



Delivering Fairness, Stability and Results:
**Transforming Fiscal and Accountability relationships
between First Nation Governments and the
Government of Canada**

DISCUSSION PAPER

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Transforming the Fiscal Relationship

Introduction

First Nation governments have long advocated for a transformed fiscal relationship with the Federal Government to respect First Nation rights and appropriately align responsibilities.

As the global economy continues to show weakness and volatility, Canada must take all measures domestically to enhance its own stability and address underlying vulnerabilities. A commitment to enhance stability and security for the most vulnerable regions of Canada is directly tied to enhancing Canada's competitiveness and job creation especially in critical resource sectors.

The sustainability and equitability of funding levels have a significant impact on the ability of First Nation governments to provide adequate services to their citizens. First Nation citizens face some of the most difficult social and economic problems in Canada and as a result First Nation governments often have a more difficult task than other governments delivering adequate services.

Current funding arrangements for basic services for First Nations citizens are subject to annual allocations, changing program parameters and reporting obligations as well as unilateral realignment, reductions and adjustments.

A sustainable funding base is essential to create the conditions necessary for First Nations to develop economically, thereby ending the cycle of poverty and unacceptable conditions that currently face First Nations across Canada.

Leveling the Field

Most Canadians rely upon fundamental programs and services for their health, education and social assistance needs. The Federal Government, recognizing the need for fiscal stability within provincial and federal governments, has consistently supported annual rates of growth that reflect both demographic and inflationary pressures guaranteeing a consistent level of basic service.

The Federal Government provides funding to provincial and territorial governments for such core services through the following transfers:

1. *Canada Health Transfer (CHT)*

The CHT is the largest major transfer and provides long-term and predictable funding for health care. CHT transfer payments are set in legislation to grow by 6% annually through an automatic escalator.

2. *Canada Social Transfer (CST)*

The CST is a federal block transfer in support of post-secondary education, social assistance and social services, early learning and childcare. CST payments are set in legislation to grow by 3% annually through an automatic escalator.

3. *Territorial Formula Financing (TFF)*

The TFF is the largest federal transfer to the three territorial governments and supports the funding of essential public services in the North, such as hospitals, schools, infrastructure and social services. The transfer is designed to recognize the high costs of providing public services to a large number of small and isolated communities. For example, in 2010-11 the per-capital transfers for the three territories were: NWT (\$21,285); Nunavut (\$33,281) and Yukon (\$19,232).

4. *Equalization*

Equalization is the transfer program that addresses the fiscal disparities among provinces, enabling less prosperous ('have-not') provinces to provide their residences with public services comparable to those in other provinces. Equalization payments have been increasing at a stable rate of at least 3.5% annually.

In comparison, First Nation governments must manage many of these same core services on the basis of discretionary program funding that has no legal protections.

Since 1996, Finance Canada has maintained an arbitrary 2% cap on spending increases for core services, which is one-third of the legislated 6% increase that most Canadians will enjoy through the CHT.

In fact, when adjusted for inflation and the rapid population growth of First Nations communities since 1996, the total budget for the Department of Indian and Northern Affairs Canada (INAC) has actually decreased by 3.5% and funding for core services such as education, economic and social development, capital facilities and maintenance has decreased by almost 13% since 1999-2000.¹

¹Financial data are from INAC 2009 Departmental Performance Reports and TBS Main Estimates. Population data are from INAC Registered Indian data, both on and off-reserve.

Growing Support for a New Fiscal Relationship

In June, 2006, the President of the Treasury Board, the Honourable John Baird, commissioned an independent blue ribbon panel “to recommend measures to make the delivery of grant and contribution programs more efficient while ensuring greater accountability.” In December 2006, the **Report of the Independent Blue Ribbon Panel on Grants and Contribution Programs** tabled specific observations and recommendations related to First Nations:

Payments to First Nations governments are (or ought to be) more like intergovernmental transfers than typical grants and contributions. ... mechanisms other than grants or contributions for the funding of essential services such as health, education and social assistance in reserve communities are needed... .²

Successful management of First Nations programs requires: sustained attention; coordination of government programs; meaningful consultation with First Nations; development of First Nations capacity; establishment of First Nations institutions; development of an appropriate legislative base for programs; and consideration of the conflicting roles of Indian and Northern Affairs Canada.³

In response, INAC conducted a review of Indian Government Support Programs. The Assembly of First Nations (AFN) proposed to embark on a joint examination of the full range of issues affecting First Nation governance and accountability. Specifically, AFN advocated for a review of INAC’s grants and contributions programs including intervention and transfer payment policies, with reference to the work of the report of the Independent Blue Ribbon Panel. The AFN specifically stated an overall objective of combining efforts to lead toward enhanced mutual accountability for the results of program spending and support development toward increased First Nation responsibility and control.

INAC’s new Policy on Transfer Payments and associated Directive on Transfer Payments to Aboriginal Recipients came into effect on October 1, 2008. This new Policy appears to have created greater flexibility and as such may be a modest improvement. It would be helpful and instructive to assess how many First Nations are able to currently take advantage of any increased flexibility and to determine correspondent outcomes. Still, however, this new Policy does not respond to the overall recommendations of the Panel to advance more stable, intergovernmental-type arrangements.

²The Report of the Independent Blue Ribbon Panel on Grants and Contribution Programs Report. “*From Red Tape to Clear Results*”. 2006. Treasury Board Secretariat <http://dsp-psd.pwgsc.gc.ca/Collection/BT22-109-2007E.pdf> p. 8.

³Ibid., p. 61.

Furthermore, recent reports indicate persistent challenges. The **Auditor General's 2011 Status Report** tabled on June 9, 2011 examined the progress of previous recommendations issued between 2002 and 2008, focused on Programs for First Nations on Reserves, specifically in the areas of education, water quality, housing, child and family services, land claim agreements, and reporting requirements.

The report concludes that while some efforts have been made to address recommendations of previous reports, conditions have generally not improved for First Nations in each of the areas examined—and in some cases have gotten worse.

The education gap between First Nations living on reserves and the general Canadian population has widened, the shortage of adequate housing on reserves has increased, comparability of child and family services is not ensured, and the reporting requirements on First Nations remain burdensome.

The report goes on to identify structural impediments to this progress.

In our view, many of the problems facing First Nations go deeper than the existing programs' lack of efficiency and effectiveness. We believe that structural impediments severely limit the delivery of public services to First Nations communities and hinder improvements in living conditions on reserves.

The report further explains four examples of such structural impediments:

- **Lack of clarity about service levels:**
 - The federal government provides services on reserves that are otherwise provided by provincial or municipal governments. While in some cases there is policy commitment to provide these services at a comparable rate to those in other jurisdictions, comparability is poorly defined and rarely outlines the range and level of services to be provided.

- **Lack of a legislative base:**
 - The federal government provides core services and programs to First Nations on a policy and discretionary basis, as opposed to other jurisdictions that have legislation outlining the provision of services and associated responsibilities. This results in vulnerability for First Nations through poorly defined and funded programs.

- **Lack of an appropriate funding mechanism:**
 - The use of contribution agreements to fund core government services and on-going program obligations (such as health care or education) leads to poor stability from year-to-year for planning and program delivery; creates problems in timing of release of funds and its continuity; inhibits accountability to First Nation citizens; and leads to onerous reporting.

- **Lack of organizations to support local service delivery:**
 - First Nations generally do not have access to secondary or tertiary supportive institutions that support service delivery, such as school boards or health management boards or other regional bodies.

The report provides the following final observation:

Addressing these structural impediments will be a challenge. The federal government and First Nations will have to work together and decide how they will deal with numerous obstacles that surely lie ahead. Unless they rise to this challenge, however, living conditions may continue to be poorer on First Nations reserves than elsewhere in Canada for generations to come.

Both Minister Duncan and National Chief Atleo responded to this report agreeing with much of the findings and moreover agreeing with the need to set a new course. Through the **Canada – First Nation Joint Action Plan** (The Plan), Aboriginal Affairs and Northern Development Canada (AANDC) and the Assembly of First Nations have made an expressed commitment to advancing a constructive relationship based on the core principles of mutual understanding, respect, ensuring mutually acceptable outcomes and accountability.

Setting a New Course

The vision of a new Fiscal Relationship put forward by the Royal Commission on Aboriginal Peoples (RCAP) remains relevant and begins by defining First Nations governments as nation-based rather than community-based. To pay for the many services First Nations governments currently deliver, RCAP proposes the development of a tax system transfer approach modeled after Canada's Equalization program. This would specify the relationship between tax revenues and transfer entitlements for all First Nations. However, given that First Nations are often very remote and impoverished, RCAP proposes introducing the element of 'need' in the transfer formula, similar to what is done with the Territorial Formula Financing, described earlier.

Essential to setting a new course is rapidly increasing the fair settlement of First Nation land claims and unlocking the potential of the First Nation economy through streamlined policies and reduced regulation. Resource revenue sharing agreements are needed within traditional territories based on full engagement of First Nations to advance sustainable resource development. All of these measures taken together will serve to dramatically increase jobs and income levels, community development and directly enhance Canada's competitiveness overall. As the world economy continues to be volatile, Canada must take all measures within its control to strengthen and reinforce the Canadian economy. Investing in these measures will return significant dividends and yield increased stability for all Canadians.

Steps forward

Looking forward, it is clear that there is an opportunity to create a broad framework for change.

1. Principles

The very first step may be in establishing mutual principles to achieve the path forward. Considerations should be given to the following:

A new fiscal relationship needs to be based on core principles, that may include:

- **Equity.** Funding commitments to First Nation governments that are at least equal to that provided to provincial and territorial governments.
- **Fairness and Security.** Ensuring that basic services enjoyed by all Canadians are not jeopardized and a standard of care guaranteed
- **Stability.** Long-term, legislated funding transfers that have automatic escalators.

- **Predictability.** The ability to engage in financial planning with confidence regarding future revenues and expenditure obligations.
- **Accountability.** Delivering transparency, effective and appropriate reporting to First Nation citizens, from First Nation governments and to the Government of Canada
- **Authority/Autonomy.** Greater authority to set priorities and determine how the fiscal priorities of First Nation communities are determined.
- **Flexibility.** Fiscal transfers that are flexible enough to enable effective decision making power for First Nation governments.
- **Access to capital:** Increasing First Nations' economic growth will require improved access to capital so that First Nations can build the necessary physical infrastructure and attract business investment.

2. Standards and Capacity Development

Collaboratively developing standards and linking to available mechanisms, as agreed, would enable First Nation governments to attain recognition of their performance and capacity as set out in standards to facilitate stream-lined transfers and reporting.

There may be an opportunity to collaboratively and effectively advance some efforts that are currently underway within AANDC.

The General Assessment (GA) measures recipient risk and is to determine which category or type of agreement First Nations can engage in and on-going reporting requirements. The GA is an extensive test based on five areas:

- Operating Environment (Emergency and Extraordinary Events);
- Governance (Capacity of Council/Board to Transact Business; Management Framework for Program Delivery; Mutual Understanding of Agreement Requirements; Accountability to Service Population);
- Planning (Strategic Plan; Operational Plan and Budget);
- Financial Management (Financial Position; Financial Records and Reporting; Finance Function; Status of (Financial) Remedial Plans); and
- Program Management (Service Delivery; Service Policies and Plans; Staff Capacity)

It will be important to consider this current assessment, something that all First Nations must undergo already, and assess how this can evolve into an appropriate matrix of standards and stream-lined transfers and reporting.

INAC has also developed a "Governance Capacity Planning Tool" to complement the GA.⁴ Furthermore BCAFN has undertaken extensive work to advance governance assessment from a First Nation perspective grounded in the variety of First Nation experience and the range of development considerations facing First Nations.

3. Re-Alignment and improved coordination

In the current context of strategic operational review, there are important considerations.

Aligning programming and services across the Government of Canada to better ensure coordination and efficiencies may be a key part of this effort. Furthermore, it will be important to begin effective dialogue with First Nations on the ways in which changes can positively align with mutual interests. Some principles to guide this discussion may include:

- Community-based services set as a priority and guaranteed at a sustainable rate of growth;
- Redeployment of resources to areas of greatest need;
- Rebuilding plan to refocus and enable investment; and
- Policy change to unlock First Nation economic potential and job creation through removing barriers to investment and growth.

⁴ See: <http://www.ainc-inac.gc.ca/ap/gov/igsp/pid/gn11-eng.asp>

Conclusion

The Assembly of First Nations is continuing its commitment to confirm a process to develop a new fiscal relationship between the Government of Canada and First Nations Governments. Beyond the steps presented here, there are additional factors which require consideration. For certain, the First Nation-Crown relationship requires appropriate and efficient machinery of Government. Looking to the future, it may be that current functions of the Department of Aboriginal Affairs and Northern Development would be transformed to entities upholding this relationship as well as ensuring efficient service delivery.

As outlined in this discussion paper, there is a clear need and a compelling rationale that this transformation is absolutely necessary.

Moving forward, there is an opportunity to build upon and assess existing initiatives in a collaborative and principled process that supports the overall goal of increased First Nation self-determination. A direct outcome may be advancing an optional incentive-based approach which creates the opportunity for greater stability once standards of delivery and accountability have been reached in accordance with First Nation development aspirations.

Such an approach and agreement is needed to create fundamentally new and stable fiscal transfer arrangements

This new relationship will ensure First Nations governments receive the financial support they need to serve their citizens and affirm First Nations governments as national leaders in accountability and successful administration.