations, capacity activities and on-the-ground experience provide further shape and new possibilities.

Our goal is the development of Aboriginal governments that are stable, legitimate and accountable to their people and that have the power and resources to solve problems locally and provides programs and services comparable to those received by other Canadians. In turn, these governments would provide the foundation for stable, self-reliant communities that can participate in the social and economic growth of Canada by enabling First Nations to attract support, investment and partnership to promote economic development and improve social conditions.

## **Suggested Readings**

Cornell, Stephen and Joseph P. Kalt, eds. *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles: American Indian Studies Center, UCLA, 1992).

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