

**TOWARDS A FISCAL RELATIONS
FRAMEWORK
FOR
SELF-GOVERNMENT:
SUMMARY OF THE MAJOR CONCLUSIONS
OF THE
ROYAL COMMISSION
ON ABORIGINAL PEOPLES**

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**Towards a Fiscal Relations Framework
for
Self-Government:
Summary of the Major Conclusions
of
The Royal Commission on Aboriginal Peoples**

A. PURPOSE

The Department of Indian And Northern Affairs (DIAND) has the lead role in a government-wide effort to develop a framework for new fiscal arrangements with emerging Aboriginal self-governments. In addition to establishing federal structures and machinery for managing inter-governmental transfer mechanisms, such a framework would likely include at least the following four principal sections:

- a) **A statement of objectives;**
- b) **Guidelines on the major elements of a fiscal transfer regime:**
 - **purposes of particular transfers** e.g. financial assistance for general operations or particular purposes; financial resources to meet equity or regional development principles, etc.;
 - **nature of the transfers**, e.g. conditional versus unconditional ;
 - **forms of the transfers**, e.g. cash payments, grants in lieu of taxes etc.;
 - **method of calculating the transfers**, e.g. to include ways of handling own source revenue etc.; and
 - **means for generating the required statistical information** i.e. to underpin transfer calculations.
- c) **Co-ordination mechanisms and agreements, e.g. for tax harmonization purposes;**
- d) **Transition measures**

The purpose of this paper is to summarize the major conclusions and proposals of the Royal Commission on Aboriginal Peoples regarding the above four sections. To begin, a brief overview of the Commission's overall strategy will provide a useful context.

B. THE CONTEXT: THE COMMISSION'S OVERALL STRATEGY

The Royal Commission on Aboriginal Peoples was established in 1991 to, in its words, "... restore justice to the relationship between Aboriginal and non-Aboriginal people in Canada

and to propose practical solutions to stubborn problems."

The following 6 points cover the Commission's major elements of its proposed strategy:

- 1) **Based on an historical overview, the Commission concludes that the relationship that has developed over the last 400 years between Aboriginal and non-Aboriginal people in Canada has been built on "false premises".** The result were policies that removed Aboriginal people from their homelands, suppressed Aboriginal nations and their governments, undermined Aboriginal cultures and stifled Aboriginal identity.
- 2) **The time has come, according to the Commission, to start afresh, to put the relationship on a more secure foundation based on the following four principles:**
 - a) mutual recognition;
 - b) mutual respect;
 - c) sharing;
 - and d) mutual responsibility.
- 3) **The negotiation of treaties - either new treaties or the re-interpretation or clarification of existing treaties - is the primary means for renewing the relationship based on the above principles.** These treaties would deal with:
 - a) self-government and
 - b) the land and resources required to make self-government viable.

Treaty negotiations would include the Provinces and territories as well as the federal government where appropriate.

- *Critical elements to the Commission's approach to self-government include the following:*
 - *Aboriginal Nations and not communities have an inherent right to self-government based on international law and the Canadian constitution;*
 - *Aboriginal governments can exercise jurisdiction in 'core' areas through self-starting initiatives without the need for agreements with other levels of government and in 'peripheral' areas through negotiated agreements;*
 - *in establishing and structuring their governments, Aboriginal peoples should consider three models - nation government operating on a land base, public government (e.g. Nunavut) and community of interest government, which would be established without a land base.*
- *The Commission believes that "... self-government without a significant economic base would be an exercise in illusion and futility."¹ Thus, the single most important*

¹Final Report, Royal Commission On Aboriginal Peoples, Volume 2, Part 2, P. 775

*factor in altering the economic options available to Aboriginal communities in the medium term is restoration of "... fair shares in the lands and resources of this country." Such restoration is necessary before "... even the best designed business development program can be expected to be broadly successful."*²

4) **Other elements in the Commission's strategy for renewing the relationship include:**

a) **economic development** - a series of effective measures to rebuild Aboriginal economies

b) **new directions in social policy**, including

- social issues (poverty, health, housing, family violence);
- cultural issues (language, spirituality, child care and traditional ways of life); and
- educational issues

- *The relationship between self-government and economic development is important, according to the Commission. Self-government will result in more culturally appropriate development, more rapid decision-making, the development of Aboriginal leadership in economic matters, the reduction in program duplication and greater funding stability. The Commission recommends that, as self-government becomes a reality, federal, provincial and territorial governments enter into long-term economic development agreements with Aboriginal governments or institutions, agreements which would, among other things, transfer all of their economic development programming responsibility and funding to Aboriginal institutions.*³

- *From the Commission's perspective, the links between social policy, self-government and economic development are critical. In terms of health, for example, it notes that whole health, in the full sense of that term, does not depend primarily on health and healing services. Whole health depends as much or more on the design of the political and economic systems and these have worked badly for Aboriginal peoples. But the dependence is mutual. The new political and economic systems that Aboriginal peoples are struggling to build will not work effectively unless health and healing have been achieved: "In a sense our entire report is about restoring and maintaining whole health among Aboriginal people."*⁴

²ibid, Vol. 2, Part 2, P. 799

³ibid, Vol. 2, Part 2, P. 835-841

⁴ibid, Vol. 3, P. 316

- *See the attached diagram, which summarizes the major elements of the Commission's strategy and their interrelationships.*
- 5) **The Commission maintains that its agenda for change can substantially reduce the costs of Aboriginal marginalization, ill health and social distress.** (By the year 2016 overall savings would be \$375M per annum.) In the short term, however, government spending must increase so that 5 years after the start of the strategy, spending is \$1.5B to \$2B per annum higher than it is today and this level should be sustained for some 15 years.
- *See Appendix 1 for a brief summary of the Commission's financial projections of its strategy.*
- 6) **Cost sharing amongst federal, provincial and territorial governments would be determined on the basis of the following principles: that⁵**
- a) the federal government be responsible for the costs of self-government on Aboriginal territory, including health and social services delivered by Aboriginal governments;
 - b) the federal government be responsible for Aboriginal government services and treaty entitlements outside Aboriginal territories where these benefits exceed benefits generally available;
 - c) with the exception of those residents on-reserve, in Inuit communities or on extended Aboriginal territory, provincial and territorial governments be responsible for financing services that are ordinarily available to other residents, including any additional costs that will make these programs appropriate for Aboriginal residents; and
 - d) the costs of affirmative action (to compensate for historical disadvantage) be shared by federal, provincial and territorial governments on a formula basis reflecting fiscal capacity.
- *Points a) and b) above would increase federal government costs and decrease provincial costs in comparison to the status quo. Whether there would be an overall shift in relative terms between federal and provincial spending would depend on negotiations regarding point d), the compensation for historical disadvantage, and negotiations on the value assigned to the land reallocated to Aboriginal nations as part of treaty agreements. Most of this land would likely be provincial Crown land.*

⁵ibid, Vol. 5, P. 551-552

Diagram on

C. THE COMMISSION'S FISCAL FRAMEWORK PROPOSALS

The starting point for discussing the new fiscal relationship proposed by the Commission is with its proposed model for governance.

1. Who Does What: The Commission's Model For Governance

The Commission's approach to the question "What is the most desirable level (or levels) for government functions?"⁶ is centred on the distinction it makes between an Aboriginal nation, of which there are 60 to 80 across Canada, and a local Aboriginal community, of which there are about 1000. The Commission defines an Aboriginal Nation as having the following three characteristics:

- "• the nation has a collective sense of national identity that is evinced in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry and homeland;
- it is of sufficient size and capacity to enable it to assume and exercise powers and responsibilities flowing from the right of self-determination in an effective manner; and
- it constitutes a majority of the permanent population of a certain territory or collection of territories and, in the future, will operate from a defined territorial base."⁷

Based on its legal analysis, the Commission concludes that the international right to self-determination, which, according to the Commission, is the "... fundamental starting point for Aboriginal initiatives in the area of governance"⁸, is vested in Aboriginal nations rather than small local communities. In addition, Aboriginal peoples possess the inherent right of self-government within Canada, a right guaranteed under section 35 of the *Constitution Act, 1982*, and that, here too, this right is vested "... in people that make up Aboriginal nations, not in local communities as such."⁹

⁶ibid, Volume 2, Part 1, P. 156

⁷ibid, Volume 2, Part 1, P. 182

⁸ibid, Volume 2, Part 1, P. 193

The Royal Commission's fiscal framework
⁹Institute On Governance, P. 236

As a corollary, the Commission maintains that Aboriginal people are entitled to identify their own national units for the purpose of exercising their rights to self-government and that their nations do not have to be recognized by the federal government. Nonetheless, as a practical matter, there is a need for federal and provincial governments to acknowledge the existence of the various Aboriginal nations in order to engage in serious negotiations "... designed to implement their rights of self-determination".¹⁰

The four-level organization model

Thus, from the Commission's perspective, the fundamental building block for its proposed model of governance is the Aboriginal nation. Consequently, in its treatment of individual policy spheres such as economic development, education, health, culture and language, the Commission recommends that the law-making authority be vested with the Aboriginal nation as well as the capacity to develop policy and allocate resources.

From that starting point, the Commission identifies four levels of responsibility for government functions - the local community, the Aboriginal nation, the multi-nation level and, finally, the Canada-wide level. Table 1¹¹, on the following page, illustrates the application of this model to the field of education. At the local community level, politicians and officials would be responsible for, among other things, implementing nation policy in local Aboriginal institutions and making decisions on the instruction of local students.

At the Nation level, in addition to its law-making and policy functions, the nation would be responsible for receiving and distributing revenues. Multi-nation organizations at the regional or provincial level, on the other hand, would have responsibility for negotiating policy frameworks with the province, developing curriculum, and monitoring academic standards, advising provincial ministers of education and provide training.

The fourth level of organization is what the Commission terms "Canada-wide networks". In the case of education, such networks would take a "... federated form rather than a centralized hierarchy"¹² and would include an Aboriginal Peoples' International University, an electronic clearing house, a statistical clearing house, a documentation centre and associations for standard-setting and accrediting post-secondary programs and institutions.

The governance model and economic development

In applying its model to other policy fields, the Commission provided further rationale for why certain functions were placed at particular levels.

¹⁰ ibid, Volume 2, Part 1, P.184

¹¹ This table is taken directly from the Commission's report. See Volume 3, P. 564
The Royal Commission's fiscal framework

¹² Institute on Governance, 2005

TABLE 1
MODEL OF AN ABORIGINAL EDUCATION SYSTEM

Local Community	Aboriginal Nation	Multi-Nation Organization	Canada-Wide Networks
<ul style="list-style-type: none"> • Participates in policy-making through representation in Aboriginal nation governing bodies and nation education authority • Makes decisions on instructions of local students • Implements nation policy in local Aboriginal institutions • Negotiates tuition agreements in accord with nation policy • Participates in decision making in local institutions under provincial / territorial jurisdiction 	<ul style="list-style-type: none"> • Enacts or adopts laws on Aboriginal education • Establishes an education authority to make policy on: <ul style="list-style-type: none"> - education goals and means of achieving them in the nation - administration of schools and colleges within the nation - tuition agreements - purchase of provincial / territorial services • Receives revenues and distributes funds for government services including education • Participates in establishing policy framework province-wide through representation in multi-nation organizations 	<ul style="list-style-type: none"> • Negotiates policy framework with the province or territory <ul style="list-style-type: none"> - for tuition agreements - access to provincial or territorial services - transfer between Aboriginal and provincial or territorial academic programs • Develops curriculum • Monitors academic standards in Aboriginal system • May co-ordinate nation support of Aboriginal post-secondary institutions • Advises provincial ministers of education, colleges and universities and training • Provides an umbrella for representation of community of interest governments administering education 	<ul style="list-style-type: none"> • Federated organizations reflecting nation interests <ul style="list-style-type: none"> - Aboriginal Peoples' International University - electronic clearinghouse - statistical clearinghouse - documentation centre - associations for standard setting and accrediting post-secondary programs and institutions

For example, in the field of economic development, the Commission had this to say: "Responsibility for programming should not be lodged at the level of individual First nation, Metis, or Inuit communities, where most funding and programming are now directed. There is a strong case for implementing economic development programs at the level of the Aboriginal nation, confederation or provincial/territorial organization, given the scarcity and cost of skilled personnel, among other factors. There are also considerations of scale. Better choices can be made if decision makers can choose from a number of alternatives, encourage linkages that go beyond the boundaries of particular communities, and amass the financial resources to support large projects as well as small ones. In a world of large international trading blocks that are gradually eroding the importance of state borders, Aboriginal people will need to have units of sufficient scale and strength to act effectively in a highly competitive environment."¹³

Based on this rationale, the Commission applied its four-level model and proposed that only the managing of certain economic development personnel be located at the local community level. Appendix 2 contains a summary of the Commission's proposals for economic development along with similar tables summarizing its approach in three other policy fields - health and healing, family, and arts and heritage.

There may be one other reason behind the Commission's identification of the Aboriginal Nation as the fundamental building block, and it is integrity in governance. The Commission stance on this topic is as follows:

"There is a widespread perception in some communities that their leaders rule rather than lead their people, and that corruption and nepotism are prevalent. Increasingly, Aboriginal people are challenging their leaders through a variety of means, including legal suits brought against leaders by individual members for alleged breaches of public duty. For First Nations people, this situation is traced to the *Indian Act* system of governance and associated administrative policies. Over the past 100 years the act has effectively displaced, obscured or forced underground the traditional political structures and associated checks and balances that Aboriginal peoples developed over centuries to suit their societies and circumstances."¹⁴

It is clear from other sections of the Commission's report, particularly in its arguments about the right to self-determination and the inherent right to self-government, that the "traditional political structures" to which it is referring emanated from the Aboriginal nation rather than individual communities.

Conclusion

¹³ *ibid*, Volume 2, Part 2, P. 838

¹⁴ Royal Commission On Aboriginal Peoples, Volume 2, Part 1, P. 345-346

In summary, the Commission answers the question regarding the desirable level for government functions by proposing a four-level model. The fundamental building block within this model is the Aboriginal nation which, across all policy fields, has three basic responsibilities: law-making, policy development and resource allocation. Built into the definition of an Aboriginal nation is the notion of sufficient size and capacity to assume the powers and responsibilities flowing from a right to govern. The Commission further elaborates on this principle of "sufficient size and capacity" by referring to such factors as the scarcity and cost of skilled personnel, and considerations of scale - for example, having the size and financial strength to act effectively in the global economy. It is also likely that integrity in government was another rationale behind the choice of the nation as this fundamental building block.

2. Financing Aboriginal Governments

2.1 Objectives

The Commission proposes the following five objectives for financial arrangements that will support meaningful and effective self-government.

Self-reliance - Aboriginal governments will need an adequate land base, adequate resources and the authority, such as tax powers, to have access to independent sources of revenue.

Equity - New funding arrangements must produce equity 1) among Aboriginal governments; 2) between Aboriginal and non-Aboriginal peoples; and 3) between individuals.

Efficiency - Financial arrangements and the processes employed to achieve them should be designed to be efficient.

Accountability - Governments should be held accountable for their expenditures, primarily by their citizens and also by other governments from which they receive fiscal transfers.

Harmonization - Arrangements should include mechanisms that provide for harmonization with adjacent governing bodies at the federal, provincial and municipal levels.

Based on these objectives, the Commission argues for fundamentally new fiscal arrangements, not adaptations or modifications of existing fiscal arrangements for *Indian Act* band governments. In fashioning these new arrangements, the negotiating parties should take into account the differences that exist between Aboriginal and non-Aboriginal governments, such as the high cost of services in remote areas; the fact that many First Nations have non-contiguous land bases; the likelihood that many Aboriginal governments will not immediately exercise all of the jurisdiction available to them.

The Commission then examines four sources and related instruments for the financing of Aboriginal governments:

- own-source funding;
- transfers from other governments;
- funding from treaties and land claim settlements; and
- borrowing authorities for capital expenditures.

2.2 Own-Source Funding

Aboriginal governments should have a wide array of instruments available to them to raise their own revenue.

2.2.1 Taxation

The Commission's approach to taxation can be summed up in the following points:

- Aboriginal governments would have four kinds of taxation powers: i) personal income tax, which would apply to Aboriginal citizens and to non-citizen residents within an Aboriginal-controlled territory; ii) corporate taxes on private business, both Aboriginal and non-Aboriginal; iii) sales or consumption taxes; and iv) taxes or lease fees on land and property;
- transfers from other governments should be dependent on the revenue collection effort of Aboriginal governments;
- residency should be the determinant of tax status, a principle that applies in all jurisdictions of Canada;
- residents on an Aboriginal nation's territory should pay all income tax to the Aboriginal government and not, as with other residents of a province, to the federal and provincial governments (there are two reasons for this position - first, the tax capacity of most Aboriginal nations will be quite limited and second, this is the best way to address the divisive debate over taxation and whether it is a treaty right etc.);
- arrangements should not permit the development of tax havens for non-citizen residents;
- where services are provided by a province, these should be paid for through a contractual arrangement and not through a provincial tax instrument; and
- non-Aboriginal residents should be represented effectively in the decision-making processes of Aboriginal nation governments.¹⁵

¹⁵ There are important similarities between the Commission's approach to taxation and that of the federal government as set out in "A Working Paper On Indian Government Taxation", March 1993. Nonetheless, there are some differences in approach - see Appendix 4.

2.2.2 Other own-source revenues

The Commission notes other sources of revenue that an Aboriginal government might generate: resource rents and royalties; user fees, licences and fines; and revenue from corporations owned by an Aboriginal government. On the question of gaming, the Commission recommends that this matter be dealt with as a part of treaty negotiations, given the jurisdictional questions, among other things.

In concluding its review of own source revenues, the Commission notes that

"...the reality is that own-source financing for Aboriginal governments is currently very limited and likely will remain so for some time. This brings us back to a key point about the financing of Aboriginal governments - the overwhelming importance of a sufficient land base and of sustainable economic development to effective self-government."¹⁶

2.3 Transfers from Other Governments

Transfers from other levels of government will be a prominent feature of the financing of Aboriginal governments, according to the Commission, for a variety of reasons: the weakness of own-source revenues because of, among other things, the inequitable distribution of land and resources, and the benefits from efficiency and equity standpoints of having the federal government assume a relatively stronger revenue generating role in the federation. Key features of the Commission's approach to these transfers are the following:

- a) as Aboriginal governments become more autonomous politically, the portion of transfers from federal and provincial governments that is conditional should fall (this principle is reflected in current arrangements with the provinces);
- b) conditional transfers are legitimate for certain purposes - for example, when the program being financed entails significant 'externalities' or when there is a strong rationale to maintain national standards e.g. in the area of health. Moreover, conditional transfers could be especially relevant for Aboriginal nations in a transition phase, where they assume only a portion of their jurisdictional 'space' available to them;
- c) the equalization principle, embedded in Section 36 of the *Constitution Act, 1982*, should extend to the Aboriginal order of government as well (Section 36 commits the federal government to equalization payments to ensure that "...provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation");
- d) the level of transfers should be governed by two principles, principles which are both embedded

¹⁶RCAP report, Volume 2, Part 1, P. 294

in current arrangements with the provinces and territories - first, that the level must be a function of the fiscal capacity of the Aboriginal government, using measures such as the revenue potential of various tax bases under a given jurisdiction; and second, that there must be a needs basis as one of the factors determining the appropriate level;

- e) the accountability procedures to other levels of government should not be any more onerous than those imposed on the federal and provincial governments;
- f) Aboriginal governments should be eligible for grants in lieu of taxes for federal and provincial property in Aboriginal lands; and
- g) the level of transfers should be determined by formula or formulae, rather than negotiations conducted on a government by government basis. A formula-based approach will be more efficient and equitable and one that will not be so unbalanced in terms of the negotiating power of the parties.

2.4 Entitlements from Treaties and Land Claims

The Commission makes three recommendations regarding the revenue that certain Aboriginal governments will receive from the settlement of specific or comprehensive claims through a treaty negotiations:

- a) revenues arising from specific claims settlements should not be included as own-source funding for the purposes of calculating fiscal transfers (such settlements are made to right a wrong, not to provide revenue to a government);
- b) similarly, financial settlements arising from comprehensive land claims and treaty land entitlements should not be considered a direct source of revenue for Aboriginal governments; and
- c) investment income arising from settlement monies should be considered own source revenue with the following exceptions: if the income is used
 - to repay loans advanced to finance negotiations;
 - to offset the effect of inflation on the original principal; or
 - to finance charitable activities or community works.

2.5 Borrowing Authority

The three categories of funding sources and instruments summarized above focus primarily on the operating costs of government. In addition Aboriginal governments will require a fourth funding source - the capacity to finance capital expenditures by borrowing money through public offerings or loans from financial institutions. According to the Commission, the constitutional and legal status of

Aboriginal governments under the new relationship will provide the necessary basis to establish these borrowing authorities.

2.6 Financial Arrangements and Models of Aboriginal Government

The Commission applies these four categories of funding sources and instruments to the three models of Aboriginal government that it believes are feasible: the nation-based government with a defined land base (see section 1 above); public government (the new territory of Nunavut is an example of this model); and the community of interest model, for example, an Aboriginal school board or health organization, responsible for a social service within an urban setting. This latter form of government would be a delegated model, whose authority rests ultimately with a nation government or another level of government.

The Commission's analysis is summarized in Table 2 on the next page.

3. The Commission's Proposed Process for Developing the Fiscal Relationship

Establishing a 'once and for all' master plan to define a fiscal relationship is impossible, according to the Commission, both in theory and in practice. Rather, it proposes that negotiations to establish the relationship proceed in two stages: the first stage would create a Canada-wide framework to fashion the general fiscal relationship among the three orders of government - Aboriginal, federal and provincial. The second stage would be at the level of individual nations in negotiating treaties. Key characteristics of the first stage to establish a Canada-wide agreement are the following:

- a) the Government of Canada would convene a meeting of premiers, territorial leaders and national Aboriginal leaders to create a forum charged with drawing up a Canada-wide framework agreement;

TABLE 2

FINANCIAL ARRANGEMENTS AND MODELS OF GOVERNMENT

FUNDING SOURCE	NATION GOVERNMENT	PUBLIC GOVERNMENT	COMMUNITY OF INTEREST
<p>1. Own-source</p> <p>2. Transfers</p> <p>3. Treaties and claims</p> <p>4. Borrowing</p>	<ul style="list-style-type: none"> • fully compatible • but high collection costs • primarily unconditional • applies • compatible 	<ul style="list-style-type: none"> • fully compatible • but high collection costs • primarily unconditional • not applicable • compatible 	<ul style="list-style-type: none"> • partial compatibility • user fees and redirected taxes • primarily conditional • not applicable • restricted; (to be met by delegating government)

- b) this framework agreement, in addition to establishing the fiscal relationship would also include a number of other important topics: the areas of jurisdiction to be exercisable by Aboriginal nations, including paramountcy questions; principles to govern the allocation of land and resources; principles to deal with interim relief measures, before treaties are concluded; and an interim agreement to set out the core powers that Aboriginal governments can exercise, prior to the renegotiation of treaties;
- c) key elements in the portion of the framework agreement dealing with fiscal arrangements would include:
 - objectives (a starting point would be the Commission's proposals - see section 2.1 above);
 - the principal elements of the transfer regime, including purposes to which particular transfers would be directed; the nature of the transfers (conditional vs. unconditional); the form of the transfers (cash, revenue-sharing grants in lieu of taxes etc.); a formula to calculate the magnitude of the transfers; and
 - co-ordination mechanisms and agreements e.g. tax-sharing agreements to provide for the co-ordination of taxing activities and to allow collection of certain Aboriginal government taxes by other levels of government.

4. Transition Strategy for Building Capacity

To effect the transition to a future where Aboriginal governments are fully functional as one of three orders of government, the Commission lays out a capacity-building strategy to assist Aboriginal people to move through the following four transition stages;

- **rebuilding Aboriginal nations and reclaiming nationhood** - this element would be the responsibility of Aboriginal peoples and would include strategies for cultural revitalization and healing; and political processes for building consensus on the composition and structures of the Aboriginal nations;
- **constituting Aboriginal governments** - this stage would include designing and planning nation governments and reflecting these in a constitution and laws;
- **negotiating new intergovernmental agreements** - Aboriginal nations would require strategies and capacities for negotiating new relationships with other governments in Canada; and
- **exercising governmental powers over the long term** - this element would involve developing the human resource base for self-government; establishing accountability systems; and putting in place the data collection and information management systems.

Central to the Commission's approach to developing capacity for each of these stages is the

establishment of a transition centre by the federal government in co-operation with national Aboriginal organizations. This centre, to be governed by a predominantly Aboriginal Board, would work with other organizations such as universities and research institutes to initiate programs and other activities to assist Aboriginal peoples throughout the transition.

Issues relevant to the fiscal relationship are raised in the fourth element of the transition strategy - exercising governmental powers over the long term.

4.1 Human Resource Capacity

Notwithstanding the dramatic growth in their administrative and service delivery capacity over the past two decades, Aboriginal governments, according to the Commission, face a shortage of skilled human resources to fill the wide range of jobs that will accompany Aboriginal self-government. Included in this shortage are financial administrators and managers.

Specific recommendations of relevance to the fiscal relationship for dealing with this shortage are the following:

- increase co-operative work placements, internships and executive exchanges with the private and public sectors;
- involve professional associations in Aboriginal professional training;
- establish distance education models for professional training;
- include provisions in self-government agreements for education and training strategies;
- have the Aboriginal government transition centre promote and co-ordinate strategies and programs for developing senior managers; and
- develop a partnership program to twin Aboriginal governments with Canadian governments of similar size and operation.

4.2 Accountability Capacities

From the Commission's perspective, the current accountability regime facing Aboriginal governments is rife with problems. Traditional checks and balances have been obscured or forced underground because of the imposed *Indian Act* system of governance. Furthermore, administrative reporting systems to external agents like DIAND are time-consuming and complex, diverting valuable time of service providers. Finally, political accountability has been stymied because key policy and program decisions are made by other governments.

The Commission's concept of accountability is summed up in the following paragraph:

"Accountability falls into three broad categories: for political decisions, for the administration of public affairs, and for the use of public funds. Elected and appointed

officials are formally responsible through clearly defined rules and mechanisms. Accountability means that those dealing with or receiving services from government will be treated impartially, fairly and on the basis of equality; that government decisions will not be influenced by private considerations and will be carried out efficiently and economically; and that public officials will not use public office for private gain."¹⁷

The Commission recommends that Aboriginal governments adopt a mix of formal and informal accountability mechanisms. Formal mechanisms could include codes of conduct for public officials; conflict of interest laws, policies or guidelines; and independent structures or agencies responsible for upholding and promoting the public interest and the integrity of governments.

Informal accountability strategies with a community education orientation could encompass:

- regular public meetings and consultation processes;
- regular communication through a variety of media;
- regular community surveys and assessments;
- establishment of citizen advisory bodies for elders, youth and women; and
- opportunities for direct interaction such as citizens' question periods.

4.3 Statistical and Data Collection Capacities

Improvements and adjustments will need to be made, according to the Commission, to support emerging Aboriginal governments, particularly in assisting Aboriginal planning activities as well as determining fiscal transfers to Aboriginal governments. The Commission proposes a three-pronged strategy to accomplish these objectives.

The first aspect to its approach are changes directed at Statistics Canada. Specifically it calls on this agency to continue its efforts to consult Aboriginal people; establish an Aboriginal advisory committee; continue the post-census survey; include the Metis Settlements of Alberta in standard geographic coding; and continue its policy of establishing bi-lateral agreements with representative Aboriginal governments, especially in those regions where participation was low in the 1991 census.

The second prong is directed at improving the capacity of Aboriginal governments. Specific recommendations include Governments' providing for the implementation of information systems in support of self-government - such measures would encompass financial support for technologies, equipment and training and skills development, including apprenticeships and

¹⁷RCAP report, Volume 2, Part 1, P. 347. The issue of the integrity of Aboriginal governments is of widespread concern among Aboriginal people. For example, Mary Ellen Turpel-Lafond, in a research paper done for the Royal Commission on this topic, noted that, in the public hearings of the Commission, over two hundred submissions addressed concerns related to conflicts of interest and ethics in Aboriginal governments.

executive exchanges with Statistics Canada to ensure compatibility between Aboriginal government systems and Statistics Canada.

Finally, the Commission calls for the establishment of a statistical clearing-house at the national level. Among its functions would be establishing and updating statistical data bases in collaboration with Aboriginal governments, and promoting common strategies for collecting and analyzing data. It would also have a training role and be part of the Aboriginal Peoples' International University recommended by the Commission.

D. CONCLUSIONS

Comprehensive is one adjective that comes to mind in describing the approach of the Commission to the question of forging a new fiscal relationship between emerging Aboriginal self-governments and other levels of government. The Commission appears to have covered the 'waterfront' in its treatment of this topic and, if nothing else, will provide policy makers with a template for approaching this issue, a template that includes objectives, characteristics of the fiscal transfer mechanism, the treatment of own-source revenue, co-ordination mechanisms, the relationship of the fiscal framework to various self-government models, a process for arriving at a new relationship and a capacity-building strategy.

The comprehensiveness of the Commission's approach may also pose problems in making headway on the question of the fiscal relationship. For example, the Commission is adamant that any new relationship must be based on a significant reallocation of land and resources that would cost in the order of \$1 billion per year well into the future (this figure does not include any value on Crown land that would be part of the reallocation). Should governments balk at this aspect of the Commission's approach, then progressing on other aspects of the fiscal relationship might prove difficult.

In addition to comprehensiveness, the Commission has also broken new ground on a number of questions of substance. There are at least three examples which are noteworthy in this regard. The first is the recognition of the Aboriginal Nation, not existing communities, as the fundamental building block of governance. This notion will be controversial to say the least among Aboriginal leaders, but there are existing precedents with some apparent advantages.¹⁸ In sum, it is an idea worthy of more extensive discussion and further research among governments and Aboriginal organizations.

Related to this idea of the Aboriginal nation as the fundamental building block is the Commission's proposed model of governance, whereby it identifies three types of Aboriginal governments -

¹⁸The Institute has examined this issue in the context of past and current self-government agreements in a paper entitled "Who Does What: A Comparison Of The Approach Of The Royal Commission On Aboriginal Peoples With Self-Government Agreements."

nation, community of interest and public government and then, for the case of the nation government, explores what functions should be located at the community, nation, multi-nation and national levels. These ideas are also ground-breaking and worthy of further discussion. Indeed, the Liberal Party of Canada has committed the new Liberal government to establishing a national-level program for preserving Aboriginal languages and such a program could spawn a national-level organization. In terms of the fiscal framework, some national-level approach to the gathering of statistics and the building of statistical capacity at the Nation level appears to merit more discussion.

Finally, the Commission has made a significant contribution in putting forward a comprehensive approach to building capacity for self-government, a strategy that, to the best of the Institute's knowledge, has no existing precedent. In doing so, the Commission has also raised some difficult topics, one of which is the question of integrity in government. Here again, there has not been much analysis of this issue in Canada in the context of Aboriginal self-government. It is an area of high interest internationally and there may be some lessons to be learned from the approaches taken by other countries.

Appendix 1**FINANCIAL SUMMARY**
INCREMENTAL COSTS
(\$ millions)

ELEMENT	2001	2016
self-government and claims settlements	150	1475
social	525	(1050)
economic development and living conditions	900	750
Total	1575	1175
Government revenue gains	0	1550
Overall Total	1575	(375)

THE COMMISSION'S APPROACH TO GOVERNANCE

1. HEALTH AND HEALING

LOCAL COMMUNITY	ABORIGINAL NATION	MULTI-NATION	CANADA-WIDE
<ul style="list-style-type: none"> - manages community health centres (minimum community size is 250); - participates in local and regional planning; - participates in human resource development; - participates with mainstream organizations to develop action plans; 	<ul style="list-style-type: none"> - enacts laws; - establishes policies; - distributes funding; 	<ul style="list-style-type: none"> - manages a network of healing lodges; - promotes cooperation and strategic deployment of resources (regional Aboriginal agencies and councils); 	<ul style="list-style-type: none"> - prepares a comprehensive human resources development strategy for health and social services (national Aboriginal organizations);

2. FAMILY

LOCAL COMMUNITY	ABORIGINAL NATION	MULTI-NATION	CANADA-WIDE
<ul style="list-style-type: none"> - adopts community codes of conduct to create and maintain safe communities; - establishes committees to study family law matters; - manages child care services; 	<ul style="list-style-type: none"> - enacts laws on child welfare and family law matters; - negotiates agreements with provinces on child welfare matters; - establishes policies; - distributes funding; 	<ul style="list-style-type: none"> - consults with provinces and the federal government on family law; 	

3. ARTS AND HERITAGE

LOCAL COMMUNITY	ABORIGINAL NATION	MULTI-NATION	CANADA-WIDE
<ul style="list-style-type: none"> - collaborates with governments to prepare an inventory of historical sites; 	<ul style="list-style-type: none"> - collaborates with governments to prepare an inventory of historical sites; - enacts laws on the status and use of language; - adopts policies and priorities on language; - adopts policies on open access to information; -provides funding to Aboriginal media (arms length); 	<ul style="list-style-type: none"> - collaborates with governments to prepare an inventory of historical sites; - reviews federal and provincial legislation on historical sites; - participates in drafting guideline program criteria and jury process of arts-granting organizations; 	<ul style="list-style-type: none"> - assists in conserving and revitalizing Aboriginal languages (Aboriginal Languages Foundation); - fosters and revitalizes Aboriginal arts and literature (Aboriginal Arts Council)

4. ECONOMIC DEVELOPMENT

LOCAL COMMUNITY	ABORIGINAL NATION	MULTI-NATION	CANADA-WIDE
<ul style="list-style-type: none"> - manages some economic development personnel; 	<ul style="list-style-type: none"> - enacts laws regulating 'economic life'; - negotiates agreements with for the full range of economic development programs; - develops policies and instruments for program delivery; - manages policy capacity, specialist services, and major investment vehicles; - manages lands, resources 	<ul style="list-style-type: none"> - manages Aboriginal Capital Corporations; - manages venture capital corporations; - sponsors special employment and training initiative; 	<ul style="list-style-type: none"> - establishes and manages a National Aboriginal Development Bank; - establishes and manages an Aboriginal International University for research purposes

Appendix 3

**DIFFERENCES IN THE APPROACH OF THE COMMISSION
AND
THE FEDERAL GOVERNMENT'S
WORKING PAPER ON
INDIAN GOVERNMENT TAXATION**

ISSUE	COMMISSION	WORKING PAPER
1. tax effort	<ul style="list-style-type: none"> factor in immediately to determine overall transfer (but in context of land and resource re-allocation) 	<ul style="list-style-type: none"> delay factoring in until services and infrastructure are equal to those of non-Indian governments
2. taxation without representation	<ul style="list-style-type: none"> non-members should have opportunity to participate in decision-making 	<ul style="list-style-type: none"> suggests two principles - Nation government does not tax non-members at a more burdensome level and established economic interests are not subject to punitive levels of taxation taxpayers to have access to courts to uphold principles
3. GST	<ul style="list-style-type: none"> Nations to have power to tax on their lands 	<ul style="list-style-type: none"> similar tax power plus an arrangement to remit to Nation government an approximate portion of GST paid off-reserve
4. Relation to federal and provincial regimes	<ul style="list-style-type: none"> federal and provincial governments to vacate direct taxation on Nation territory 	<ul style="list-style-type: none"> Nation and federal and provincial governments should negotiate to harmonize tax levels