

**EXPLORING MACHINERY OPTIONS  
IN SUPPORT OF  
INTERGOVERNMENTAL FISCAL ARRANGEMENTS**

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**Institute on Governance  
122 Clarence St. Ottawa, Ontario  
(613) 562-0090**

## **EXECUTIVE SUMMARY**

### **Objectives and Scope**

The Federation Of Saskatchewan Indian Nations (FSIN), the Government of Canada represented by the Department of Indian Affairs and Northern Development (DIAND) and the Government of Saskatchewan have established a joint Fiscal Relations Table to develop proposals for a new intergovernmental fiscal relationship between First Nation governments under a self-government regime and the federal and provincial governments.

This study was undertaken to assist the Table in its task. The specific objectives are twofold:

1. To provide an overview for the fiscal table of the range of machinery options that table members might wish to discuss in developing proposals for a new fiscal relationship; and
2. To assist the table members to analyze the available options by describing some of the key objectives, functions and attributes of 'ideal' machinery and how such machinery might relate to and build on existing organizations.

This study is not intended to produce recommendations for the parties to consider. Rather, it is one among a number of building blocks that the parties will use to develop a set of proposals for a new fiscal relationship

### **Methodology**

In executing this study, the Institute attempted to build to the extent possible on work already accomplished by the Fiscal Relations Table. In addition to reviewing a number of reports written for the FRT and interviewing some of its members, the Institute undertook a literature search; interviewed a number of individuals in the FSIN, the federal government, the Government of Saskatchewan and the World Bank; relied on previous studies undertaken by the Institute; and used the internet to gather information about machinery used in other jurisdictions.

### **Context**

In establishing appropriate machinery to underpin a new fiscal relationship, a number of contextual factors will have important implications for what finally emerges. The contextual factors canvassed in the report are the following:

- the FSIN's view of the nature of the Crown – Treaty Nations relationship;
- the Assembly of First Nation's (AFN) perspectives on Crown-Indian Fiscal Relations;
- the federal government's action plan vis-à-vis establishing a new fiscal relationship as laid out in its publication, "Gathering Strength"; and
- some broader trends affecting Canada and other western nations with regards to public administration.

An encouraging sign is the apparent willingness on the part of the federal government and First Nations to make a distinct break from the past. This will be important common ground.

## **Machinery Options**

The Institute examines the functions, principles and options for machinery that might underpin a new fiscal relationship in the following six areas: managing the overall relationship; accountability; data management; revenue assessment and collection; borrowing of capital; and capacity development.

<b>Managing the Overall Relationship</b>
<p><b>Functions – managing the following issue</b></p> <ul style="list-style-type: none"><li>• ‘who gets what’</li><li>• accountability of the partners in the relationship;</li><li>• the conditionality of the funds that are transferred;</li><li>• the division of responsibilities among levels of government;</li><li>• expenditure or tax initiatives</li><li>• the management of deficits; and</li><li>• borrowing by both levels of government.</li></ul> <p><b>Principles</b></p> <ul style="list-style-type: none"><li>• <b>Orderly administration</b> – the roles and responsibilities of the parties should be clear; data is well managed; disputes are well managed;</li><li>• <b>Transparency</b> – the basic structure of the arrangements can be easily understood;</li><li>• <b>Clear responsibility and accountability</b> – the roles and responsibilities of the parties are clear;</li><li>• <b>Facilitate fulfillment of contractual obligations</b></li><li>• <b>Effective mechanism for dispute resolution</b> – disputes need to be identified and a variety of means established to resolve them;</li><li>• <b>Effective mechanism for review and renewal</b> – the fiscal arrangements will be subject to constant change and consequently review and renewal are crucial.</li><li>• <b>Costs are commensurate with benefits</b></li><li>• <b>The machinery is neutral</b> - it does not favour the interests of one party</li></ul> <p><b>Options</b></p> <ol style="list-style-type: none"><li>1. <b>Committees of officials reporting to politicians;</b></li><li>2. <b>Option 1 plus ad hoc neutral bodies for major changes</b></li><li>3. <b>Grants Commission as in Australia</b></li></ol>

## Accountability – Review Mechanism

### Functions

- Audit – attest, compliance, value for money
- Performance measure
- Evaluation

### Principles

- **Independence** – from politicians and others who have a direct stake in the activity under review;
- **Integrity and fairness** – those conducting the review should have no ‘axes to grind’ and be judged as reputable and fair;
- **Transparency** – the review process is an ‘open book’;
- **Experience and expertise** – some review processes require professional accreditation, others require high degree of experience and good judgment
- **Costs are commensurate with benefits** – the reviews result in changes (or act as a deterrent to inappropriate behaviours), the benefits of which are worth the costs;
- **Stability** – time is required to build expertise and experience
- **Accountability** – review mechanisms are accountable for the resources they expend

### Options

1. **Advisory body on comptroller-type issues** attached to the FSIN, with capacity to do contracted evaluations and reviews
2. **Self-governing entities contract with another level of government**
3. **Self-governing entities delegate upward to new review body**

## Data Management

### Functions

- Providing a policy capacity for future developments in data management;
- Serving as a focal point for dealing with data issues with other levels of government;
- Promoting the value of sound data management;
- Managing certain data sets (e.g. storage; advice; tailoring products);
- Documenting the data needs of the FSIN and its member First Nations;
- Co-ordinating data collection by First Nations to ensure consistency; and
- Effecting some data analysis

### Principles

- **Independence from political interference** – the day to day operations relating to the availability and analysis of statistical information should not be subject to political directives;
- **Sustainability** – there must be sufficient likelihood of resourcing the mechanism over a multi-year period to provide, among other things, a core staff;
- **Data integrity and quality** – validity, reliability, timeliness, consistency must be hallmarks of the products produced;
- **Accessibility** – the data products must be available and affordable to potential users
- **Confidentiality** – information bearing on individuals and businesses must be protected;
- **Costs must be commensurate with benefits** – use put to the products must justify the costs
- **Accountability** – the mechanism must be accountable to the various stakeholders that it is serving.

### Options

1. Develop a **centralized data management capacity within FSIN** plus co-ordination through intergovernmental committees;
2. Establish a **branch within Statistics Canada** akin to the Centre for Justice Statistics (Canada-wide mandate)
3. Establish a **non-profit centre** akin to the Institute for Health Information (Canada-wide mandate)

## Tax Assessment and Collection

### Functions

- Initial jurisdiction set-up;
- Upgrading the integrity of existing records;
- Suggesting modifications to tax by-laws;
- Defending assessments through the review process;
- Performing ongoing assessments of property values; and
- Tax collection, redress and enforcement

### Principles

- **Stability and predictability** – capriciousness in this area will drive away business and anger citizens
- **Fairness and Equity** – few citizens enjoy paying taxes but resentment is high if inequities are evident or if individuals have no redress for unfair decisions;
- **Independence in day to day management** – there should be no political interference in decisions affecting individual assessments or taxes;
- **Accountability** – policies and resources for assessment and collection activities must be subject to some accountability regime;
- **Tax harmonization** – there should be no tax havens created through these activities;
- **Efficiency**
- **Separation of the property assessment and collection functions** – the assessment system should not be used, or perceived to be used, as a means for a ‘hidden’ increase in taxes

### Options

1. **Short term** – contract out
2. **Longer term** – develop own assessment agency; participating in the new national collection agency; developing own collection capacity in certain areas

## Capital Borrowing

### Functions

- Facilitate low cost borrowing
- Provide other services – access to invest pools, other types of credit
- Ensure responsible debt management

### Principles

- **Well defined rules for reserve funds** – in the BC case, this is a simple formula related to the debt load;
- **Conservative investment strategy for reserve funds** – this should be mandatory and publicized
- **External checks on the borrowing of its members** – in the BC case, this meant outside approvals for borrowing and borrowing limits
- **External checks on its management;**
- **Effective accountability structure;**
- **Sufficient powers to pool risks** – in the BC case, this is a taxing power on all members
- **Multiple services** – investment opportunities as well as a number of borrowing programs, both short and long term
- **Efficiency** – low administrative costs are a must if such an organization is to realize benefits for members on the lending and borrowing side.

### Options

1. **Establish own finance authority** - following BC model
2. **Join an existing finance authority**
3. **Begin by developing a mechanism for pooling investments**

## Capacity Development

### Functions

- Developing and implementing a capacity development strategy to support the fiscal relationship through, among other things, developing and delivering training programs; conducting research; strengthening linkages with other initiatives; co-ordinating efforts with other organizations; facilitating information exchanges etc.

### Principles

- **Long term focus** – capacity development, to be sustainable, is a long term endeavour
- **Comprehensive mandate** – capacity development may involve citizens, political leaders, public servants, organizations, networks of organizations, non-profit groups, the media etc.
- **A partnership orientation** – in a world of scarce resources, capacity development must focus on partners and using existing organizations to their maximum
- **A facilitating, catalytic role** – only recipients can build capacity
- **Cost effective** – any new mechanism has to add value commensurate with costs
- **Appropriate Accountability to stakeholders**

### Options

1. **Subcommittee of officials as part of machinery for managing the relationship**
2. **Establish a governance transitions centre** (mandate to extend beyond Saskatchewan)
3. **Establish a governance capacity centre as part of an existing organization** (e.g. a university or college)



## **Conclusions**

The following six points sum up the major conclusions of this study:

1. A central finding of this study is that modern governments employ a vast (some might say a bewildering) array of sophisticated machinery in support of intergovernmental fiscal relationships.
2. Given the relatively small scale of self-governing entities in Saskatchewan, it appears neither feasible nor desirable to employ anywhere near the number of mechanisms surveyed in this study. There are at least three reasons behind this conclusion:
  - Affordability;
  - Capacity – finding the numbers of highly skilled people to make this machinery work would pose a significant challenge; and
  - Complexity – the system will not be understandable to most citizens.
3. The challenge facing the FRT, once more progress is made on the governance front, is to attempt to set priorities, consolidate and simplify vis-à-vis machinery. Some of the options suggest ways of going about this task:
  - Attaching certain functions under the wing of the machinery set up to manage the overall relationship – examples are aspects of data management and capacity development;
  - Identifying those functions that are essentially a service to self-governing entities and placing them within the FSIN or some other provincial-level body with contractual relationships to the self-governing entities – examples include many of the review type mechanisms (audit, evaluation, performance measure) and aspects of data management;
  - Contracting out the function with another level of government – this is already being done in the tax assessment and collection arena and might have broader application, especially if such arrangements can be part of a capacity development strategy; and
  - Grouping like functions together in a single mechanism – the complaints and redress type functions appear to be possible candidates for such an approach.
4. A significant number of the machinery options canvassed in this study, with suitable modifications, would likely be compatible with a treaty relationship envisioned by the FSIN. The negotiations and consensus models employed by a number of countries to manage the overall relationship is one such example. Several of the mechanisms surveyed in the data management area are also based on equal partnership notions. Another encouraging development is the thinking now going on in many circles, both in Canada and abroad, in fashioning accountability relationships not based on hierarchy.

5. One mechanism with which the Institute had little familiarity prior to this study and which appears to warrant greater attention is the Municipal Finance Authority in British Columbia. The Authority, as well as providing low cost capital funds and high returns on investments to its members, encompasses a scheme with built-in incentives for managing debt in a responsible manner. (It is unfortunate that the federal and provincial governments were not under such a regime during the 1970s and 80s!) The downside to the scheme, from the perspective of its applicability to the FRT context, is that it is imposed by provincial statute. The question is whether such a regime could be developed on a voluntary basis among a number of self-governing entities. If so, it would appear to offer important benefits.
6. A final conclusion bears on the importance of determining governance models first before settling on machinery questions. This is especially so in the accountability area where systems of government are crucial to choosing appropriate accountability mechanisms.

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# **EXPLORING MACHINERY OPTIONS IN SUPPORT OF INTERGOVERNMENTAL FISCAL ARRANGEMENTS**

## **1.0 INTRODUCTION AND SCOPE**

### **Background**

The Federation Of Saskatchewan Indian Nations (FSIN), the Government of Canada represented by the Department of Indian Affairs and Northern Development (DIAND) and the Government of Saskatchewan have established a joint Fiscal Relations Table to develop proposals for a new intergovernmental fiscal relationship between First Nation governments under a self-government regime and the federal and provincial governments. Current topics being explored at this fiscal table include revenue options, accountability, data requirements, capacity development and the overall management of the relationship.

Of benefit to the fiscal table would be a document that explores the type of ‘machinery’ - in the sense of organizations and related processes – that would support a new fiscal relationship. The Institute On Governance has just completed a research project that explored intergovernmental fiscal relationships from an international perspective. In that paper, the Institute highlighted a number of examples of machinery in use in other countries. Amplification of these examples and others drawn from international and Canadian experience would be a useful starting point for the fiscal table to begin consideration of this area.

### **Objectives and Scope**

The specific objectives of this study are twofold:

1. To provide an overview for the fiscal table of the range of machinery options that table members might wish to discuss in developing proposals for a new intergovernmental relationship; and
2. To assist the table members to analyze the available options by describing some of the key objectives, functions and attributes of ‘ideal’ machinery and how such machinery might relate to and build on existing organizations.

It is important to note that this study is not intended to produce recommendations for the parties to consider. Rather, it is one among a number of building blocks that the parties will use to develop a set of proposals for a new fiscal relationship

In determining an appropriate set of boundaries or scope for this project, the Institute faced a number of difficulties. First is the question of the level of detail to be used in describing the options. In the absence of defined governance structures at this stage of the Table’s work, the Institute concentrates much of its effort at the level of principles and describes options only in general terms.

To assist future work, however, the Institute has provided a set of appendices containing extensive details on many of the examples discussed.

Another difficulty relates to the issue of a suitable boundary for the fiscal relationship as opposed to the non-fiscal aspects of the relationship. In this respect, the Institute has erred in the direction of a broad view of what “fiscal” encompasses. That said, this study does not discuss machinery with respect to a number of important areas such as the conduct of elections (e.g. machinery akin to Elections Canada) or to other areas such as those falling under the domain of human rights commissions, for example. Areas that will be canvassed include management of the overall fiscal relationship; data management; accountability; capacity development related to financial management and the fiscal relationship; revenue assessment and collection; and the borrowing of capital. Dispute resolution mechanisms relating to fiscal matters will be covered in a separate study.

A final challenge in determining the study’s scope relates to the extent to which the machinery covered is “joint” in the sense of having a direct impact on all parties as opposed to just one party. For the purposes of this study, the Institute has adopted a liberal interpretation of “joint” given that machinery can impact other parties in a variety of ways. One obvious example is that contracting for services from another party is usually an option - for example, in the collection of revenue. Another is that some machinery might be financed by various governments but serve only one. Finally, in the area of accountability, there is likely an inverse relationship between the strength of First Nation accountability regimes and the need for strong regimes relating to other levels of government.

## **Methodology**

In executing this study, the Institute attempted to build to the extent possible on work already accomplished by the Fiscal Relations Table. In addition to reviewing a number of reports written for the FRT and interviewing some of its members, the Institute did the following:

- undertook a literature search relating to such machinery as ombudsman and auditors;
- interviewed a number of individuals in the FSIN, the federal government (DIAND, Statistics Canada, Treasury Board, the Auditor General’s Office, Finance), the Government of Saskatchewan (Aboriginal Affairs, Finance and Education) and the World Bank;
- relied on previous studies undertaken by the Institute, especially in the areas of accountability, capacity development and fiscal relations; and
- used the internet to gather information about machinery used in other jurisdictions.

One surprise was the lack of recent analyses comparing machinery such as auditors, ombudsman and information commissioners across jurisdictions.

## **Organization**

The organization of this report is straightforward. In the section which follows, the Institute examines some of the important elements making up the context in which the FRT will consider machinery options, elements ranging from the perspectives of the FSIN on its treaty relationship with Canada to a brief survey of current trends affecting public administration in Canada. The next

section is the heart of the study and focuses on machinery options spanning six categories - from the overall relationship to capacity development. The final section provides a set of conclusions which are based on the analysis in this study.



## 2.0 CONTEXT

In establishing appropriate machinery to underpin a new fiscal relationship, a number of contextual factors will have important implications for what finally emerges. The contextual factors canvassed in this section of the report are the following:

- the FSIN's view of the nature of the Crown – Treaty Nations relationship;
- the Assembly of First Nations' (AFN) perspectives on Crown-Indian Fiscal Relations;
- the federal government's action plan vis-à-vis establishing a new fiscal relationship as laid out in its publication, "Gathering Strength"; and
- some broader trends affecting Canada and other western nations with regards to public administration.

### 2.1 The nature of the Crown-Treaty Nations relationship – an FSIN Perspective<sup>1</sup>

Several short paragraphs can not do justice to such a complex topic. This said, the following points of the FSIN's position appear to be particularly germane in reflecting upon machinery questions for a fiscal relationship:

- a) First Nations in Saskatchewan and their citizens possess two distinct groups of rights – inherent rights and treaty rights;
- b) The basis for inherent rights, which all First Nations in Canada possess, includes prior occupancy, prior sovereignty, the affirmation of political authority by the treaty-making process and international legal principles concerning a right of self-determination;
- c) Treaty rights are a separate specific group of rights which flow from the Treaties between the Crown and the First Nations where treaties are understood to be binding legal agreements between sovereign nations;
- d) The treaty relationship is thus a bilateral relationship between the Crown and First Nations, a relationship which can not be changed unilaterally by any one party;
- e) In entering into this treaty relationship, the Crown acquired rights (for example, the use and occupancy of the land) and assumed a continuing fiduciary obligation to ensure that First Nations "...could survive and flourish on their traditional lands with their inherent rights intact"<sup>2</sup>;
- f) The sharing of the revenues and wealth generated by the resources is the basis of the Crown-First Nations fiscal relationships (one of the many unfinished treaty issues requiring discussion and resolution is the question of the resources beneath the top soil, which were not a topic of negotiations when the Treaties were consummated);
- g) The Treaties also created a confederate relationship between the Crown of Canada and the First Nations - "Treaty Federalism" or "Shared sovereignty". The fundamental flaw in Canada's current constitutional arrangements is that there was no legal basis to extend Section 92 powers to the Province or to enlarge them to include natural resources in 1930 without the consent of the Treaty First Nations.

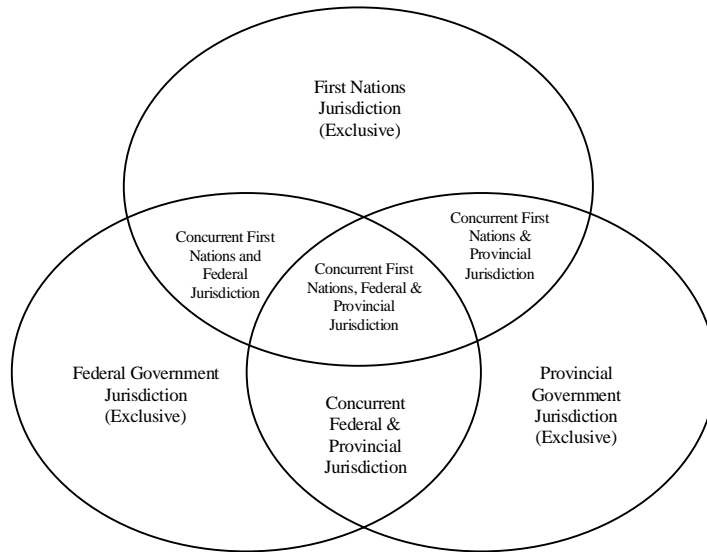
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<sup>1</sup> Material for this section is taken from documents provided by the FSIN entitled "Federation of Saskatchewan Indian Nations: Treaty and Constitutional Relationships" and "Federation of Saskatchewan Indian Nations: First Nations' Inherent Rights Policy"

<sup>2</sup> Ibid, P. 26

- h) The roles and jurisdictions of all parties must be clearly defined in a true shared government relationship as set out in the following diagram<sup>3</sup>:

**Figure 1**



## 2.2 Implications for Machinery Questions – a FSIN perspective<sup>4</sup>

Some interesting implications for questions around machinery flow from inherent rights and treaty rights. The inherent right to self-government is grounded in individual First Nations in Saskatchewan (72 of which make up the FSIN). This must be the starting point in considering the authority to govern in the First Nations context. The old adage of "government of, for, and by the people" occurs at the level of the individual First Nations band. Autonomy is pivotal to how bands define themselves, and also to how both Tribal Councils and the FSIN are organized and where their authority comes from - both for current systems and for new self-government, Treaty-based systems.

This First Nations perspective differs in fundamental ways from the federal-provincial perspective [the perspective from which many of us tend to view the world]. In Canada, governing authority flows from the Crown and the Constitution (both written and unwritten), which provide a mandate for two levels of government. Ultimately, though, "government of, for, and by" is based in the Canadian people as a whole through their relationship to the Crown, which is a single entity whose authority is carried out at two different levels.

In First Nations governments, governing authority comes from the people at the band level. Any broader scale governments will need to receive their authority from powers delegated by individual

<sup>3</sup> Ibid, P. 38

<sup>4</sup> The following paragraphs were provide by the FSIN.

bands up to those broader levels. This, in some respects, then reverses the traditional flow of delegation of authority and accountability (at least compared to the federal/provincial view of the world). That is, in First Nations governance, which is based on the inherent right, delegation flows from local/band/First Nations level where authority fundamentally resides upwards to broader scaled levels and the requisite accountability then flows downward.

### 2.3 AFN perspectives on the Fiscal Relationship

In 1996, the Assembly of First Nations (AFN) made public its analysis of Crown-Indian Fiscal Relations<sup>5</sup>. The following are some of the key points made in the document with potential implications for machinery questions:

- a) From colonial times, with the dispossession of Indian lands and resources, successive governments have regarded the administration of Indian affairs as a burden to be off-loaded;
- b) The “original flaw” in the terms of Confederation gave the federal government legislative responsibility for Indians and land reserved for Indians while giving the provinces the beneficial interests in Indian lands and resources. This flaw continues to distort any discussion of Crown-Indian fiscal relations;
- c) Since Confederation, the federal government’s objective, re-affirmed with the 1969 White Paper, has been to eliminate the burden on the public treasury through the assimilation or extinction of Indian nations;
- d) Fiscal arrangements continue to support this objective through
  - Policies and programs designed and controlled by the federal government;
  - Maintaining a focus on “maintenance” (i.e. social assistance) as opposed to “development” (i.e. economic development);
  - Shifting fiduciary responsibilities to band councils without providing them sufficient resources to carry these out; and
  - Drawing the provinces further into band administration and programs.
- e) Thus the quality of life continues to be eroded on Indian reserves and off-reserve migration continues to increase.

Based on this analysis, the AFN, in July 1996, passed a resolution at its Annual General Assembly, calling for the establishment of a new fiscal relationship based on the following principles: “choice, fairness, certainty of government service delivery to comparable jurisdictions, clarity of revenue raising jurisdictions, economic incentives, cost effectiveness and efficiency”<sup>6</sup>.

The resolution goes on to mandate the National Office to develop a *First Nations Transfer Act*, the objective of which is to “...facilitate the transfer of financial resources from the Government of Canada to First Nations governments with the government-to-government relationship affirmed in the recognition of the inherent rights of First Nations”<sup>7</sup>.

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<sup>5</sup> The document is called “Fiscal Transfers, Programs & Services: End of The Line? A Brief Survey of Crown-Indian Fiscal Relations”, September 1996

<sup>6</sup> Ibid, P. 29

<sup>7</sup> Ibid, P. 29

## 2.4 The Federal Government's Perspective

In 1997, the Government of Canada announced a new Aboriginal Action Plan in its document, "Gathering Strength". Based on the four principles recommended by the Royal Commission of mutual respect, mutual recognition, mutual responsibility and sharing, the Plan begins with a *Statement of Reconciliation* that acknowledges past mistakes and injustices and moves to a *Statement of Renewal* with a vision of the future. One of the four objectives in "Gathering Strength" calls for the development of a new fiscal relationship based on arrangements which are "...stable, predicable, and accountable and will help foster self-reliance"<sup>8</sup>. Elements of the Action Plan to achieve this objective include the following:

- a) the establishment of multi-year funding arrangements with clear funding formulas to provide a more stable and predictable flow of revenue;
- b) a pilot project to consolidate funding from different government departments into one funding arrangement;
- c) the establishment of joint fiscal-relations tables in several provinces to develop government-to-government transfer mechanisms;
- d) the enhancement of accountability arrangements of Aboriginal governments and institutions to their members and to the Government of Canada through, among other things, "...the regular reporting of results against defined criteria and periodic evaluation of the effectiveness of financial arrangements with Aboriginal governments"<sup>9</sup>;
- e) working with Aboriginal governments to increase their capacity to generate their own revenue through economic development and internal sources; and
- f) a number of measures to strengthen the capacity of First Nations in data collection and exchange to, among other things "...measure performance against program goals"<sup>10</sup>.

In terms of another of its four objectives - strengthening Aboriginal Governance - the government affirmed that "...treaties, both historic and modern, will continue to be a key basis for the future relationship" and to this end would continue to seek the views of Treaty First Nations on "...how the historic treaties and treaty issues can be understood in contemporary terms, while fully recognizing their original spirit and intent"<sup>11</sup>.

## 2.5 Relevant Trends affecting Public Administration in Canada

Almost without exception, governments in the western world have embarked on ambitious programs of reform over the past decade. As one knowledgeable but somewhat skeptical academic has noted:

"These reforms have been launched with considerable fanfare, involving the use of positive rhetoric about reinventing government, shifting the boundaries between the public and private sector, cutting back to basics, breaking through bureaucracy, deregulating and delayering the public service, reengineering program delivery, empowering individual

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<sup>8</sup> "Gathering Strength – Canada's Aboriginal Action Plan", P. 2

<sup>9</sup> Ibid, P. 21

<sup>10</sup> Ibid, P. 21

<sup>11</sup> Ibid, P.17 - 18

public servants, developing a new public service culture, making governments more “customer friendly,” and requiring results be demonstrated through published reports”.<sup>12</sup>

Governments in Canada have not been immune to these pressures for change, powered in part by the necessity of dealing with massive deficits and a long term decline in deference to political authority. For example, the Clerk of the Privy Council in her recent report<sup>13</sup> to the Prime Minister notes that public service reform has been occurring for the past 10 years and outlines her three current priorities:

- **strengthening the government’s policy capacity**, through initiatives to assist the government to deal with cross-cutting or ‘horizontal issues’;
- **modernizing the delivery of services to Canadians** through , among other things, integrated service delivery (e.g. the Aboriginal Single Window Initiative in Winnipeg) alliances and partnerships, and the exploitation of information technology; and
- **enhancing citizen engagement** by giving citizens a greater voice in developing policy and more access to government services on their terms.

Reforms at the federal and provincial levels have emphasized other objectives as well. **Creating efficiencies** or ‘doing more with less’ has been a major concern and has resulted in efforts to consolidate government into larger entities (for example, larger departments, school boards, and municipalities); experiment with alternative delivery systems (e.g. spinning off some government entities into more commercial like vehicles); institute market mechanisms – for example, greater use of user fees; and provide more discretion to public servants by reducing the welter of procedures and rules, among other things.

**Enhancing accountability** has been another important theme in many reforms in Canada and has taken a variety of forms: simplifying government by consolidating regional and municipal governments and by reducing the number of special purpose bodies (e.g. the Economic Council of Canada); improving the reporting of information on the results or performance of programs; and developing clear ‘contracts’ with senior public servants to name a few.

Efforts to develop machinery to underpin a new fiscal relationship will need to be cognizant of these trends, given that such proposals may imply new legislation or new funding and consequently, will undergo close scrutiny by one or more levels of government and the Canadian public.

## 2.6 Conclusions

As this brief survey of the four contextual factors in this section indicates, the context in which the FRT is operating is a complex one. An encouraging sign is the apparent willingness on the part of the federal government and First Nations to make a distinct break from the past. This will be important common ground on which to build. With these contextual elements as important background, the Institute turns now to a discussion of machinery options.

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<sup>12</sup> Paul Thomas, “The Changing Nature of Accountability” in B. Guy Peters and Donald J. Savoie (eds.) Taking Stock: Assessing Public Sector Reforms (Montreal: McGill-Queen’s University Press, 1998)

<sup>13</sup> Jocelyne Bourgon, “Fifth Annual Report to the Prime Minister on The Public Service of Canada”, March 1998

### **3.0 MACHINERY OPTIONS**

In this section the Institute examines the functions, principles and options for machinery that might underpin a new fiscal relationship in the following six areas:

- managing the overall relationship;
- accountability;
- data management;
- revenue assessment and collection;
- borrowing of capital; and
- capacity development.

The danger in looking at each of these areas as if they were discreet and independent of one another is that a system-wide perspective may be lost in the welter of possible machinery options. Attempting to restore such a system perspective to the analysis of machinery will be the objective of the concluding section, which follows this one.

#### **3.1 Managing the Overall Relationship**

##### **Functions and Principles**

The experience of Canada and other western countries with intergovernmental fiscal relations is clear on at least one point: these relationships require ongoing management by the parties if they are to remain robust and effective. In particular, two types of issues require constant attention – the overarching political question of the size or quantum of the annual allotment from one level of government to another; and second, technicalities surrounding the formula or formulas so that the relative distribution of funds among sub-national governments is seen to be fair. Neither of these types of issues is self-regulating.

In addition to ongoing issues surrounding ‘who gets what’ in terms of funding, there are other questions that require continuous discussion and modification. These include, among others, issues related to

- accountability of the partners in the relationship;
- the conditionality of the funds that are transferred;
- whether the division of responsibilities among levels of government is appropriate;
- expenditure or tax initiatives that could have implications for the other level of government;
- the management of deficits; and
- borrowing by both levels of government.

In its document entitled “A Proposal To Develop A Framework For Fiscal Arrangements Between The First Nations of Saskatchewan, The Government of Canada and The Government of Saskatchewan”, the FSIN lays out principles to underpin a new relationship, many of which have a direct bearing on machinery to manage the overall relationship. These include the following:

### Principles for machinery to manage the relationship

- **Orderly administration** – the roles and responsibilities of the parties should be clear; data is well managed; disputes are well managed;
- **Transparency** – the basic structure of the arrangements can be easily understood;
- **Clear responsibility and accountability** – the roles and responsibilities of the parties are clear;
- **Facilitate fulfillment of contractual obligations**
- **Effective mechanism for dispute resolution** – disputes need to be identified and a variety of means established to resolve them;
- **Effective mechanism for review and renewal** – the fiscal arrangements will be subject to constant change and consequently review and renewal are crucial.

In addition to these principles, which were not developed specifically for machinery questions, the Institute suggests the addition of the following:

### Additional principles

- **Costs are commensurate with benefits** – a proper balance needs to be struck between machinery which is overly costly and one that is not adequately resourced to function properly;
- **The machinery is neutral** – it does not favour the interests of one party over another.

### Examples and Options

A review of Canadian-based and international examples suggest that there are at least three broad options from which to choose in terms of managing the overall fiscal relationship. An element common to all three options is a committee of politicians from the three levels of government which serves as the final negotiating (and decision-making) body. Support for this committee of political leaders differs amongst the options.

**The first option** has this support coming from a committee structure of officials from both levels of government. In managing its federal-provincial transfer system, Canada relies on a cascading system of three committees of officials, one at the Deputy level, a second at the Assistant Deputy level and a third at a more junior level. An analysis of part of this structure, including success

factors<sup>14</sup>, by a federal official, Douglas Clark, who attended all of the meetings of one of these committees over a 24 year period, is appended in Appendix 1. Denmark has a similar committee structure, headed by a committee of politicians with the Minister of Finance leading the national government along with representatives from an association of Counties and Municipalities. Thus, option one is a consensus-based,<sup>15</sup> non-legislated committee structure headed by politicians and supported by officials from both levels of government.<sup>16</sup>

**Option two**, where the example is Sweden, is similar to option one but with one important addition. Sweden has relied on six parliamentary commissions over the last eight years to work through two radical changes to their fiscal transfer system and to manage continuous fine-tuning. These Commissions have been supported by a neutral secretariat. Translating this option to the Saskatchewan context would mean constituting a neutral body on a “as needed basis” to provide recommendations to the parties, especially if radical restructuring were contemplated.

The **third option** is based on the Australian approach of relying on a permanent ‘neutral’ body to provide ongoing support to the committee of politicians, in this case the annual premiers’ conference. This neutral body, the Commonwealth Grants Commission (CGC), was established in 1933 and now defines its role as “an independent, impartial and authoritative arbiter in relation to distributional aspects of fiscal federalism in Australia.”<sup>17</sup> Its main function is to make recommendations on the distribution of all general purpose funding to the states on the basis of the principles of horizontal equalization (but not on the overall level of such funds). It does so in response to terms of reference provided to it each year by the Commonwealth Government, terms of reference which define the general approach to be followed as well as any specific conditions or limitations on the extent to which equalization is to apply.

Membership consists of a Chairman and three members, along with a secretariat. Commissioners are appointed (by the Commonwealth government) strictly based on their personal merits. States are always informally included in decision-making about CGC members. The commissioners are supported by a staff of about 50, although much of the data collection work is carried out by the Australian Bureau of Statistics.

Although the CGC has no official decision-making control over transfers, its recommendations are usually accepted and implemented by the Commonwealth government. This is more true now than ever – in fact, the CGC has been given increasingly greater stature in the system over the course of the century, and is now the “hub” of the Australian system.

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<sup>14</sup> One such factor was the contribution by both federal and provincial officials in producing proposals and discussion papers.

<sup>15</sup> In Canada, the consensus-based nature of the committee structure has not prevented the federal government from acting unilaterally in making a number of important decisions vis-à-vis cuts or freezes to provincial funding.

<sup>16</sup> In his April 1997 report, the Auditor General, while generally positive about the Equalization program, noted that the Department of Finance should solicit “...advice from a wider circle of interested parties, rather than relying almost exclusively on the advice of a committee of federal and provincial officials.” In this regard, Saskatchewan’s Department of Education has an advisory committee on its fiscal transfer system consisting of provincial and school board officials from several organizations as well as representatives from the teachers’ federation.

<sup>17</sup> Richard Rye and Bob Searle, “The Fiscal Transfer System in Australia”, in Ahmad ed. Financing Decentralized Expenditures (International Monetary Fund, Washington, 1997)



With some modifications, for example in the way members are named, this type of permanent mechanism could be created in a Saskatchewan context and would bear some similarities to the Treaty Commission established in British Columbia or the Indian Commission of Ontario.

In conclusion, some machinery will be needed to manage the overall fiscal relationship. Whether the FRT should opt for a variant of the existing federal-provincial machinery in Canada or supplement this by a Swedish or Australian inspired approach will need to await further work on the equalization approach. And such a decision may also depend on what types of conflict resolution approaches are adopted. This will be the subject of a separate study.

## **3.2 Accountability Mechanisms**

### **Introduction**

Accountability is a difficult, wide-ranging topic and consequently some introductory comments are in order to help situate machinery options.

There is little debate about the centrality of accountability to democratic governance. For example, the draft working paper prepared by the ad hoc Accountability Working Group refers to accountability as the “glue that holds a system of democratic governance together”.<sup>18</sup> Academic treatments of the topic often yield similar analogies. Paul Thomas, a political scientist from the University of Manitoba who has written extensively on this topic, refers to accountability as the “heart” of governance in democratic societies.<sup>19</sup>

Despite its centrality to governance, accountability has an elusive quality about it for a variety of reasons. The first has to do with complexity. Experts, for example, point out that there are various categories of accountability – political, constitutional, legal, administrative, financial, professional.<sup>20</sup> Adding to the complexity is the recognition that accountability arrangements will differ markedly from one system of government to another. For example, approaches to accountability in a presidential-congressional system – with its separation of powers, undisciplined political parties, and a “politicized” public service – may be inappropriate in a cabinet-parliamentary system.

Finally, accountability has a cultural aspect to it: in the Netherlands, for example, the frequency of coalition governments - and the attendant need to build cross-party consensus on policies – has influenced the nature of public sector accountability. Statutes are written in general terms on the understanding that political actors will negotiate implementation issues. In sum, all of these factors leading to complexity mean that there is no “one size fits all” model of accountability.

But complexity is not the sole, or perhaps even the most important, reason for accountability’s elusive quality. More fundamental are paradoxes which make the search for accountability a never ending challenge to find the appropriate balance between competing values. Some examples include the following:

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<sup>18</sup> “An Accountability Framework for Intergovernmental Fiscal Relations In Saskatchewan”, April 30, 1998, P. 11

<sup>19</sup> Paul Thomas, op. cit. P. 3

<sup>20</sup> op. cit. P. 11

- Accountability mechanisms have, as one of their underlying objectives, the enhancement of public trust and confidence in governments. Yet, in Canada, despite a myriad of reforms (or some might argue because of them) over the past three decades – from enhanced roles for Auditors General to access to information laws – public trust and confidence have actually declined;
- Accountability mechanisms often have a negative connotation attached to them – they are seen by the public as a means of rooting out mistakes and assigning blame. In a highly partisan and competitive party system like we have in Canada, this creates strong incentives for both Ministers and public servants to avoid risks by creating elaborate controls and rigid hierarchies – the opposite to much current thinking about a new public service. Furthermore, the incentives are strong to avoid accountability mechanisms whenever possible. On the other hand, mechanisms which have tried to combine a more positive orientation of continuous improvement with their traditional negative mandate (e.g. auditor generals, commissions of inquiry) have experienced difficulties in marrying these two roles<sup>21</sup>.
- At the heart of a cabinet–parliamentary system of government is the notion of an anonymous, non-partisan, permanent and professional public service controlled by Ministers. Yet, current trends in public administration towards greater managerial discretion, the establishment of semi-autonomous delivery agencies, more partnerships and intense consultations over policy lead in the opposite direction with perplexing consequences for traditional tenets of accountability.
- Traditional definitions of accountability are strongly hierarchical in nature – the obligation to answer for a responsibility conferred. Yet, such definitions appear to be at odds with the emergence of essentially non-hierarchical relationships such as partnership arrangements in the delivery of services where there is not a ‘senior’ and ‘junior’ party.<sup>22</sup>

These introductory remarks lead to the following four conclusions about developing and analyzing options for accountability:

1. Systems of government and the cultural dimensions underlying them are critical to the design of accountability mechanism – there should be a careful match between them;
2. Accountability often plays to competing values; the design of machinery should recognize this and make explicit these values;
3. Whether one mechanism can house both the negative and positive sides of accountability (i.e. punishment v. continuous improvement) needs to be carefully weighed; and
4. The hierarchical definition of accountability may be appropriate in some circumstances but not in others. Again the design of accountability mechanisms may be different depending on the type of relationship involved.<sup>23</sup>

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<sup>21</sup> Two critics of the mandate creep of the Auditor General have been Peter Aucoin in an upcoming paper written for the Institute On Governance entitled “Auditing for Accountability: the Role of the Auditor General” and Sharon Sutherland, “The Politics of Audit: the Federal Office of the Auditor General in comparative perspective”, Canadian Public Administration, Volume 29, No.1, 1986.

<sup>22</sup> Appendix 2 contains a chapter from a recent report of the Auditor General of Canada that explores this issue in the context of the federal government’s relationship with First Nations.

<sup>23</sup> A discussion draft of a joint paper by the Office of the Auditor general of Canada and the Treasury Board of Canada (included as Appendix 3) entitled “Modernizing Accountability Practices in The Public Sector” proposes the following

## A Framework for Accountability

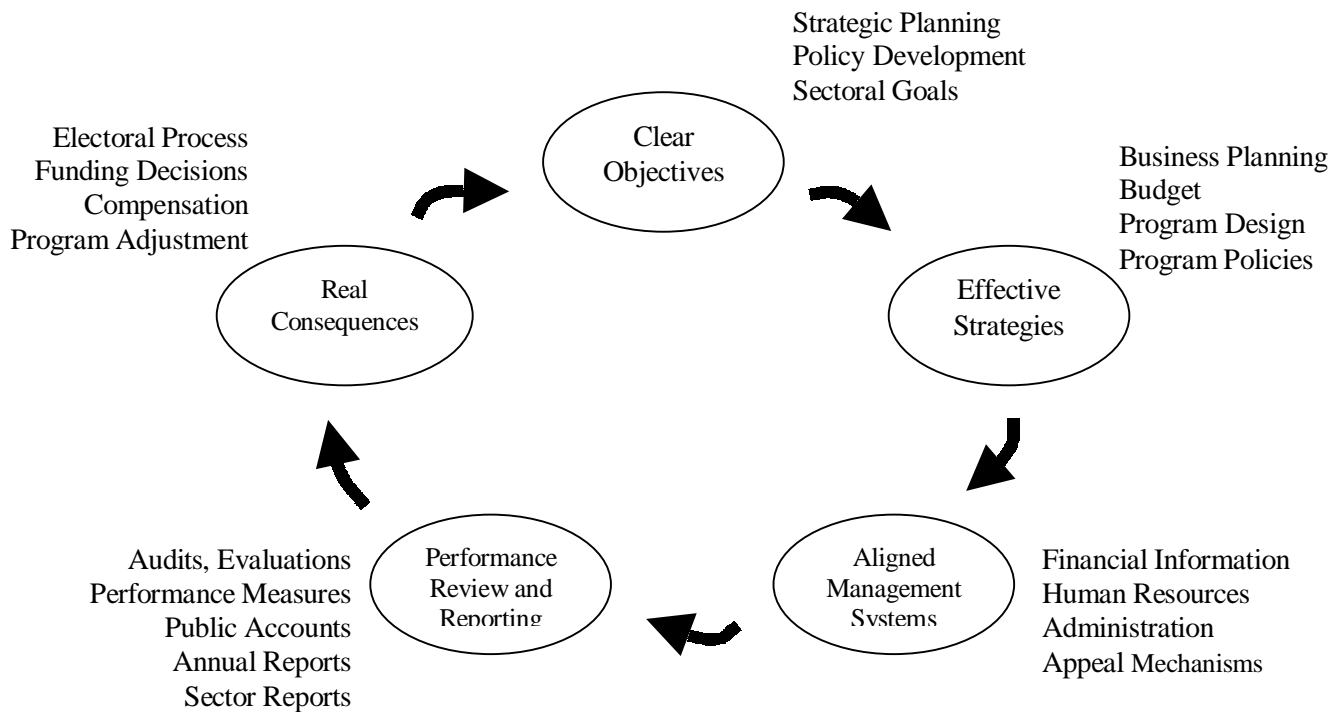
In light of the complexity of accountability and given that there are many more mechanisms and processes at work than will be covered in this paper, it is useful to have a framework for accountability around which machinery options can be developed. The framework in figure 2 is a synthesis of the work of the ad hoc Accountability Working Group of the FRT and a paper handed out at the June FRT meeting by provincial officials entitled “An Accountability Framework for Post-Secondary Education, Training and Employment Services in Saskatchewan”.

The figure 2 framework below is based on an understanding of accountability as a cycle and not a ‘linear’ concept, a cycle consisting of five elements:

- Clear objectives and expectations
- Effective strategies to support the fulfillment of the expectations;
- Aligned management systems;
- Performance review and reporting; and
- Real consequences.

This cyclical framework is used to group elements listed in the ad hoc working group’s report.

**Figure 2**  
**Accountability Framework**

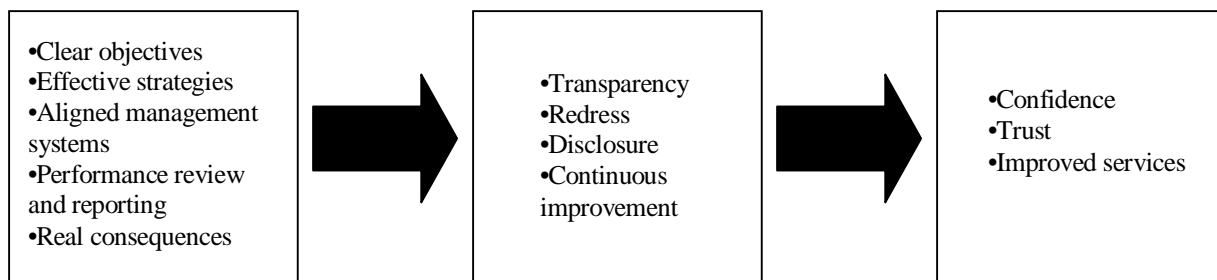



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non-hierarchical definition of accountability: “Accountability is a relationship based on the obligation to demonstrate and take responsibility for performance in light of agreed expectations.”

Underlying this framework are the three principles of transparency, disclosure and redress with a fourth added by the Institute, that of continuous improvement. The final outcome of effective accountability should be higher levels of trust and confidence of citizens in their government coupled with higher quality of government programs and services. Figure 3 illustrates the logic behind the framework:

**Figure 3**



With this framework as a backdrop, the Institute now turns to the examination of machinery relating to the following:

- The review functions –audit, evaluation and performance monitoring;
- Redress functions through Ombudsman-type mechanisms; and
- Ethics and integrity systems.

## **Review Mechanisms**

### **Function and Principles**

From the public’s perspective, the most visible part of the accountability cycle outlined in Figure 2 above are the performance review and reporting elements, including, most notably, the audit function. In addition to audit, this section will also cover two other types of review – performance monitoring and evaluation, both of which usually involve important machinery issues.

The audit function in Canada has evolved substantially over the past 120 years, following the appointment of the first independent Auditor General of Canada in 1878. (One of his functions was to approve or reject the issue of every government cheque!) Audit experts now distinguish among three types of audits:

- **Attest auditing** – where the auditor attests to or verifies the accuracy of financial statements;
- **Compliance auditing** – where the auditor asks if the government has complied with the wishes of Parliament; and

- **“Value for money” or performance auditing** – where the auditor asks whether programs run efficiently and economically and does the government have the means to measure their effectiveness.

The combination of all three types of audit is referred to as comprehensive auditing, given that such an audit framework provides over time a complete view of the organization. Since 1977, the Auditor General of Canada has had the authority to perform the full range of comprehensive auditing. In comparison, the role of the Office of the Provincial Auditor Saskatchewan appears to be more constricted to commenting on the adequacy of government systems vis-a-vis value for money rather than the programs themselves.

Not all government auditors carry out audits. For example, in the United Kingdom, the Audit Commission, with a mandate that extends to all local governments and public authorities, appoints auditors for each entity to be reviewed and sets standards for those auditors through a Code Of Audit Practice.

In contrast to auditing, performance monitoring is centered more on effectiveness or on how well programs are doing and deals with such questions as were the expected results accomplished? Were they accomplished within budget and in the most efficient manner? And were there undue, unintended consequences? (In terms of the accountability model in figure 2, the emphasis is on the effective strategies element rather than on management systems.) For any given initiative achievements can be viewed along a continuum as follows:

**Performance Achievements Continuum<sup>24</sup>**

Activity →	Outputs →	Intermediate Outcomes →	Long-term Outcomes
Example: <ul style="list-style-type: none"> <li>• Development of a publication on energy efficiency</li> </ul>	<ul style="list-style-type: none"> <li>• Publication distributed to customers/targeted stakeholder groups</li> </ul>	<ul style="list-style-type: none"> <li>• Publication used to make more informed decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Actual energy saved as a result of using information contained in the publication</li> <li>• Impact of energy savings in terms of global warming potential</li> </ul>

Governments’ reporting on the performance of their programs in a systematic way is a relatively recent phenomenon. Within Canada, Alberta appears to be the most advanced in terms of reporting regularly on its performance. In June 1995, it published “Measuring Up: First Annual Report by the Government of Alberta”, which contained 22 “core measures” such as educational attainment, life expectancy at birth, family income distribution, tax load, crime rates etc. The 1996 version compares actual results with the goals set in the government’s business plan. In the United

<sup>24</sup> Adapted from Exhibit 10.5, Report of the Auditor General of Canada, April 1997

Kingdom at the local level, the Audit Commission has the duty of directing local authorities to publish comparative indicators of performance annually.

Appendix 4 contains a brief summary of the experience to date of a number of other Canadian and foreign jurisdictions. Some of these jurisdictions, including Alberta, have adopted laws mandating their government departments to publish performance information on a regular basis. Appendix 5 contains the results of a survey of the literature on implementing results based management and performance-based budgeting.

Interviewees at both the World Bank and the Office of the Auditor General noted that the trend towards greater emphasis on performance monitoring is often accompanied by approaches to give managers more discretion in managing resources assigned to them. Oddly enough, therefore, performance monitoring carries with it a need for increased emphasis on traditional audit approaches (attest and compliance) to ensure that this greater discretion is not being abused.

Like performance monitoring, evaluations focus on effectiveness but on occasion go even one step further by asking the question: Is the program still relevant? (Referring again to the accountability model in figure 2 the relevance question focuses on the element at the top of the diagram, setting objectives.) Evaluations tend to be conducted periodically rather than on an annual basis and usually consist of a combination of quantitative data similar to that generated by performance monitoring along with qualitative information (for, example, the opinions of program recipients gathered through interviews). Evaluations can take many forms from small in-house studies to Royal Commissions.

To complete this brief survey of review mechanisms, it is useful to mention Comptrollership, which is an internal management function located in the executive branch directed at improving the quality of management. More specifically, comptrollers provide advice and support related to many of the elements in the accountability cycle including budgetary planning, expenditure control, protection of assets, strategic planning, ethical frameworks, evaluation and internal audit. In most cabinet-parliamentary systems, this function is located in a central agency such as the Department of Finance or Treasury Board. Large departments also have this function in their finance areas.

The principles usually associated with effective review mechanisms are summarized in the box below.

## Principles for Review Mechanisms

- **Independence** – from politicians and others who have a direct stake in the activity under review;
- **Integrity and fairness** – those conducting the review should have no ‘axes to grind’ and be judged as reputable and fair;
- **Transparency** – the review process is an ‘open book’;
- **Experience and expertise** – some review processes require professional accreditation, others require high degree of experience and good judgment
- **Costs are commensurate with benefits** – the reviews result in changes (or act as a deterrent to inappropriate behaviours), the benefits of which are worth the costs;
- **Stability** – time is required to build expertise and experience
- **Accountability** – review mechanisms are accountable for the resources they expend

To illustrate the last principle, accountability, the Auditor General of Canada at its web sites lists a wide variety of ways it is held accountable. Examples include the appointment of an external auditor to audit its expenditures, the discussion of the Auditor’s work by some 15 parliamentary committees and scrutiny by the Public Accounts Committee on the Office’s budget and expenditures.

The first principle, independence, is also worthy a short comment. In many jurisdictions, there appears to be an inverse relationship between independence and the political sensitivity of the review mandate. Thus performance monitoring and evaluations which concern themselves with effectiveness and relevance tend to be less independent functions than more conventional auditing.

### Examples and Options

For the purposes of this section and the others which follow, the Institute will follow the lead of the ad hoc Accountability Working Group and assume that “in all likelihood, First Nations governments will include some form or forms of collective governing arrangements”<sup>25</sup> but that any collective form will not cover the entire province. Under these conditions, options inspired by the number of examples already cited would include the following.

**Option one** would be an advisory body within the FSIN and responsible to the Chiefs making up that organization’s governing body. Its advisory mandate would be wide, encompassing all of the elements usually associated with the comptroller function. In terms of audit and perhaps the other review functions, this body could establish standards as is the case in the United Kingdom to which First Nation governing bodies could adhere (the incentive to adhere to the standards would be increased credibility among their own citizens, other levels of government and perhaps potential

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<sup>25</sup> op. cit. P. 9

investors). Finally, such a body could also establish a capacity to do special studies and evaluations for which it would contract its services.

**The second option** would be for a number of the self-governing entities to contract with an existing audit organization for, say, a five year period to provide a package of review services such as comprehensive auditing. The multi-year term of the contract might allow the audit organization to establish a dedicated unit with staffing arrangements to be stipulated in the contract. How the head of this unit would be appointed, reporting requirements, the scope of the reviews - these and other important considerations could all be determined in the contract negotiations.

**A final option** would see the establishment of a review office by a group of First Nation self-governing entities delegating authority upwards to such an office through commonly adopted laws or legislation. The entities would need to agree on a range of important matters concerning the office, particularly the scope of the reviews and how the office would be held accountable to the participating governments. Should the scope of the reviews be narrow (say to compliance and attest auditing), then having an advisory body similar to option one, to provide comptroller-like advice, might also be added to this option.

## **Redress Through Ombudsman-like Mechanisms**

### **Functions and Principles**

The ombudsman institution has its roots in Sweden, which developed the concept some 250 years ago. Since the early 1960s there has been what one author has called an ‘ombudsman explosion’<sup>26</sup>, whereby the institution has spread to an increasing number of countries in the world in a variety of forms and at all levels of government – central, state and local. The United States in particular has been receptive to this institution. In Canada, most provinces have an ombudsman and forms of the institution exist at the federal level as well.

Ombudsmen exist to handle complaints from ordinary citizens about certain public bodies or private sector services – usually to consider whether something has been badly or unfairly handled. Examples include unreasonable delay, inaction, neglect, failure to follow policy or proper procedure inconsistency, mistakes of law and the giving of inaccurate information. (In 1995, the Ombudsperson for the Saskatchewan Government handled 1841 complaints.) A secondary objective is to improve the quality of administration and in that sense is akin to a review mechanism.

Like Auditors General, ombudsman, to ensure their independence, are usually an officer of the legislative branch of the government. In most jurisdictions, they have powers to launch an investigation without awaiting a complaint (for example, in Saskatchewan) but can only recommend forms of redress (one exception is Sweden where the ombudsman has the power to quash certain decisions). Appendix 6 contains a document published by the Local Government Ombudsman in the United Kingdom on best practices associated with devising a ombudsman system.

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<sup>26</sup> Najmul Abedin, “Transplantation of the Ombudsman Institution in Developing Countries”, Butterworth & Co (Publishers), 1986



A variation of the ombudsman concept are the Information and Privacy Commissioners found at the federal level and in most provinces. (Indeed, in at least two provinces – New Brunswick and Manitoba – the provincial ombudsman handles access and privacy matters.) These Commissioners are established to receive complaints about the administration of Access to Information and Privacy Laws with powers to summon the appearance of persons to give oral or written evidence and to produce documents the Commissioner considers necessary for a full review. At the federal level, the Commissioner has decision making power, but such decisions may be appealed to a court of law.

Key principles<sup>27</sup> associated with ombudsman institutions are the following:

<b>Principles for Ombudsman Machinery</b>
<ul style="list-style-type: none"> <li>• <b>Independence</b> – the institution should have an arms-length relationship with the organization it has the power to investigate;</li> <li>• <b>Fairness</b> – the ombudsman is neither an advocate for citizens or a defender of the government;</li> <li>• <b>Transparency</b> – the procedures of the office should be clear and the results of investigation open to inspection;</li> <li>• <b>Accessibility</b> – the institution should be well publicized and within easy reach of the large majority of citizens;</li> <li>• <b>Effectiveness</b> – the office has to be respected so that its recommendations are taken seriously; it must also maintain a proper balance between thoroughness and speed.</li> <li>• <b>Accountability</b> – there should be measures in place so that it can answer for the resources it expends and the powers it exercises.</li> <li>• <b>Stability</b> – time is required to build expertise and experience</li> </ul>

## Examples and Options

There are a wide variety of elements that make up an ombudsman office, elements such as the scope of the what constitutes a complaint, procedures to follow in resolving them, powers of the office to have access to documents and other material, reporting procedures, role of politicians and government officials, appointment and tenure of the ombudsman, accountability procedures and so. Options could be fashioned around most of these.

Nonetheless, the most meaningful options to consider at this stage of the FRT’s work revolve around the relationship of an ombudsman mechanism and the self-governing entities. At least three options are worthy of consideration.

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<sup>27</sup> Other source material from which these principles are derived include: Roy Gregory and Jane Pearson, “ The Parliamentary Ombudsman After Twent-five Years”, Public Administration Vol. 70 1992;kent Weeks, “Ombudsmen Around the World: A Comparative Chart”, Institute of Governmental Studies, University of California, Berkley, 1973

**The first option** would be for one or more self-governing entities to contract with an existing ombudsman from another government over a multi-year period. As in the case of the review mechanisms, such a contract might call for a dedicated unit within the existing organization to handle complaints arising from these entities. The contract would have to ensure appropriate access to documents and establish reporting arrangements so that the integrity and independence of the ombudsman would be ensured.

**Option Two** would involve an ombudsman office being established at the provincial level under the auspices of the FSIN. Questions such as access to documents and individuals and reporting protocols would need to be dealt with through individual agreements with participating self-governing entities. This option assumes that the ombudsman would have advisory powers only.

**The third option** would be for self-governing entities to create their own ombudsman office through legislation. Questions of scale and independence suggest that more than one such entity should collaborate to create such an office.

## **Integrity and Ethics Regimes**

### **Function and Principles**

Based on a study of ethics management conducted by the Organization of Economic Co-operation and Development (OECD) of nine member countries, an OECD official connected with the study concluded that “Few, if any OECD countries have escaped occasional headlines pointing to government scandals, exposing anything from inappropriate behaviour to full-scale corruption, on the part of both politicians and civil servants. Politicians can be dealt with at the polls, if not through the judicial system. But what can be done to ensure the integrity in the machinery of government?”<sup>28</sup>

Aboriginal governments do not appear to be immune from unethical or corrupt behaviour. Mary Ellen Turpel-Lafond, in a study completed for the Royal Commission on Aboriginal Peoples, observed that in the Commission’s public hearings, “...over two hundred submissions addressed concerns relating to ethics and conflicts of interest in aboriginal governments.”<sup>29</sup>

A number of recent studies on integrity and ethics in government have concluded that a multi-pronged approach is needed to deal with this issue. The OECD study, for example, recommended that governments create an “ethics infrastructure” consisting of the following elements:

- **Political commitment** from senior government leaders that unethical conduct will not be tolerated;
- **An effective legal framework** including existing criminal codes, civil service laws, conflict of interest statutes and regulations;
- **Efficient accountability mechanisms**, ranging from audits, evaluations and performance measures to protection for whistle blowers;

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<sup>28</sup> Sally Washington, “Managing Government Ethics”, The OECD Observer, February/march 1997

<sup>29</sup> Mary Ellen Turpel-Lafond, “Enhancing Integrity in Aboriginal Government: Ethics and Accountability for Good Governance”

- **Workable codes of conduct**, to define in broad terms the behaviour expected of public servants;
- **Training and other professional development activities** to inculcate values;
- **Supportive conditions** such as reasonable pay and good management-union relations; and
- **Ethics co-ordinating bodies** – either parliamentary committees or central agencies – to assume a variety of roles: watchdogs, counsellors and advisors, or overall promoters of public service ethics.

In her Royal Commission study, Mary Ellen Turpel-Lafond also advocated a multi-faceted approach with many of the same elements identified by the OECD. Several of her recommendations were based on the experience of the Navajo Nation, which had adopted an Ethics in Government Law. This law established among other things, an Ethics and Rules Committee, a quasi-judicial body to hear complaints of alleged ethics violations. (Ms. Turpel-Lafond’s description of the Navajo system is found in Appendix 7.)

In Canada, federal and provincial governments have adopted machinery as well to promote ethics and integrity in government. At the federal level, the Prime Minister announced the appointment of Canada’s first Ethics Counsellor in June 1994 with responsibilities in two related domains: conflict of interest and lobbying. Among the Counsellor’s duties are the following:

- investigating allegations against ministers and senior officials involving conflict of interest or lobbying;
- offering guidance to lobbyists and their clients before they enter into dealings with the government; and
- investigating complaints about lobbying activities that may be contrary to the lobbyist’s code of conduct.

The ethics counsellor reports annually to Parliament.

A number of other provinces, including Saskatchewan, have ethics or conflict of interest commissioners<sup>30</sup> as well as laws or regulations dealing with such matters as disclosure, prohibited activities, criteria for gifts and other benefits and post employment time restrictions.

Principles underlying any machinery in this area would include the following:

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<sup>30</sup> For a comprehensive summary of conflict of interest approaches across Canada, see “Conflict of Interest in Canada: Comparative Tables, 1994”, Office of the Ethics Counsellor, Ottawa

### Principles for ethics and integrity Machinery

- **Independence** – it must not be subject to political interference in carrying out its mandate;
- **Fairness and integrity** – its work must meet the highest ethical standards;
- **Transparency** – what it does should be open to public scrutiny;
- **Effectiveness** – its recommendations must be taken seriously and have a good track record of being acted upon;
- **Professionalism** – the quality of any investigations must be very high; furthermore, the organization must develop a rich understanding of individual behaviour in organization settings.

### Options

The following three options appear to be worthy of careful consideration. **The first option** would be for self-governing entities to contract with an ethics commissioner with another government to perform the services required – investigations and counselling. Again, as part of the negotiations it might be possible to develop a dedicated unit within the existing Counsellor’s organization.

**The second option** might split the two primary duties, leaving the complaints handling responsibilities with another body like an ombudsman. The advice and counselling function could reside in a province-wide organization like the FSIN, with accountability to the Chiefs’ governing body. The advice function could be narrowly focused on individuals seeking advice or more likely, would be broad in nature, providing assistance and guidance to self-governing entities on establishing multi-faceted systems to deal with unethical and corrupt behaviour.

**The third option** would have the ethics machinery, for scale reasons, serving several self-governing entities, based on their adopting similar laws to provide the investigatory powers to a single ethics organization. (This would be delegating jurisdiction upward.) This same organization could also provide broad advisory services as outlined in option two to the participating self-governing entities.

This completes the Institute’s treatment of accountability. In the next section we turn to the question of data management.

### 3.3 Data Management

#### Functions and Principles

Statistical data and related analyses will be essential to a healthy, sustainable fiscal relationship. Among other things such information will be need for developing and using funding formulas; statutory requirements; accountability purposes; developing and maintaining partnerships with the

private and non-profit sectors and other levels of governments; and the ongoing management of programs and services.

Given the wide jurisdiction that self-governing entities will be assuming, the quantity and variety of their statistical requirements may have some parallels with those of a province, ranging from demographic to community well-being (e.g. education, health justice culture social etc.) to program management to governance and to geographic data and related information.

In this regard, it is relevant to note briefly how provinces are equipped to serve their statistical needs. In Saskatchewan, for example, the Department of Finance has a Bureau of Statistics consisting of a staff of six. Its focus is reporting on and measuring the provincial economy but it does concern itself with demographic information as well. A major function of the Bureau is to liaise with Statistics Canada through a dozen or so consultative committees. In addition, it does produce some data – through a government employment survey – but does little or no analysis. Other departments (for example, health, education and justice) have small statistical capacities as a part of their planning functions.

Other provinces appear to have much larger, centralized statistical units: according to Saskatchewan officials, British Columbia has some 40 people while Quebec has well over 100. Most Provinces have statistical acts, which, among other things allow them to enter into agreements with Statistics Canada to collect data for them.

Of relevance to this issue is the proposal for a pilot project soon to be considered by the FRT, a project that would establish a modest data capacity within the FSIN. Possible functions of such a unit might include the following:

- Providing the FSIN and its member First Nations with a policy capacity for future developments in data management;
- Serving as a focal point for dealing with data issues with other levels of government;
- Promoting the value of sound data management with First Nations;
- Managing certain data sets (e.g. storage; advice; tailoring products);
- Documenting the data needs of the FSIN and its member First Nations;
- Co-ordinating data collection by First Nations to ensure consistency; and
- Effecting some data analysis.

Any machinery that might underpin a new fiscal relationship would need to rely on the following principles:

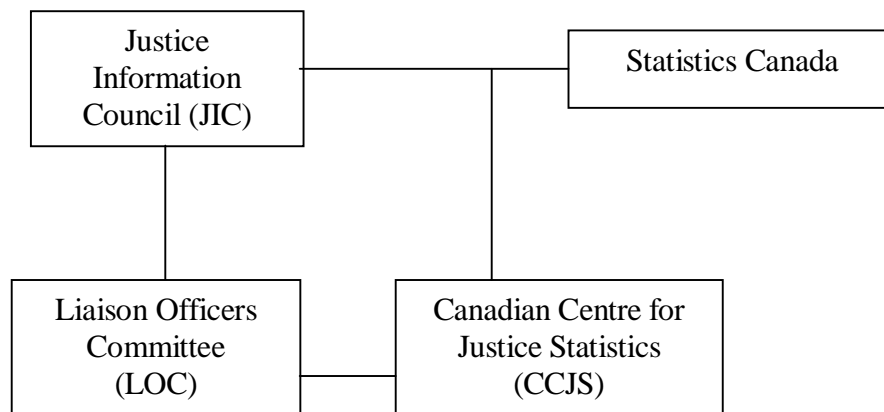
### Principles for data management machinery

- **Independence from political interference** – the day to day operations relating to the availability and analysis of statistical information should not be subject to political directives;
- **Sustainability** – there must be sufficient likelihood of resourcing the mechanism over a multi-year period to provide, among other things, a core staff;
- **Data integrity and quality** – validity, reliability, timeliness, consistency must be hallmarks of the products produced;
- **Accessibility** – the data products must be available and affordable to potential users
- **Confidentiality** – information bearing on individuals and businesses must be protected;
- **Costs must be commensurate with benefits** – use put to the products must justify the costs
- **Accountability** – the mechanism must be accountable to the various stakeholders that it is serving.

### Models and options

Two existing models of intergovernmental co-operation in Canada are worth highlighting as a backdrop to discussing options for the FRT context. The first is the **Canadian Centre for Justice Statistics (CCJS)**, established in 1981. While the centre resides as a branch within Statistics Canada, it has an interesting governance structure, one designed to share authority and responsibility among the partner governments. The governing body is the Justice Information Council, which is chaired by the Deputy Minister of Justice Canada and consists of the federal and provincial/territorial deputy ministers with justice responsibility and the Chief Statistician. Aiding the Council in overseeing the CCJS is the Liaison Officers Committee, whose membership, albeit at a less senior level, mirrors that of the Council and includes a representative from the Canadian Association of Chiefs of Police. Figure 4 summarizes this organization structure.

**Figure 4**



With the guidance of this governing structure, the Centre implements statistical surveys and other studies and provides information, products and services to the partners and to the public. The centre's budget for 98/99 is \$6.1 million with a staff of 77. The recently established Centre For Educational Statistics appears to follow the same organizational model as that of the CCJS. (Additional information on the CCJS is contained in Appendix 8).

A second model of relevance to the FRT is the **Canadian Institute for Health Information (CIHI)**, which is a federally chartered but independent not-for-profit organization . It has a 15 member Board of Directors linking federal, provincial and territorial governments with non-government health groups. Included on the Board is the head of Statistics Canada. (See Appendix 9 for more information on the CIHI.)

Operating from its head office in Ottawa with offices in Toronto, Vancouver and Edmonton, the organization has three primary functions:

- Collecting, processing and maintaining health-related data bases;
- Setting national standards for health related data and health informatics technology; and
- Producing analysis from its information holdings.

Its 97-98 budget is \$14.8 million. The majority of its revenue is generated from clients, including provinces and health institutions, on a fee for service basis.

The Institute presents three options for FRT members to consider. All three assume that self-governing entities will have some capacity of their own – for example, a small unit within the FSIN as being proposed for a pilot project.

The **first option** would follow the current federal/provincial model of developing a modest centralized capacity at the FSIN level – much as is envisioned for the pilot project described above but likely larger – coupled with co-ordinating machinery in the form of one or more

intergovernmental committees. This committee or committees might fit within the machinery to manage the overall relationship, described earlier in this paper.

A **second option** would be patterned after the Canadian Centre for Justice Statistics, that is a branch within Statistics Canada but with a governing structure that would reflect federal, First Nation and perhaps provincial interests. Such a Centre, which would be national in scope, would need to be linked to the machinery overseeing the fiscal relationship in Saskatchewan, perhaps through a member or members common to both organizations.

The **third option** to consider would follow the lines of the Canadian Institute for Health Information and would also be national in scope. The partners would form a non-profit entity to coordinate, collect analyze and distribute data and related products. As in option two, some means would need to be found to link this organization to the fiscal relations machinery in Saskatchewan.

### **3.4 Tax Assessment and Collection**

The capacity of most First Nation self-governing entities to generate significant revenue in the near term will likely be limited. Consequently, the question of machinery for tax collection and assessment, relative to the other topics covered in this study, is not as pressing an issue. With this in mind, the Institute's treatment of this topic will be brief. That said, some First Nations are generating tax revenues and it is useful to review how they are going about the tax collection and assessment functions.

#### **Function and Principles**

An important tax initiative for First Nations came as the result of an Amendment to the *Indian Act* in 1988, following a long process led by the Kamloops Indian Band under its Chief, Manny Jules. As a result of the amendment, many First Nations, over 50 in British Columbia alone, are now taxing the property interests held by non-Indians on reserve lands.

According to officials at the Indian Taxation Advisory Board (ITAB), the body established by the *Indian Act* amendment to review and advise the minister of DIAND on the tax bylaws adopted by First Nations, the large majority of First Nations have contracted with provincial assessment authorities to perform their property tax assessment function. In British Columbia, the assessment authority is a Crown Corporation called BC Assessment, established in 1973 to replace the 140 real property assessment organizations in the province. Under the pre 1973 system, the lack of uniformity (no standard valuation methods existed) resulted in serious inequities, constant grievances which were difficult to respond to and rising citizen dissatisfaction.

Functions provided by BC Assessment include the following:

- Initial jurisdiction set-up;
- Upgrading the integrity of existing records;
- Suggesting modifications to tax by-laws;
- Defending assessments through the review process; and
- Performing ongoing assessments of property values.



According to ITAB officials, the advantages to First Nations under these arrangements are several – cost-effectiveness is one; another is uniformity in tax assessment with neighbouring municipalities so that there is no incentive to relocate to another jurisdiction because of the tax assessment process; and there is a high degree of acceptance on those being taxed. More information on BC Assessment and its relationship with First Nations is contained in Appendix 10.

Another tax initiative of note are the 1997 agreements between the Cowichan Tribes of Indians and Westbank First Nation in British Columbia with the federal government whereby Revenue Canada, on behalf of the First Nations, collects sales tax on tobacco sales on reserve lands and remits the tax receipts to the First Nations. The Province has a similar arrangement for collecting a sales tax on tobacco with the Cowichan Tribes of Indians. More information on the legislative changes required for these initiatives is in Appendix 11. Following the 1998 budget, the government has introduced legislation to enable the Kamloops Indian Band to impose a value-added tax on all sales of alcohol, tobacco products and fuel sold on its reserves. The legislation will also amend last year's *Budget Implementation Act* to enable the Westbank First Nation to impose a similar tax on alcoholic beverages.

The arrangements described above are very much in line with a long tradition in Canada of intergovernmental co-operation on the assessment and collection of taxes. For example, Revenue Canada collects income tax for all provinces except Quebec and corporate taxes for all provinces except Alberta, Ontario and Quebec. (Longstanding federal policy has been to collect provincial taxes at no charge so long as they are harmonized with similar federal taxes.) The province of Quebec, on the other hand, collects the GST on behalf of the federal government as part of a harmonized sales tax.

The federal government plans to extend tax collection harmonization in Canada through the creation of the Canada Customs and Revenue Agency. The Minister will continue to be accountable to Parliament for the new agency but its management will fall to a Board of Directors, of which 11 of 15 members will be nominated by the provinces and territories. In addition to increased flexibility in personnel, real property and materiel management, the government believes that the following benefits will be realized:

- Tax harmonization will save the provinces up from \$37.5 to \$62.5 million per year; and
- There will be a reduction in compliance costs for businesses from \$116 million to over \$193 million.

The Agency will continue current policy of collecting provincial taxes at no charge so long as the harmonization principle is respected. In non-harmonization cases, the agency will charge at full cost recovery rates. More information on this agency is contained in Appendix 12.

Principles for tax assessment and collection machinery would include the following:

### Principles for Tax Assessment and Collection Machinery

- **Stability and predictability** – capriciousness in this area will drive away business and anger citizens
- **Fairness and Equity** – few citizens enjoy paying taxes but resentment is high if inequities are evident or if individuals have no redress for unfair decisions;
- **Independence in day to day management** – there should be no political interference in decisions affecting individual assessments or taxes;
- **Accountability** – policies and resources for assessment and collection activities must be subject to some accountability regime;
- **Tax harmonization** – there should be no tax havens created through these activities;
- **Efficiency**
- **Separation of the property assessment and collection functions** – the assessment system should not be used, or perceived to be used, as a means for a ‘hidden’ increase in taxes

### Options

Given the small amounts of revenue involved in the near term, the most attractive options appear to be contracting out to other levels of government or to the private sector (as one First Nation has done in British Columbia). Tax collection by Revenue Canada, or the new federal agency which succeeds it, appears to be particularly attractive, should the federal government extend the same ‘no cost’ offer to First Nation entities as it does to Provinces (the federal government in the Mulroney era made such a proposal in consultations on a draft tax policy for First Nations in the early 1990s.)

Many more options will become available in the longer term. Developing the equivalent of BC Assessment run by First Nations is one such option. Participating in a national collection agency is another.

### 3.5 Capital Borrowing

The emphasis on this section will be primarily on machinery to facilitate the borrowing of capital for public purposes. The Institute was unable to discover interesting examples of machinery having to do with the allocation of capital among governments.

### Function and Principles

A number of countries have established machinery to assist sub-national governments to borrow capital more easily and at lower rates than if they were to access the financial markets on their own. In Sweden, for example, some 80 municipalities have established their own bank, the mandate of which is to reduce borrowing costs by having a single facility with sufficient scale to pool risks. The United Kingdom has taken a somewhat different tack. There, the national government has established the Public Works Loan Board, a statutory body that acts as a lending agent for sub-

national governments. Over 70% of all sub-national debt is held by this body, which is able to lend at advantageous rates.

Closer to home is the Municipal Finance Authority of British Columbia, a statutory body established in 1970 through which regional districts and municipalities finance all long-term capital requirements (the City of Vancouver is the only municipality in the Province which retains the right to issue its own securities to finance capital projects). The Province is divided into 27 regional districts, each of which has a Regional Board. The Authority is governed by a Board of Trustees, elected by members of the regional boards.

There are a series of safeguards in place that allow the authority to borrow at substantially lower rates than might an individual municipality:

- The combined credit of all the regional districts and their members stands behind the Authority's obligations;
- The authority is required to establish a debt reserve fund into which each regional district sharing in the proceeds of a securities issue by the Authority must contribute a pre-determined amount;
- The Authority has the power to levy a tax upon all taxable land and improvements in the province, should the balance in the reserve fund reach a pre-determined level;
- The Inspector of Municipalities may inspect the reserve fund from time to time;
- Moneys in the fund can only be invested in very low risk securities;
- The Inspector of Municipalities must approve the debt and user charges and other taxes to service the debt of a municipality;
- The total indebtedness of a municipality is limited by statute.

One significant result of this regime of safeguards is that the Authority now has a AAA rating (both from Moody's Investor Service and from Canadian Bond Rating Service), a rating that is higher than that of the Province. (The provincial rating is in the high AA category.)

In addition to capital financing, the Authority provides other services to its members. For example, it has established pooled investment funds for regional districts and municipalities; it offers interim financing for a variety of purposes and it can finance short term debt for the purposes for leasing purposes. More information on the Authority is included in Appendix 13.

With the assistance and encouragement of the Municipal Finance Authority, some 25 First Nations in the province have established an incorporated body called the First Nations Finance Authority. Members have concluded that a legislative base is required in order that their body could establish the type of guarantees and comfort for an investor to parallel those of the Municipal Finance Authority. In the meantime, many of the members have availed themselves of the investment pools established by the Municipal Finance Authority. (See Appendix 14 for more information on this organization).

The experience of British Columbia and other jurisdictions suggest the following principles for machinery for facilitating borrowing:

### Principles for machinery to Facilitate Borrowing

- **Well defined rules for reserve funds** – in the BC case, this is a simple formula related to the debt load;
- **Conservative investment strategy for reserve funds** – this should be mandatory and publicized
- **External checks on the borrowing of its members** – in the BC case, this meant outside approvals for borrowing and borrowing limits
- **External checks on its management;**
- **Effective accountability structure;**
- **Sufficient powers to pool risks** – in the BC case, this is a taxing power on all members
- **Multiple services** – investment opportunities as well as a number of borrowing programs, both short and long term
- **Efficiency** – low administrative costs are a must if such an organization is to realize benefits for members on the lending and borrowing side.

### Options

There appear to be three options available in the Saskatchewan context: First Nations could establish their own finance authority or second, join an already established organization like the First Nations Finance Authority in British Columbia. A third option would be to begin by pursuing the joint pooling of investment funds, an approach that would not require the type of legislative framework required to make a borrowing authority work.

### 3.6 Capacity Development

Capacity development is a term that has been in use in international development work for most of the 1990s. A definition, slightly modified, that is employed by CIDA and several other development agencies is the following:

Capacity Development is the process by which individuals, groups, organizations, institutions and societies increase their abilities, in culturally appropriate ways, to

- Set objectives and determine priorities;
- Perform function, solve problems and achieve objectives; and
- Understand and deal with their development needs in a sustainable manner.

The definition captures many of the lessons that these agencies have learned over the past decade about this somewhat elusive term. First is the importance of sustainability. The emphasis, unlike many past attempts at development, must be on long term programs rather than short term projects. A second lesson is that capacity development has to be recipient driven. Outside agencies can not 'build' capacity – only recipients can do this. Rather, the role of such agencies is a limited one –

for example, facilitating , through the bringing of expertise of other jurisdictions to bear; acting as a catalyst in forging new partnerships and by providing resources at critical junctures.

A third important lesson captured in the above definition is the necessity of asking the question “whose capacity”. All too often the initial tendency is to focus on capacity development for public servants or perhaps public servants collectively within a single organization. However, the definition raises other possibilities – politicians, citizens, members of the media, strengthening linkages between the private and public sectors etc. - in short, all those elements making up a governance system.

Thanks in large measure to the Royal Commission on Aboriginal Peoples, the concept of capacity development has taken on increased prominence in the context of the re-emergence of Aboriginal governments. The Commission’s approach echoed many of the themes of international development agencies:

- The necessity for a **long term strategy** (20 years);
- Capacity development to occur **within a context of ‘sound’ governance**;
- **Multiple targets** (rebuilding communities, training and education for individuals, organizational capacities, accountability regimes, data collection capacities etc.);
- **Scale an important factor** (focus at the nation level);
- **Multiple causalities** (self-government will help rebuild communities which, in turn, will strengthen self-government); and
- **Multiple approaches** to developing human resource capacity.

The Commission also recommended an important piece of machinery – an Aboriginal Government Transition Centre with a mandate to develop and deliver training programs, conduct research, develop and co-ordinate initiatives with other partners, and facilitate information exchange.

In the government’s response to the Commission in “Gathering Strength”, it recognized the importance of capacity development and that it be a focus in self-government agreements. Further, the government made a commitment to explore “governance resource centres”. It also noted the importance of the principle of sustainability.

In addition to noting the approach of the Royal Commission to this topic and the federal government’s response, it is also useful to summarize briefly two current capacity development initiatives of direct relevance to the FRT. The first is the development of the Aboriginal Financial Officers Association (AFOA), which began in British Columbia some 18 months ago but now has a sister organization in Manitoba with interest being expressed in other parts of the country. At the moment, the organization has two current thrusts – one under the auspices of a technical working group, made up of CAs, CGAs, DIAND and AFOA, with a focus on recommending changes to financial reporting; and a second, relating to education and professional development.

The organization now has 96 members and is funded through DIAND, yearly membership fees (\$450), and workshop fees. It has a quarterly newsletter and a web site. According to correspondence with the Institute, its goal is to have a national organization by this time next year.

A second, related initiative is a proposal for a national process to engage First Nations communities with the federal government and accounting industry in identifying and resolving audit and financial accounting issues. Four types of activities are contemplated:

- Increasing professional development opportunities;
- Strengthening community financial reporting;
- Reviewing the appropriateness and application of accounting standards; and
- Reviewing the financial accountability framework.

The intention is to consult with and involve the regional AFOA organizations.

Based on the above survey of capacity development experience and initiatives, the following principles seem appropriate for any machinery around capacity development.

<b>Principles for Capacity Development Machinery</b>
<ul style="list-style-type: none"><li>• <b>Long term focus</b> – capacity development, to be sustainable, is a long term endeavour</li><li>• <b>Comprehensive mandate</b> – capacity development may involve citizens, political leaders, public servants, organizations, networks of organizations, non-profit groups, the media etc.</li><li>• <b>A partnership orientation</b> – in a world of scarce resources, capacity development must focus on partners and using existing organizations to their maximum</li><li>• <b>A facilitating, catalytic role</b> – only recipients can build capacity</li><li>• <b>Cost effective</b> – any new mechanism has to add value commensurate with costs</li><li>• <b>Appropriate Accountability to stakeholders</b></li></ul>

## Options

Options will depend on the direction of a number of national initiatives, specifically the government's commitment to consider the establishment of governance resource centres and the national process involving First Nations, DIAND and the accounting industry. That said, three options may be worthy of consideration at this juncture. **The first** might have a capacity development focus as part of the overall machinery managing the fiscal relationship. Specifically, this could take the form of a subcommittee of officials, reporting to a political level, charged with developing and implementing a capacity development strategy to support the fiscal relationship. Such a subcommittee, in addition to federal and First Nation officials, could also include representatives from various Saskatchewan-based learning institutions (e.g. SFIC, SIIT) and participants from other organizations (e.g. Accounting Associations, Auditor General's Office etc.).

This subcommittee would need to be plugged into any regional or national initiatives and would likely require a modest secretariat.

A **second option** would be to establish an organization much like that recommended by the Royal Commission – a governance transition centre, directed by a board with membership similar to that described in option one. The mandate of such a centre would likely encompass governance in general and not just the fiscal relation side, given the costs involved. Further, its mandate might extend beyond Saskatchewan.

A **third option** would see the establishment of a governance capacity centre as part of an existing institution, say a university or college, in order to reduce administrative and setup costs. Its mandate and governing structure would be a variation of option two.

## 4.0 CONCLUSIONS

The primary purpose of this study is to canvass the range of machinery options that might support a new fiscal relationship and not to make any recommendations to the FRT partners. Having said this, the Institute believes it would be useful to share some conclusions with the FRT that have developed out of the Institute's research on this project. The following six points sum up these conclusions:

1. A central finding of this study is that modern governments employ a vast (some might say a bewildering) array of sophisticated machinery in support of intergovernmental fiscal relationships.
2. Given the relatively small scale of self-governing entities in Saskatchewan, it appears neither feasible nor desirable to employ anywhere near the number of mechanisms surveyed in this study. There are at least three reasons behind this conclusion:
  - Affordability;
  - Capacity – finding the numbers of highly skilled people to make this machinery work would pose a significant challenge; and
  - Complexity – the system will not be understandable to most citizens.
3. The challenge facing the FRT, once more progress is made on the governance front, is to attempt to set priorities, consolidate and simplify vis-à-vis machinery. Some of the options suggest ways of going about this task:
  - Attaching certain functions under the wing of the machinery set up to manage the overall relationship – examples are aspects of data management and capacity development;
  - Identifying those functions that are essentially a service to self-governing entities and placing them within the FSIN or some other provincial-level body with contractual relationships to the self-governing entities – examples include many of the review type mechanisms (audit, evaluation, performance measure) and aspects of data management;
  - Contracting out the function with another level of government – this is already being done in the tax assessment and collection arena and might have broader application, especially if such arrangements can be part of a capacity development strategy; and
  - Grouping like functions together in a single mechanism – the complaints and redress type functions appear to be possible candidates for such an approach.
4. A significant number of the machinery options canvassed in this study, with suitable modifications, would likely be compatible with a treaty relationship envisioned by the FSIN. The negotiations and consensus models employed by a number of countries to manage the overall relationship is one such example. Several of the mechanisms surveyed in the data management area are also based on equal partnership notions. Another encouraging development is the thinking now going on in many circles, both in Canada and abroad, in fashioning accountability relationships not based on hierarchy.



5. One mechanism with which the Institute had little familiarity prior to this study and which appears to warrant greater attention is the Municipal Finance Authority in British Columbia. The Authority, as well as providing low cost capital funds and high returns on investments to its members, encompasses a scheme with built-in incentives for managing debt in a responsible manner. (It is unfortunate that the federal and provincial governments were not under such a regime during the 1970s and 80s!) The downside to the scheme, from the perspective of its applicability to the FRT context, is that it is imposed by provincial statute. The question is whether such a regime could be developed on a voluntary basis among a number of self-governing entities. If so, it would appear to offer important benefits.
6. A final conclusion bears on the importance of determining governance models first before settling on machinery questions. This is especially so in the accountability area where systems of government are crucial to choosing appropriate accountability mechanisms.