



**DEVELOPING CAPACITY
FOR
PROGRAM MANAGEMENT:
SUMMARY OF THE MAJOR CONCLUSIONS
OF THE
ROYAL COMMISSION
ON ABORIGINAL PEOPLES**

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**Developing Capacity
For
Program management:
Summary of the Major Conclusions
of
The Royal Commission on Aboriginal Peoples**

A. PURPOSE

The federal government has established capacity development for the development and management of programs as an important issue, worthy of greater attention and action. There appear to be a variety of reasons for why this topic is assuming greater prominence within the government:

- DIAND and other federal departments allocate significant funding to support activities related directly or indirectly to capacity development e.g. band support funding; tribal council funding; funding for post-secondary education; HRD funding for training etc.;
- capacity development relates directly to two major priorities of the federal government with regards to Aboriginal peoples - first, strengthening First Nation and Inuit communities through continuing innovation and program improvement and second, implementing the inherent right to self-government
- questions of accountability are of high concern among Aboriginal people; for example, in a research study done for the Royal Commission, Mary Ellen Turpel-Lafond noted that, in the public submissions to the Royal Commission, over 200 raised questions of ethics and conflicts of interest related to the operations of Aboriginal governments; and
- more generally, there is a growing recognition, based on the results of the Royal Commission and developments internationally, that there is a close connection between capacity development on the one hand and effective governance on the other.

The purpose of this paper is to summarize the major conclusions and proposals of the Royal Commission on Aboriginal Peoples regarding the development of capacity for program management. 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." Thus, the single most important 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."*¹
- 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.*²
 - *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."*³

¹ *ibid*, Vol. 2, Part 2, P. 799

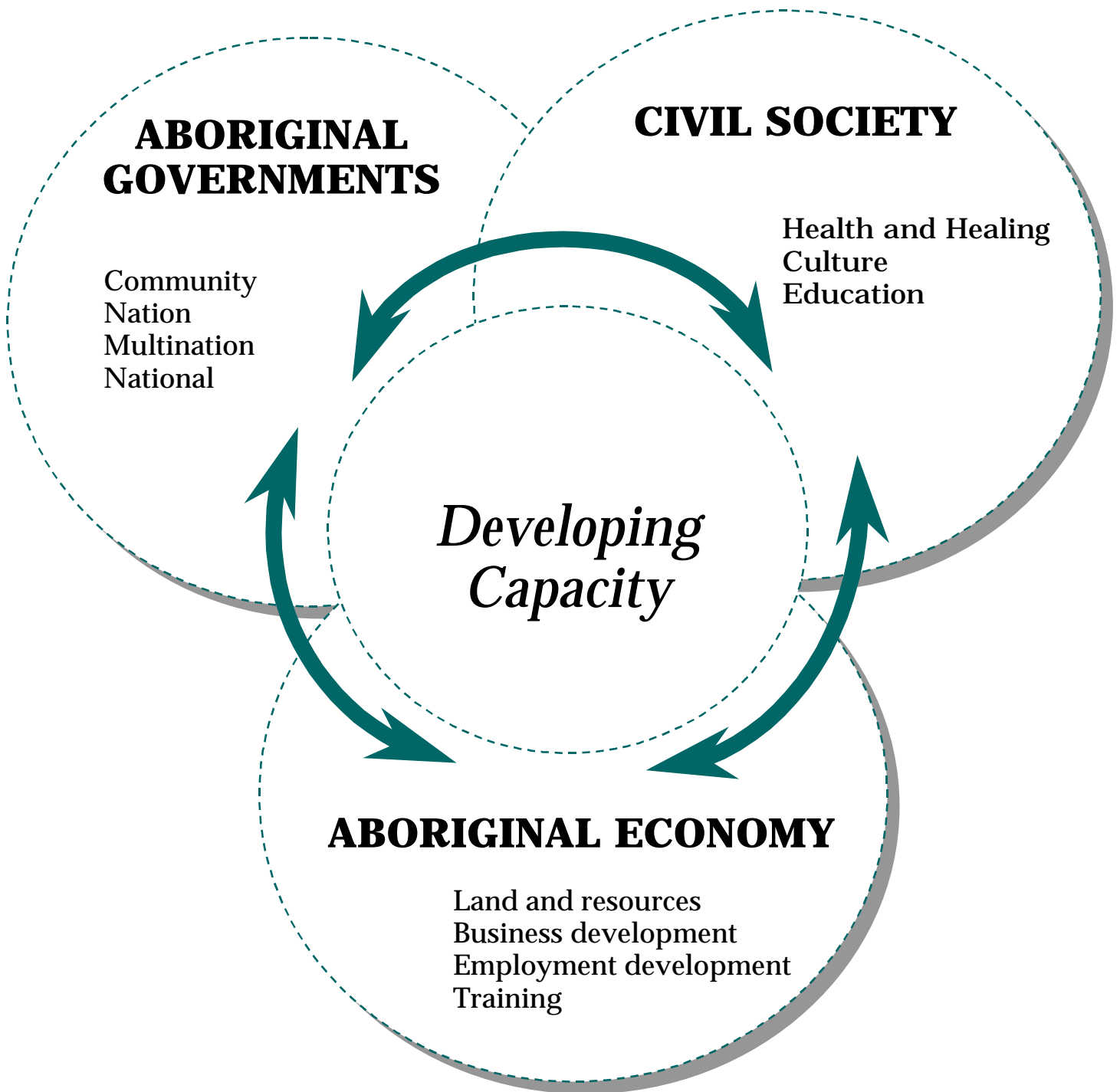
² *ibid*, Vol. 2, Part 2, P. 835-841

³ *ibid*, 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: that⁴**
- 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.*

⁴ibid, Vol. 5, P. 551-552

The Royal Commission's



C. THE COMMISSION'S PROPOSALS FOR CAPACITY DEVELOPMENT

The starting point for discussing the Commission's strategy for capacity development is with its proposed model for governance.

1. Who Does What: The Relationship of Capacity to Scale

The Commission's approach to the question "What is the most desirable level (or levels) for government functions?" 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."⁵

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"⁶, 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."⁷

⁵ibid, Volume 2, Part 1, P. 182

⁶ibid, Volume 2, Part 1, P. 193

⁷ibid, Volume 2, Part 1, 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".⁸

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 program 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 1⁹, 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"¹⁰ 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.

⁸ ibid, Volume 2, Part 1, P.184

⁹ This table is taken directly from the Commission's report. See Volume 3, P. 564

¹⁰ ibid, Volume 3, P. 565

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 instruction of local students • Implements nation policy in local Aboriginal institutions • Negotiates tuition agreements in accord with nation policy <p>Participates in decision making in local institutions under provincial / territorial jurisdiction</p>	<ul style="list-style-type: none"> • Enacts laws; • Establishes an education authority to make policy on goals, tuition agreements, purchase of provincial services, school administration; • Distributes funding 	<ul style="list-style-type: none"> • Negotiates policy framework with province; • Develops curriculum; • Monitors academic standards; • Co-ordinates nation support for post-secondary institutions 	<ul style="list-style-type: none"> ◆ Aboriginal Peoples' Internat'l University; ◆ Electronic clearing house; ◆ Statistical clearing house; ◆ Documentation centre; ◆ Associations for standard Setting and accrediting post-secondary programs and Institutions

The governance model and economic development

In applying its model to other program fields, the Commission provided further rationale for why certain functions were placed at particular levels. 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."¹¹

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 program 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."¹²

¹¹ibid, Volume 2, Part 2, P. 838

¹²Royal Commission On Aboriginal Peoples, Volume 2, Part 1, P. 345-346

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

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 program 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. 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; putting in place the data collection and information management systems and developing organizational capacity.

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 capacity development for program management are raised in the fourth element of the transition strategy - exercising governmental powers over the long term.

2.1 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, program managers and evaluators and human resource managers. Further, there will be a large demand, according to the Commission, for specialized technical and related skills in key service sectors including housing, economic development, health and healing, justice and education.

To meet this demand, the Commission proposes the development of human resource strategies based on the following principles:

- adopt a broad focus, so that opportunities are available for training and development in a wide range of subject areas;
- establish objectives which complement self-determination rather than the administrative objectives of non-Aboriginal governments;
- accommodate the different objectives and needs of the variety of Aboriginal governments - community of interest, nation-based, or public-based governments;
- adopt strategies that are culturally based and relevant; and
- take advantage of Aboriginally-controlled institutions.

Specific recommendations of relevance to the development and delivery of programs include the following:

- establish an education for self-government fund to support partnership initiatives at the post-secondary level;
- introduce student bonuses and incentives to encourage completion of programs in fields relevant to self-government;
- increase co-operative work placements, internships and executive exchanges with the private and public sectors;

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- 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; and
- develop a partnership program to twin Aboriginal governments with Canadian governments of similar size and operation.

In addition to these measures, the Commission places significant emphasis on the needs of senior managers and administrators:

"At present, training opportunities for Aboriginal people in administration and management tend to focus on developing skills for administrative support and middle management. Aboriginal people are being trained to implement the decisions of other governments and decision makers outside the Aboriginal community. We see training for administrative and support positions as a valuable component of Aboriginal government human resource strategies. We draw particular attention, however, to the urgent need to train Aboriginal people to assume senior management and administrative positions in Aboriginal governments. Senior managers will need to be trained in such areas as finance, policy, and program design, planning and management. They will also need the capacity to provide objective and sound advice to Aboriginal leaders on these matters and on the law- and policy-making activities of government."

Innovative education and accreditation techniques, including distance education, on-the-job training, and co-operative and internship arrangements are among the measures recommended by the Commission.

As for Aboriginal leaders, leadership training and education initiatives should be focused on "...enhancing the interpretative, analytic and decision-making skills of leaders, for example, in the areas of financial and personal management, in policy formulation and assessment, and in law-making." Such initiatives should be extended to Aboriginal leaders in a way that ensures minimal disruption in the exercise of their leadership responsibilities - for example, through distance education technologies and on-site workshops. According to the Commission, the Aboriginal government transition centre should assume a key role in promoting, co-ordinating and funding such initiatives and those directed at senior managers.

The Commission also makes recommendations on developing human resource capacity in its treatment of specific program areas. In its chapter on health and healing, for example, the Commission's human resources strategy includes the following measures:

- a) the federal government provide funds to the national Aboriginal organizations to permit them to prepare a comprehensive human resources development strategy in health and social services;
- b) federal, provincial and territorial governments commit to training 10,000 Aboriginal professionals

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- over a ten year period in health and social services;
- c) post-secondary institutions involved in professional certification in health or social services collaborate with Aboriginal organizations to increase the numbers of and support to Aboriginal students including appropriate modification of curriculum and licensing procedures;
 - d) there be appropriate support for participation of Aboriginal communities in planning, program development and community awareness in relation to human resources development; and
 - e) Governments, health authorities and traditional practitioners cooperate to protect and extend the practices of traditional healing and to facilitate dialogue between traditional healers and bio-medical healers.

Underlying the Commission's approach to developing human resource capacity is the necessity of forging new leadership styles:

"The challenge will be to restore Aboriginal government leadership traditions and learn new leadership styles that draw on Aboriginal customs, values and traditions in a way that builds on the respect for leadership and knowledge of modern circumstances."¹³

2.2 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."

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;

¹³ *ibid*, P. 340

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.

Appendices 3 and 4 summarize two research studies undertaken for the Commission with particular relevance to the issue of accountability.

2.3 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 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.

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2.4 Organizational Capacity

In its chapter on Economic Development, the Commission, based on the work of two American academics, Joseph Kalt and Stephen Cornell notes that governing institutions need to perform three basic tasks to achieve durable economic development:

- **mobilize and sustain support for their institutions and strategies** - this means, among other things, having institutions reflect culturally understood ways of doing things on matters such as who has power, how power is exercised, the rights and limits on citizens and leaders, and how disputes are resolved;
- **implement strategies effectively** - this would entail hiring and training capable staff who operate by open and clearly understood procedures and are fully accountable; and
- **establish a political environment that is safe for development** - given the competition for and the mobility of capital and labour, effective institutions need to create the conditions of security and predictability that will attract investment and commitment.

The Commission concludes that, while there has been impressive growth and maturation of institutional structures dealing with Aboriginal economic development, "...problems with the functioning of existing institutions and gaps in institutional development remain."¹⁴ Among the problems listed by the Commission are a lack of legitimacy of some institutions, an inappropriate mix of politics and business and examples of where power is concentrated in the hands of a small political leadership or a single individual.

D. CONCLUSIONS

Groundbreaking is one adjective that is appropriate for describing the approach of the Commission to the question of capacity development for the management of programs. The Commission appears to have taken a comprehensive approach to this topic and, if nothing else, will provide policy makers with a template for approaching this issue, a template that includes principles, and specific recommendations relating to four areas - human resource development, data management, accountability, and institutional development.

The Commission should also be commended for its detailed treatment of the relationship of capacity development to broader questions of governance. 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 but there are existing precedent^s with some apparent advantages, not the least of which relate to the development of capacity for effective program management.

¹⁴ Volume 2, Part 2, P. 842

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 - 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 thought provoking 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 capacity development for program management some national-level approach to the gathering of statistics and the building of statistical capacity at the Nation level appear to merit more discussion.

Finally, the Commission has made a significant contribution in raising the question of integrity in government. Here again, there has not been much analysis of this issue in Canada in the context of Aboriginal governments. It is an area of high interest internationally and there may be some lessons to be learned from the approaches taken by other countries.

In terms of areas requiring further analysis, the Commission's treatment of accountability - especially its recommendations on formal mechanisms - focuses almost exclusively on dealing with conflict of interest and corruption problems. The role of the media, the responsibilities of citizens and their needs, the audit and evaluation functions and the use of comparative information of program performance across jurisdictions are examples of other accountability issues requiring more thought and analysis in the context of Aboriginal governments.

Another issue requiring more attention is the question of intervention strategies and what works. Aid agencies in an international context have spend large sums on attempts to build capacity, often with disappointing results. It would be useful to have some analysis of that experience, especially in areas such as accountability and developing organizational capacity.

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

TITLE: *Enhancing Integrity in Aboriginal Government: Ethics and Accountability for Good Governance*

AUTHOR: Mary Ellen Turpel-Lafond

TOPICS COVERED:

- the importance of accountability processes and structures to Aboriginal governments;
- the legacy of the Indian Act on Aboriginal accountability;
- emerging caselaw on the duties and responsibilities of chiefs and councils;
- standards for ethics and conflicts of interest in federal, provincial and territorial governments;
- experience of tribal governments in the US;
- fiduciary and trust duties of all governments; and
- recommendations for achieving greater accountability.

The paper is 46 pages in length and does not have an executive summary.

MAIN IDEAS:

- a) Questions regarding conflicts of interest and ethics in government are a growing public concern for Aboriginal people: over two hundred submissions to the Royal Commission addressed concerns related to these topics.
- b) The court system offers the only avenue to deal with band member complaints about conflicts of interest and similar matters. This venue is unsatisfactory for all concerned - courts are too slow, cautious, expensive and unfamiliar with Aboriginal traditions. Further the court system focuses negative attention on Aboriginal communities and erodes confidence in self-government.
- c) The imposition of the *Indian Act* has had dire consequences on Aboriginal governance:
 - the Act eliminated traditional forms of government, resulting in internal divisions "...which can be so powerful that they lead to violence and factionalism in our communities." (P.10)
 - the Act's elective system combined with privatization of land, bureaucratization and DIAND's processes for co-opting Indian leadership have generated a two class system on most reserves: "... a small, virtually closed elite class comprising influential landowners, politicians, bureaucrats and a few entrepreneurs, and a large lower class comprising destitute, dependent, and powerless people..." (P. 11);

- Band Councils are accountable first and foremost to the Minister and not to their communities; and
 - the Act has fostered family divisions because it supplanted consensus style clan systems where a balance was achieved among various families.
- d) Recent caselaw has made it clear that chief and council are fiduciaries as far as all other members of the band are concerned. In other words, "...decisions of chief and councillors must adhere to a standard of assessment where band members or Courts can see that the band government, in reaching a decision, duly considers the welfare of all members of the band and not simply one individual, family or elected official". (P. 17)
- e) Based on a survey of other governments in Canada, the author concludes that considerable effort has gone into prescribing the prohibitive forms of conduct of public officials through such mechanisms as the *Criminal Code* (e.g. acceptance of bribes), conflict of interest-type legislation, disclosure procedures and government codes of conduct. Penalties range from imprisonment to fines to dismissal to rendering of a contract void to being barred from holding office. Ineffective enforcement of ethical standards is a constant complaint.
- f) The Navajo Nation provides an important example for First Nations in restoring public confidence in government. Their system consists of
- an Ethics Law;
 - a code of conduct for all public officials;
 - an Ethics and Rules Committee of the Navajo Tribal Council composed of members selected by the speaker and confirmed by the Navajo Nation Council;
 - an Ethics and Rules Office, which provides support to the Committee vis-a-vis the conduct of training, provision of support for dealing with complaints, disclosure procedures and providing advisory opinions; and
 - sanctions and penalties.
- g) In the non-First Nation context, the fiduciary duties of elected officials to their constituents have been established by the courts in a number of instances.
- h) In the concluding section, the author states the following:
- "We must acknowledge -- and I can't overemphasize this -- that corruption exists within our own Aboriginal government, as we know it today. We must make our

leadership accountable before these negative effects filter in and destroy the very foundations of future self-government initiatives". (P. 40)

Specific recommendations include:

- the establishment of codes of conduct (including examples of prohibited behaviour);
- complete disclosure of candidates' holdings and interests;
- establishment of an independent position of 'conflict of interest officer'; and
- having staggered elections so that communities have greater control over government's activities.

Starting points for developing codes of conduct include examining the kinds of problems that have plagued communities and the preparation of training seminars.

RELATIONSHIP TO THE COMMISSION'S FINAL REPORT:

This paper appears to have had an important influence on the Commission. The Commission shares the author's concern with the problems of corruption and conflict of interest, adopts to a large degree her analysis vis-a-vis the negative impacts of the *Indian Act* on accountability, and recommends many of the same accountability mechanisms.

APPENDIX 4

TITLE: *The Shubenacadie Band Council and the Indian Brook Band Case Study on Self-Governance*

AUTHOR: Jean Knockwood

TOPICS COVERED:

- description of community profile, government services, community facilities and organizations and study methodology;
- analysis of study results including those related to opinions about self-government, accountability, service delivery issues, conflict of interest, membership, finances, services for off-reserve members, education and training;
- recommendations, directed mainly at the Band Council.

This paper is 34 pages long and has a short executive summary (see Appendix 5.)

MAIN IDEAS:

- a) The Indian Brook Reserve is located approximately 80 kilometres north of Halifax and consists of about 3000 acres. As of 1993, the Shubenacadie Band had a registered population of 1,755, of whom some 1100 members lived on-reserve. The Band Council employs 25 staff members and has an operating budget of some \$6 million.
- b) The study's main emphasis was to determine the views and thoughts about self-government of Indian Brook residents. It was based on a questionnaire to a random sample of individuals in 229 households. Following the interviews for the questionnaire, the researcher reviewed the results with a focus group of ten people to gain further insights.
- c) Key results of the research were the following:
 - a large majority of participants (66%) said that they didn't understand the concept of self-government;
 - only 37% support self-government;
 - a very large majority (88%) felt ill-prepared for self-government; yet many (50%) believe that self-government will be imposed upon them;
 - 53% believe that either the current band council is not accountable or they

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"don't know" and respondents had many suggestions for how accountability could be improved;

- the community wanted longer terms of office for elected officials and a requirement that each elected officer receive 51% of the ballots cast;
- a large minority (44%) believe that the Band does not have the necessary human resources to run its operations; however, the respondents do not want the band to hire non-Aboriginal people to pick up the slack;
- community members do not believe that staff of the band should hold political office;
- on the question of should decide who is a Mi'kmaq about half thought that this should be done by referendum, the other half by a membership committee.
- a large majority felt that off-reserve members should receive services;
- most (59%) believe that the band would not have the financial resources necessary to support self-government;
- there was strong support for taxing non-Mi'kmaq interests and individuals but respondents did not support the taxing of Mi'kmaq individuals and businesses;
- 55% responded no or don't know to the question of whether they were in favour of moving away from the band council system to traditional governance based on Mi'kmaq values and structure.

d) Recommendations of the researcher, directed at Band Council, include the following:

- measures to improve the community's understanding of self-government including an education program, community meetings and a study team to review other models of self-government;
- changes to improve accountability and transparency including improved access to council meetings, establishment of a grievance committee, development of community committees to increase community participation; changes to the election process; and the development of conflict of interest guidelines;
- organization of a community meeting to discuss membership issues;
- the settlement of land claims before the band begins discussions about power and jurisdiction.

RELATIONSHIP TO THE COMMISSION'S FINAL REPORT:

This study's conclusions regarding improved accountability mechanisms are all reflected in the Commission's report. As well, the Commission's transition strategy for building governance capacity

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recognizes the need, as pointed out in this study, for community-based processes to develop community consensus around self-government issues and provide communities with models for membership rules, constitutions etc.

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