



Results:

Short term

- Secure funds to immediately address housing backlog.
- Develop joint Action Plan aimed at factors that enhance the standard of living and environment of First Nation communities .
- Identify new infrastructure and capacity building initiatives that:
- Improve access to adequate housing
 - Support economic growth of communities
 - Improve community infrastructure
 - Build an appropriate information base and communications plan
 - Design a framework around enhancing community ability to respond to public-works type issues; fire safety requirements; capital planning; maintaining community assets; and related support areas
 - Outline structural capacity support requirements: administrative and financial controls, training and professional development
 - Explore homeownership options (economic development opportunity and “means to encourage pride in ownership”)
 - Identify performance standards and processes
 - Builds 21st century infrastructure through best technologies, new approaches and best practices
 - Consider community wellness and infrastructure from a cultural and recreational viewpoint; telecommunications and technology access and high speed access needs; economic growth; and transportation infrastructure
- Facilitate compliance mechanisms.
- Bring existing housing stock up to standard.
- Establish better, more effective coordination of various processes between First Nations, CMHC and INAC, Infrastructure Canada.
- Build on the success of some communities by ensuring financial and technical support for comprehensive community planning,
- Encourage partnerships among First Nations communities to create purchasing power.
- Develop and share models that improve access to financing such as revolving loan funds and public/private partnerships as well as models that create First Nation development companies or other institutions that build houses and create revenue and employment within our communities.
- Provide access to the Canada Infrastructure Program to build housing and economic development infrastructures.
- First Nation involvement in developing a federal report card on items relating to housing and infrastructure; hard results on addressing shortages in housing, funding levels.
- Assistance in capacity development to support First Nation policy development on housing and infrastructure.



- Promote public education within First Nations on home ownership, generating options resulting in incentives and opportunities for home ownership, and seamless transition.
- Share examples of communities that have been successful with new development and innovation.
- Explore sectoral alliances on Housing and Infrastructure.

Long Term

- Increased investment in housing and infrastructure; secure long-term, sustainable funding envelopes.
- First Nation institutional development to support policy development on housing; promote public education within First Nations on home ownership; generate options resulting in incentives and opportunities for home ownership; and delivery of federal programs in a seamless way that is accountable to First Nations.
- Development of a fully equipped construction labour force.
- Implementing the First Nation plan on Housing and Infrastructure. The draft strategy facilitates increased control by First Nations over housing and infrastructure.
- Developing a framework whereby First Nations housing authorities control program service and delivery.
- Overhauling, revising and redesigning the existing structure that responds to the needs of First Nations on housing, capital projects and infrastructure – and establishing a First Nation organization.

Cross-cutting Issues

- Current policy framework in other areas – i.e. Effect of third party management on housing development in communities.
- Environmental issues i.e. on-reserve environmental governance; watershed management; contaminated sites clean-up
- Language and culture play an important role in creating a healthier living environment for First Nation individuals and families. i.e. cultural knowledge, including respect for oneself, others, and the environment and our relationship to both physical and spiritual environments, may be examined and used to help improve quality of home and environment; implementing culturally sensitive building plans.
- Health concerns regarding mold and vermiculite contamination
- Health concerns around potentially cancer-causing contaminants like vermiculite
- Public health concerns with unsafe drinking water (25% of First Nations drinking water infrastructures are high risk for contamination, according to the INAC Infrastructure Survey, 2003)





Options for Provincial/Territorial Involvement

- Explore access to existing Infrastructure or service delivery for Communities within close proximity to Municipalities or Regional Districts
- Explore capacity for training and work exchange/experience between First Nation communities and Municipalities





Canada - Aboriginal Peoples Roundtable
Sectoral Session

Economic Opportunities





Economic Opportunities



*AFN Annual General
Assembly, Trade Show,
July 2004, Charlottetown,*

PEI (AFN Photo)



Economic Opportunities

SUMMARY of OUTCOMES


The Sectoral Session on Economic Opportunities was held in Ottawa on December 13-14, 2004. The meeting was hosted by the Minister of Industry Canada, David Emerson, who indicated that working together and improving the economic opportunities of all Aboriginal Peoples must be a part of the overall solution.

It was noted by First Nations participants that implementing the recommendations in the Royal Commission on Aboriginal Peoples (RCAP) continues to be important, and that part of the challenge is ensuring that First Nations economic interests are included at the national level. There was also an indication that full discussion on the proposed subject areas would require more than the 2 days allotted to this Session.

The Assembly of First Nations (AFN) hosted a caucus session for First Nations participants and other interested First Nations representatives in advance of the Sectoral Session. This provided participants with an advance opportunity to focus on exact messages for each of the key questions that would be presented in the breakout groups. During the caucus, attendees discussed the possibility of a follow up meeting of technical experts to consider the Sectoral Session's outcomes.

Key Questions

1. The questions considered in the First Nations breakout groups are listed below. Participants spoke to critical issues, cross-cutting issues, and regional issues.
2. What specific actions are needed to overcome barriers to access to capital and investment, as well as to enhance coordination of programming?
3. What are the best approaches (business models, partnership mechanisms, governance structures, etc.) to foster improvements to economic opportunities related to the management and development of lands and resources?
4. What specific elements (institutional, skills development, infrastructure) related to governance and capacity are necessary to best enable economic opportunities?

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5. What adjustments are needed to improve or streamline the regulatory or legislative environment to support timely investment/business decisions and improve the investment climate?

Recommendations

- As an introductory exercise, participants were asked to share objectives/issues of importance. A wide array of issues was raised. Participants' messages included:
- communication and increased information relating to development experiences;
- establishing the importance of community priorities as the driving force in setting the economic direction, establishing programs, and policy development;
- access issues relating to capital and equity, as well as new business opportunities (e.g. cultural business development, youth, women);
- ability to make use of all traditional resources and increased economic jurisdiction and/or increased revenue sharing (fishing, mining, forestry, etc);
- ensure respect for fiduciary relationship, treaties, and Aboriginal rights;
- stressing the positive economic impacts of resolving land claims;
- ownership, conservation and sustainable use of resources;
- improved respect and capacity regarding First Nations governance systems;
- facilitation of economic opportunities, such as improved planning, economic education, connectivity and structural systems;
- program/policy modifications and business development incentives to improve participation, and, in some cases, decrease abuses;
- maximize human resource capacity (First Nations' public and private sectors), prioritize the need to create jobs and solutions for increased economic parity;
- increase coordination/relationships amongst/with industry, provinces and federal government.

1. Improving Access to Capital

- Increase control by First Nations.
- Involve First Nations in funding policy and program development, determining structures to support their economies, and associated accountability requirements.
- Economic development' needs to be a priority with real capacity/funding support.
- Complementary recommendations include acknowledging regional differences.


- Federal government must move away from pan-Aboriginal approaches in funding.
- Attract more equity and capital options, such as: private capital via tax credits; establish flexible equity criteria; lower interest rates on lending; improve market expansion and venture capital support; and establish flexibility for communities to use own source funding as equity.
- Establish seed capital, training funds, support and information initiatives for women and youth.
- Revise definitions and funding capacities, development definitions require broad approach and greater ability to meet 'risk thresholds'.

2. Management and Development of Lands and Resources

- Moving beyond reserve borders and treaty (and Aboriginal title) areas, mechanisms to support this objective politically (e.g. public education) and economically (e.g. impact benefit agreements, meaningful development). First Nations' mandated regional or national institutions can be a part of the solution.
- Improved jurisdiction to include subsurface rights to renewable and non-renewable natural resources, water, fishing, energy, forestry activity, mining, etc.
- Development must consider profit, environment, social responsibility, conservation and sustainable use of resources.
- Recognition of inherent rights and inter-treaty trade agreements.
- Long term resource revenue sharing agreements, corporate partnering, and innovative financing options for land and resource development.
- Development of a comprehensive First Nations Federal/Provincial/Territorial policy to assist in regional economic development and planning approaches, resource programs, etc.

3. Skills Relating to Governance and Capacity

- Initiate policy shifts in federal government to change 'program funding' mentality to an appropriate government transfer relationship (e.g. First Nations housing loans entities).
- Develop an innovative strategy to address stages of economic progress, coordination needs, proper funding, education/training support, and the appropriate levels of authorities.
- Commit to a sustainable First Nations human resources strategy with appropriate funding and flexibility.
- Develop strategies to address women's economic interests (reduce barriers to access funding, training, childcare, business networks, etc); youth entrepreneurship and continued education and training assistance; and persons and families working with disabilities, their training, education, child care and support requirements to enhance their participation in the economy.

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- Federal government must recognize the rights of First Nations to determine their citizenship and appropriate fiscal transfers to enable First Nations to serve their citizenry regardless of residence.
 - Remote and northern communities/nations comprehensive capacity development initiative needs (including technological needs, school retention programs, land use planning, etc).

4. Improving the Regulatory and Legislative Environment

- Recognize Aboriginal and treaty rights, better definition of Constitutional rights.
- Revisit outdated/unsuitable legislative and regulatory frameworks (e.g. Natural Resource Transfer Agreements, Employment Insurance Act, corporate regulations, intellectual/cultural property protection, environmental legislation, etc.).
- Ensure grounding in First Nations cultural values, management of resources, improved service, revenue sharing, revenue raising ability, trade vehicles, address overlap in jurisdiction, etc.
- Change tax and corporate laws to be more conducive to First Nations development.
- Re-examine regulatory framework of initiatives to ensure relevance (e.g. federal procurement and/or business programs).
- Design federal initiatives to link employment opportunities with training in specific careers.
- Amend *Indian Act* barriers that impede development (e.g. land designation, sub- surface and offshore rights, s.87 and s.89), improve investment environment, autonomy and certainty over lands.
- Establish a regulatory framework on Federal/Provincial/Territorial performance in agreement with First Nations.

Next Steps

1. Establishment of a joint task force to develop a new, coordinated federal economic strategy to strengthen First Nation economic partnerships involving INAC and Industry Canada, NRCAN, HRSDC and possibly others.
2. Reporting to Committees and to the Annual General Assembly on progress and opportunities for full engage through possible national policy forum in late 2005.

Background Paper on Economic Opportunities

Vision:

- The creation and maintenance of sustainable and successful First Nation economies built on a coherent First Nation economic development strategy, including:
 - Recognition and implementation of First Nation control and decision-making in matters related to the First Nation economy including lands and resources
 - Coordination and Integration of existing policy development and program delivery in support of First Nation control
 - Sustainable funding to support strategic investment and the development of local economies.

Issue Statement

- As the Royal Commission of Aboriginal Peoples firmly concluded, self-government without a significant economic base would be an exercise in illusion and futility. However, re-building the First Nation economy is a particular challenge given that our economies have been severely disrupted over time, marginalized, and largely stripped of their land and natural resource base. The consequences of this reality are evident in employment and income levels that continue to lag far behind Canadian standards. Furthermore, the rapid increase of the Aboriginal population means that thousands of additional young people will be entering the labour market over the next two decades. RCAP estimated that more than 300,000 jobs will be needed for Aboriginal people in the period 1991 to 2016 to accommodate growth in the Aboriginal working-age population and to bring employment levels among Aboriginal people up to the Canadian standard.
- Transformative change also means that governments must formally recognize the right of self-determination of First Nations peoples under international law.

Key Objectives:

Strategic:

- Creating a sustainable resource base for First Nation governments through supporting and providing assistance to ensure that First Nations are full and effective participants in all resource negotiations; building a competitive First Nation investment climate through improved infrastructure and employment strategies; and working with government and the private sector to identify economic opportunities and partnership.

Key Objectives / Discussion Topics:

- 1, Improved First Nation government infrastructure and capacity**
- 2, Improved Access to Capital and Investment**
- 3, Greater Opportunities and Advantage from Lands and Resource Development**
- 4, Improving Regulatory/Legislative frameworks to facilitate Economic Opportunities**

Improved First Nation government infrastructure and capacity

- A small number of First Nation communities have managed to advance their economic position to a dynamic state, with very low or virtually non-existent levels of unemployment, and a continuous stream of opportunities being explored. However, with this noted, there still remain issues and challenges for the majority of First Nation communities in moving their economy from a developmental economic stand point into an emerging economy, or from an emerging economy and into a dynamic economy.
- Programs and service levels exist in extremely varied levels. While some communities have a sophisticated economic development strategies, business development services, programs and/or incentives, there are many communities that operate with an incomplete range of plans or services.
- New infrastructure, investments in funding and human capital are required to realize community potential. Investments must also be complemented by support, coordination and integration of development programs in order that community governments may evolve.

Improved Access to Capital and Investment

- Improved access to capital and investment is required as well as reducing economic leakage. At present, the federal government has increased funding for economic development without due consideration of the program and service development needs of First Nation governments.
- Access to capital has been, and continues to be, difficult for many communities and First Nation citizens seeking to start, expand or acquire a business. Concerns around criteria appropriateness to community priorities exist, and supportive information being requested in an untimely fashion. To assist in remedying this issue, reorganizing how the structure of applications is received and approved to increase efficiency is needed, as well as setting up equity bases to be controlled by First Nations.
- One of the recurring issues when discussing the ability of a First Nation to effectively plan and realize economic development strategies is the effort to make due with CEDP funding levels that have not increased with inflation¹, or population growth², in more than a decade. In addition, the issue is further compounded by cutbacks of 35-40% nationally during that period.

The CEDP holds an envelope of approximately \$45.0 million in discretionary funding. The fund is distributed based on the 1989 per capita formula model. The CEDP needs to be refitted to meet the demands of the local and regional circumstances.

- Fiscal arrangements need to strike an appropriate balance between “flexible” and “focused” funding objectives, however formulae that guide distribution of funding must be based on First Nation principles and objectives.

Improving Economic Opportunities from Lands and Resource Development

- a) Canada and mainstream sectors have built tremendous wealth from the resources of the country. (see full dialogue paper for statistics)
- b) Establishing a First Nation capacity to uptake a small percentage (1%) of this resource development wealth in each sector would make a tremendous difference in First Nation communities (if simply applied against what the forestry, energy and mining areas represent to their industry as “economic engines” and “GDP” contributors could amount to over \$10.0B). To be competitive in these natural resource development sectors, First Nations require a well equipped labour force, partnering opportunities, contracting opportunities and economic benefits outlined at the onset of resource development agreements
- c) From a First Nations economic view point, fundamentally access to land and natural resources represent some of the most critical issues faced by First Nations. Some of the economic-oriented challenges include:
 - extremely limited access to resources,
 - lack of agreements to benefit from activity conducted on traditional territories,
 - cumulative losses such as wage earnings by citizenry resulting from lack of access,
 - a legislative environment that has much difficulty in working with First Nation economic interests to progress beyond the framework of the Indian Act,
 - a lack of process in how and when First Nations are involved in processes and decisions before lands and resources deals are struck, and importantly
 - effects to traditional economies.
- d) As one starting point, **AFN recommends a task force** be established to recommend options to support First Nations in efforts to manage, maintain and exercise First Nation rights and responsibilities over resources in traditional territories including the forests, mining and energy sectors.

1 Inflation at a rate of 3% per year on the base level funding (not including the funds that were cutback starting at year two of strategy) would after 15 years amount to approximately \$25.0 million reduced capacity of the program.

2 Population growth from 1989 to 2002 represents 51%, or a 238,514 increase in population counts.

Improving Regulatory/Legislative frameworks to facilitate Economic Opportunities

- As noted previously, funding designated to assist communities in economic development activity, such as with the CEDP, are categorized as “discretionary funding”. This leaves the funding exposed to many issues such as meeting the requirements of other federal priorities, and having to regularly justify the purpose and intent of an economic fund.
- Two critical issues must be addressed in accordance with the funding issues:
 - a) Funding must aim to support sustainable economies** and therefore support capacity and other development requirements in accordance with the real circumstances of First Nations;
 - b) a legal framework to safeguard the intent of the funding should be considered.**
- Plan for regulatory frameworks to support First Nation involvement in resource development decision making processes and planning for increased economic benefits.
- Recognizing and building on the existing infrastructure within First Nations: **increase program integration and enhanced budgets** rather than creating competing programs.
- Labour force issues: Working to **coordinate jurisdictional overlaps**, funding support for literacy and upgrading be stabilised and enhanced for all potential candidates
- Reporting: Accountability and reporting frameworks need to be adjusted to reflect the Auditor General’s findings that First Nation communities and their structures are burdened with excessive reporting requirements
- Ensuring **First Nations are full participants in securing connectivity targets.**
- Ensuring First Nations have the opportunity to guide and fully participate in meeting national Kyoto targets, implementation and in the “Kyoto economy”.
- Ensuring a role for **First Nation participation in existing and new trade agreements.**

Results:

Short term

- Federal re-engagement through a national initiative/task force to identify a framework for a **renewed First Nation national economic strategy.**

- Facilitating and fostering **participation in resource development through research on best practices for First Nations/Government/private sector resource management activities**, that are respectful of inherent rights.
- Developing **regional partnership and community planning models** so that we can participate fully in regional economic opportunities.

Confirming **First Nation infrastructure program** in connection with Infrastructure Canada.

Developing companion national strategies that promote or coordinate labour force/labour market/ employment development.

Improved coordination and integration of programming and jurisdictional authorities in support of First Nation governments.

Discussion on economic Partnering Opportunities, such as with the Public Private Partnerships model. We need to put more emphasis on these opportunities to widen the scope/ breadth of our economies. (ie. Facilitating/ negotiating greater benefits from resources development initiatives; data collection from reports to IC/INAC/HRSD/CMHC/... may be better managed by a First Nation business; policies revisions needed to ensure that economic or socio-economic impacts are maximized in large tendered contracts to construct community facilities.

Longer Term

- Increased recognition of First Nation Government jurisdiction over the First Nation economy
- Increased First Nation participation and control in resource development activities
- Increased First Nation connectivity
- Investment in new technologies to secure the connectivity of First Nations and facilitating opportunities to take advantage of emerging markets and trends.
- Building connections with potential investors so that First Nations can attract and expand businesses in our communities.
- Greater access to venture capital

Cross-cutting Issues

Women and Youth

- Women and youth must be key participants in developing and accessing economic and employment opportunities; decision making processes; natural resources and stewardship involvement
- Economic and employment parity will support the political, cultural, social and health fabric of the community



Urban

As First Nations governments are recognized and implemented, the full First Nation citizenry must have access to economic opportunity- regardless of residence:

- The current funding framework does not provide the type of assistance necessary for communities to consider how to reach urban residents. An expansion program is required to further empower community priorities and evolution needs, in areas they prioritize, such as with business services to a greater number of citizens.

Languages

- Economic development can help alleviate some of the negative pressures on a community to allow for positive reinforcements on other community priorities such as language, culture, and recreation.
- A healthy economy is one of several underpinnings to a healthy community. If due to economic circumstances, the community is pressured to find remedies to social and health issues, then it will not have the ability to assure priority (time, funds) to the language and cultural needs of the community.

Environment

- Environmental stewardship issues are intrinsically tied to economic development. Environmental considerations need to be involved in all policy discussions dealing with economic development.



Canada - Aboriginal Peoples Roundtable
Sectoral Session

Negotiations





Negotiations



"As First Nations take-on greater responsibilities and obligations we will require and we will exercise the ability to make our own decisions. This is, after all, what real governance is about."

National Chief Phil Fontaine, April 19 CAPRT Speech

- National Chief Phil Fontaine and Minister of Indian and Northern Affairs, Andy Scott

(AFN Photo)



Negotiations

SUMMARY of OUTCOMES

The Sectoral Session on Negotiations was held on January 12-13, 2005, in Calgary. The Assembly of First Nations (AFN) held a caucus session on January 11, 2005 and points were identified by First Nations representatives relevant to the breakout groups. A document summarizing these points was tabled with conference participants to form a part of the record, as well as an AFN Background Paper on Negotiations. Other First Nation participants, such as the First Nations Summit, also tabled recommendations and background papers.

The session was formally opened by the Elders on January 12th with their message that the time for change was now. The Minister of Indian Affairs and Northern Development, Andy Scott, made opening remarks in which he indicated that the policies and processes for addressing Aboriginal and Treaty Rights were clearly in need of renewal. The Aboriginal leadership spoke at the end of the first day. National Chief Phil Fontaine noted that much of what was being said had been said before and has never resulted in any change. In his remarks, Minister Scott departed from his speaking notes and made the following candid comments:

- The government needs to close the gap between “the talk and the walk”;
- The situation of Aboriginal people is a “blight on the history of this country”;
- The economic gap between Aboriginal people and other Canadians is very real, but at the end of the day, it is “the relationship that must be changed”;
- What needs to be corrected is the “imbalance in the public policy process”;
- It is “time to move past normal positions”, not on the part of the organizations, it is the government of Canada that must change;
- The Prime Minister strongly supports the need for “transformative change”;
- He was not prepared to reduce expectations of Aboriginal peoples and urged his officials to seize this opportunity to bring about historic change;
- He gave “unqualified support” to his officials to move forward with the needed changes;
- He thanked the Elders and asked them for further guidance.

PANEL PRESENTATIONS

There were two Panels on the morning of the first day. The first was on “Constitutional and Legal Developments”, which explored developments in respect of s. 35 of the *Constitution Act, 1982*, particularly in the judgments of the Supreme Court of Canada. Speakers noted that the Supreme Court has come a long way in its decisions, though the fundamental tenets were established in the *Sparrow* case. There, the Court emphasized the words “recognized and affirmed” in s. 35 and established a purposive approach for its interpretation saying that it was a solid constitutional base for negotiations. *Sparrow* dealt with Aboriginal rights, but the Court has applied the same principles to Treaty rights (e.g. *Badger* and *Sundown*). Since *Sparrow*, the Court has consistently called for negotiated solutions and has moved the yardstick forward with a view to encouraging governments to negotiate. The most recent decision in this trend is the *Haida* case. The application of the *Secession* case to Aboriginal peoples was noted, particularly with respect to the principles of democracy, constitutionalism, the rule of law, the protection of minorities and the requirement for governments to negotiate. Speakers indicated the importance of the inherent right of self-government for the future and reconciliation of Aboriginal peoples in Canada.

The second panel was on “Relationship Principles, Objectives and Lessons Learned”. It was more diverse than the first, but overall it focused on practical experiences related to negotiations. One speaker highlighted the diversity and complexity of land claims negotiation and that though national standards were required, it was hard to come up with a “one-size–its-all” solution. Problem areas include “overlaps” and “third parties”, especially since negotiations will now be undertaken in more populated areas with provincial involvement. Another speaker emphasized the lack of a federal policy for the Métis. Implementation issues were also identified as problematic in a number of respects. One speaker on the panel urged people not to overlook s. 35(4), which called for gender balance.

Key Questions

The two days of discussion were organized around the following questions:

1. What key messages do you have for Canada (at all levels) with regard to negotiations?
2. What is your vision of a future where all issues respecting negotiations have been addressed?
3. What processes and mechanisms need to change?
4. What types of policy or other changes are required to allow the desired changes to processes and mechanisms?

Recommendations

Key Messages

- Canada must recognize s. 35 rights (and recognize that these include inherent rights/ First Nations sovereignty and resource/revenue sharing rights) as a starting point for negotiations; this is a pre-requisite for, and must come before, reconciliation.
- Federal and provincial governments' denials of First Nations rights (refusal to acknowledge or recognize s. 35 rights at outset) are impediments to progress in negotiations and to achieving outcomes.
- Canada should demonstrate leadership, not sit back and let Provinces set the parameters.
- Federal policies and mandates (claims, self-government) must be reformed to reflect the current body of s. 35 court decisions, through a joint review process with First Nations.
- Greater efforts are needed to ensure inclusion of women in negotiations, and inclusion of the interests of women in negotiation outcomes.
- Must eliminate extinguishment policies; need to recognize that Crown-First Nations relationships and agreements are ongoing, living and evolving; this will require a change in federal & provincial approaches to 'certainty'.
- First Nations are disadvantaged by the critical power imbalance which results from governments' failure to recognize First Nations sovereignty co-existing with Crown sovereignty, the unfairness of loan financing, and the fact that federal and provincial policies set framework for negotiations; this power imbalance must be addressed before any real reconciliation possible or improved rate of progress in reaching settlements.
- Mutual respect, recognition, responsibility, sharing and benefit to be the basis of negotiations.
- The overriding objective of First Nations in negotiations is securing the well-being of our people, now and in the future, and ensuring our standard of living is at least equal to that of other Canadians; failure to improve negotiations process and policies will negatively affect capacity to achieve progress in other sectoral areas (e.g. socio-economic areas).
- Transformative change must come from community members at a pace determined by them; dependent on communication and capacity building with community members.
- Need for public education, attitudinal change, and to combat racism and colonial ways of thinking.

Federal Policy Changes

- Fundamental reform to claims (both specific and comprehensive) and self-government policies and processes are needed to address the power imbalance (recognize First Nations come to table with rights).
- Recognition of First Nations sovereignty as a premise of negotiations.
- Recognition legislation to be considered, but jointly drafted with First Nations.
- First Nations recognize and define their own citizens.
- Development of treaty implementation policy and processes.
- Federal Crown has responsibility for relations with First Nations.
- Federal responsibility for relations with First Nations during negotiations and implementation must be taken out of DIAND.
- Need an independent tribunal as per RCAP.
- Federal policy/mandates that require First Nations laws in some areas to “meet or beat” “provincial standards” are unacceptable.
- Review recommendations from key reports in past (e.g. Penner, RCAP, BC Task Force); Implement RCAP Recommendations.

Fiduciary Relationship and the Honour of the Crown

- Federal Crown has primary responsibility for meeting Crown obligations to protect s. 35 rights; negotiations are primarily federal-First Nations in nature.

The Negotiation Process

- Federal negotiators need clearer mandates, need authority to say ‘yes’ and authority to reveal limits of mandates early in process.
- Need to address revolving door of negotiators.
- Agreements in principle (AIPs) need to address problem of revisiting by federal government; need to address absence of funding for First Nations between AIP and ‘effective date’ of agreement.
- Need to streamline processes and have earlier outcomes.
- Need to find better ways to address overlap issues.
- Need mechanisms to make less adversarial, to address federal conflicts of interest.
- Need resource revenue sharing during negotiations and need to resolve own-source revenue issues.

Inclusion

Empower elders, for example, by formalizing their role as advisors to the community through mechanisms/councils at all levels (local, regional, national).

- Restore women to their rightful places in our nations and honour them as them Creator intended.

- More gender-based analysis should be undertaken by all parties.
- S. 35(4) should be noted in agreements, and taken into account in analysis and negotiations.
- Reform needed to federal policies and concepts concerning citizenship, membership, and Indian status to ensure the interests 'off-reserve' citizens are met, to recognize First Nations right to define.
- Need policies and processes to ensure community ownership of negotiation outcome.

Funding and Fiscal issues

- Loan financing of negotiations unfair and an impediment to process, rather than an incentive; loan forgiveness for existing loans.
- Need to revisit original funding formulas and move from business model for negotiations (cheapest deal at cheapest cost) to model based on transfer or wealth, sharing of resources/revenue, creation of economies to sustain First Nations now and in the future.
- Funding for negotiations must be adjusted for changes in process (e.g. to support consultation and new interim measures).
- Federal policies regarding Indian status and First Nation membership inhibit full inclusion and servicing of non-status citizens.
- Need formulas aimed at meeting First Nations present and future needs.
- Can't use municipal model for funding formulas; First Nations have broader responsibilities than municipalities.
- Address need for catch-up funding to address gap in socio-economic indicators between First Nations and other Canadians.

Implementation and Post Agreement Issues

- New funding approaches for self-government/treaties implementation; funding must be based on real costs of running First Nations governments and must also take into account capacity, training needs and need for capacity assessment.
- Get the relationship out of DIAND.
- Independent oversight body needed for all treaty implementation.
- Treaty implementation policy and oversight body needed for historical treaties, to ensure respect for spirit and intent.
- Incremental evolution of self-government at own pace.
- First Nations need own benchmarks to measure transformative change; benchmarks based on our own First Nation values, not federal government policy.
- Need to address lack of access of capital infrastructure funding post-agreement.



Next Steps

- Development of a national intergovernmental strategy to be confirmed by the National Executive.
- Report on recognition and implementation of First Nations Government initiative, including reference to 'reconciliation' and the requirement for new negotiations framework, at the Special Chiefs Assembly March 29-31, 2005.
- Seek commitment at the joint Cabinet Retreat with Aboriginal leaders, Spring 2005.
- Report at the Annual General Assembly in July 2005.

Background Paper on Negotiations

Issue Statement

The commitments made by this government to make real progress on First Nations issues are very important and much needed. However, these commitments can not be realized without a close examination of how negotiations are currently undertaken, particularly the policy framework and the assumptions underlying that policy framework.

The path that connects First Nations rights and progress on development is the negotiation process and the relationship between the negotiating parties. In other words, we are unlikely to achieve healthy, economically vibrant First Nations communities without the implementation of our collective rights to resources and government and we are unlikely to achieve implementation of rights without attention to the fairness of the negotiation process.

1. Introduction

Canada and First Nations relations have not improved to any significant degree despite constitutional reform, significant court decisions supporting Aboriginal and treaty rights, policy and program tinkering, and increased spending. Likewise the unacceptable socio-economic conditions experienced by First Nation peoples persist. The gap in the quality of life between First Nations and Canadians as a whole is not closing quickly enough by any standard. These are facts on which Canada and First Nations agree.

The Prime Minister has stated that negotiations between First Nations peoples and the Crown is the preferred approach for defining their relationships, instead of leaving it to the courts. Indeed, as recently as November 18, 2004, the Supreme Court of Canada made the same point that they have been repeating since rendering their first decision on section 35, *Constitution Act, 1982* in the *Sparrow* case in May 1982. In the recent decision the SCC emphasized that honourable negotiations was the standard and process to achieve reconciliation:

“The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown: Delgamuukw, supra, at para. 186, quoting Van der Peet, supra, at para 31.” (Haida Nation v. British Columbia, para. 17)

“Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty and too define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982. Section 35 represents a promise of rights recognition, and it is always assumed that the Crown intends to fulfil its promises” (Badger, supra, at para. 41). This promise is realized and

sovereignty claims reconciled through the process of honourable negotiation. It is a corollary of s. 35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests.” (Haida Nation v. British Columbia, para. 20)

.....

Put simply, Canada’s Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. (Haida Nation v. British Columbia, para. 25)

- From a First Nations perspective, there are issues of fairness to address that affect the honour of the Crown.
- First of all, existing policies have not changed in any way to reflect the many significant developments in the law since key policies such as the claims and self-government policies were first devised.
- Second, existing policy frameworks and negotiation processes reflect an old-fashioned and discredited win-lose adversarial way of thinking.
- Further, existing policies assume an equality of bargaining position. They do not take into account in their design or policy framework the actual power imbalance between the parties and how this affects both process and outcomes. The slow progress of negotiations is a symptom of this fundamental problem.

It is a conviction of many First Nations that we are fundamentally at a disadvantage by negotiating in processes where the ground rules are controlled by the other side and where the process aims to avoid rather than embrace the clear recognition of important constitutional rights. A forum is needed in which to squarely face these issues. Otherwise, there cannot be fairness, there cannot be reconciliation and there cannot be a just resolution.

It is no wonder, then, that the process has become extremely adversarial with a “winner-loser” scenario. Of course, no one wants to be the “loser” especially the government and the ability to control the outcome of so called negotiations can be assured by ignoring constitutional and legal developments and maintaining the power imbalance.

Negotiations need to produce real outcomes including the implementation and protection of rights. Endless negotiations and lack of agreement is not an acceptable outcome. Therefore, the negotiation process, as between the Crown and First Nations, must be redesigned and has to be mutual in design and adherence.

2. Abandoning the Colonial Status-Quo

As history shows, the relationship between First Nations and the Crown has been adversarial, with mistrust and a lack of a level playing field inhibiting the successful negotiation of issues. This relationship must be cast aside. In its place, a new relationship which recognizes the unique place of First Nations in Canada must be developed and nurtured.

Recognition and respect for First Nations as self-determining and distinct nations with their own spiritual values, histories, languages, territories, political institutions and ways of life must be the hallmark of this new relationship.

Based on experience and analysis of negotiation results thus far, it is obvious that principles and practices which create impasses, and long and costly processes, must be abandoned. Such principles and practices include:

Canada's Role in Treaty Negotiations

- Under Section 91(24) the Government of Canada has the constitutional authority to address the continued existence of First Nations' Aboriginal title, rights and other interests in, and to, their respective traditional territories. However, rather than assuming the leadership role that this constitutional authority entitles it to, Canada has been deferring it to the provincial governments.
- This is not to say that the tri-partite negotiations should be abandoned, but rather that it is essential for Canada to assert its leadership role in negotiations.
- Federal negotiating mandates are developed, approved and implemented in secret and primarily to advance federal interests at the expense of First Nations needs and aspirations. The federal negotiating mandate should reflect the advancement of both First Nations and Crown interests.

Comprehensive Claims Policy

- The federal comprehensive claims policy is outdated and inconsistent with the common law in that it aims to achieve finality with respect to 'land-based' Aboriginal rights.
- Furthermore, there is a fast growing body of case law, primarily focusing on consultations and accommodations that articulate the Crown's fiduciary duty to protect First Nations' Aboriginal rights, title and interests.
- It is beyond doubt that Canada's current 'one size fits all' approach is neither just nor workable. Such an approach simply cannot accommodate the diversity among First Nations in Canada, therefore, the federal negotiating mandates must respond to such diversity.

Certainty

- For First Nations the desire for certainty on the part of the crown is interpreted as finality which is contrary to Canadian constitutional and common law that embraces the constitution as a living tree capable of change, modernization and evolution.

- The governments are proposing certainty models that are incomplete and, therefore, unworkable. In particular, they do not provide for the resolution of potential issues that conceivably may arise. Each and every right or area of jurisdiction and exercise of power cannot be contemplated at the time that a treaty is being negotiated and there are legal mechanisms that can enable a treaty to evolve in response to legal or other changes without formal amendment, such as when replacement rights are need due to the diminishment of a negotiated right.
- First Nations are concerned that Canada and the provinces are trying to eliminate the current legal interpretive principles that First Nations fought hard to gain through the proposed certainty provisions. Another concern is that First Nations governance powers may be set out in separate agreement that is not protected under section 35.
- Canada must abandon its policy of requiring a blanket release from “‘all claims in relation to past infringements of any Aboriginal rights, which infringement occurred before the effective date of an agreement”, currently found in AIPs. This captures both land and non-land based infringements and raises serious concerns, given the governments are seeking agreements that are not protected under section 35. It is unreasonable to expect First Nations to release their section 35 rights for agreements that are not protected under section 35, while also seeking a release for claims of past infringements without compensation.

Self-Government

- The existing inherent right policy was developed unilaterally by the federal government contrary to what the Supreme Court of Canada has been declaring with respect to consultation, the fiduciary relationship and reconciliation.
- The policy has been rejected by First Nations and has not produced the desired results, therefore, needs to be revisited in its entirety.

Lands and Resources

- The focus of effort on the part of the federal government appears to be to minimize First Nations control of, access to and benefit from lands and resources; however, it is such denial of sharing of resources that deprives First Nations communities of their economies and economic rights that can enable self-sufficiency.
- The inclusion of First Nations interests and participation in decision making about lands and resources external to reserve boundaries within traditional territories is a requirement that must be addressed immediately not merely upon the conclusion of an agreement.

Fiscal Relations

- Canada’s existing fiscal policy with respect to First Nations is embodied, for the most part, in the pursuit of contribution agreements and cash settlements.
- New fiscal models that would reflect government to government relationships must be explored and implemented.

Federal Loan Funding

- The control and overall policy concerning the provision of federal loan funding to First Nations negotiating groups places the federal government in a huge advantage. On the other hand, First Nations are further disadvantaged by the prospect that failure to arrive at a negotiated settlement will result in indebtedness.
- Addressing the power imbalance situation requires changes in the federal loan funding policy and program.

Process and Structural Changes

- The Department of Indian Affairs was established to administer the *Indian Act* and Indian Affairs. Mandating the DIAND to develop and implement negotiation policies contrary to their purpose is illogical. Policies and processes aimed at removing First Nations out of the *Indian Act* and the DIAND reality should not be in the hands of officials whose responsibilities are directed at maintaining the colonial relationship.

3. Getting to Reconciliation

In order to move forward and address the fundamental problems with the current negotiations processes, there are a series of matters to be addressed. The first deals with establishing clear expectations of the process.

First Nations and the Crown must engage in a joint undertaking directed at achieving reconciliation of First Nations' and Crown interests through the process of **fair, efficient and honourable negotiations**.

Reconciliation must be defined as "... not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35 (1) of the Constitution Act, 1982. This process of reconciliation flows from the Crown's duty of honourable dealing toward Aboriginal peoples, which arises in turn from the Crown's assertion of sovereignty over an Aboriginal people and de facto control of land and resources that were formerly in the control of that people." (Haida, para. 32)

Fair, efficient and honourable negotiations can only become a reality with a significant and dramatic change in the status quo that can advance a more level playing field: such dramatic change requires the federal government to recognize First Nation sovereignty (as the Supreme Court of Canada recently did in stating that "*Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty and to define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982.*"); and focus negotiations on economic rights to enable self-sufficiency.

The negotiation process in key areas such as claims, self-government and resources, as well as the federal policy frameworks that shape those processes, must be examined in a thorough way and must take advantage of the many advances in the field of conflict resolution and cross-cultural communication over the past thirty years. This will necessarily require an examination of the role of power imbalances in negotiation processes and how they can affect outcomes and behaviours.

4. Effective Policies and Processes

Policy reform with respect to the existing comprehensive, specific claims and inherent rights policy, and policy development with respect to treaty implementation (historical and modern day), is necessary.

Policy reform should include the elimination of hard positions. More importantly, such policies must clearly embrace power sharing and the relinquishment of absolute control. Public officials must be instructed and assured that their “responsibility” as public officials is not merely about serving the interests of the Crown, but also about maintaining the honour of the Crown by advancing and achieving mutual outcomes with First Nation peoples.

Adopting a Negotiation Concept/Approach

- First Nations and Crown negotiators must be guided by a common understanding and approach to negotiation such as the consensus based approach, or any other, as the means of minimizing the adversarial nature of the relationship and process.

Common Purpose

- First Nations and Crown negotiators must work jointly to identify the desired consensual outcomes. In other words, what are the needs that each party wishes to address in the outcome? This promotes the idea that you help others to help yourself.
- In essence, a pre-negotiation stage that should also address the ground rules, agenda setting, timelines, etc. This approach should minimize aimless, costly and time consuming meetings masked as negotiations.

Common Information Base

- The parties should engage in joint information gathering, analysis and forecasting to enable trust and understanding.

Dispute Resolution

- It is absolutely necessary for the parties to have access to efficient, competent and trust worthy facilitation, mediation and/or arbitration to benefit the process generally and, especially, in situations of impasse.

Communications/Public Education

- It is essential that the parties engage in a joint effort at educating Canadians about First Nations rights and the process of reconciliation to gain public support for visionary and transformative change.

Private Sector

- The parties have to acknowledge and utilize the power of the private sector to enhance the range of options and solutions.

5. Key Initiatives to Drive Transformative Change

1. First Nations Bilateral Process

- A discussion on the distinct rights of First Nations and how government policy should support those rights must be held. It is the uniqueness of First Nations rights which drives the need for the creation of innovative and unique approaches to policy development to address the unique characteristics relationships and approaches to negotiations as opposed to those of other Aboriginal groups recognized by Canada (Inuit and Métis). The distinct rights of First Nations cannot be compromised in order to satisfy a uniform Aboriginal Policy approach by the federal government.

2. Treaty Policy

- Canada must reaffirm its respect and adherence to the historic treaties and to develop policy concerning implementation and modernization.

3. Legislative, policy and program audit and harmonization

- After the inclusion of the recognition and protection of aboriginal and treaty rights in the Canadian Constitution, Canada never officially undertook a review of its laws, policies and programs to ensure compliance and harmonization with section 35 aboriginal and treaty rights. It is long overdue and such an exercise would benefit reconciliation and relations.

6. Key Considerations

Recognition and implementation of First Nation government:

- Any new system or structure must be developed in the context of First Nation governments. Therefore, it will be critical for First Nations to develop an effective process to engage their full citizenry. **Urban, women's, youth and elders perspectives** will all play an integral role in developing a coherent and success strategy through negotiation and implementation. Federal policies and processes must accommodate and support this need as an integral aspect of developing, confirming and implementing First Nation governments.

Adequacy of resources:

- As referenced previously, resolving the power imbalance in negotiations is in part a question of resources. New approaches must be found to ensure First Nations are fully equipped to effectively and fairly participate in the negotiation process.

Machinery of Government Changes:

In order to move accomplish transformative change as envisioned in this paper, the Federal Government must be re-organized and re-structured to accommodate the realities of a renewed relationship.



Options for Provincial/Territorial Involvement:

- Discussions must be undertaken to confirm the role of the provinces in negotiations and to determine appropriate ways in which they can and should be part of the renewed relationship.

7. Results

First Nations have expressed very high expectation for the Canada-Aboriginal Peoples Roundtable Sectoral Discussions on Negotiations. A summary of anticipated results, to be set in motion following the session, include:

Short term

Policy reform and policy development in the areas of:

- land and resource rights;
- self-government; and
- treaty implementation.

Long Term

- Effectively recognizing and implementing Treaty and Aboriginal rights to land through appropriate processes to efficiently, fairly and effectively address land claims that will provide an adequate land base for First Nations governments and reduce the backlog
- Processes to implement Treaties, renewing the relationship and creating opportunities for effective partnership

Canada - Aboriginal Peoples Roundtable
Sectoral Session

Accountability





Accountability



“Accountability is saying what you are going to do and doing what you say.”

– Accountability Sectoral Session Participant

(INAC Photo)



Accountability

SUMMARY of OUTCOMES

The Accountability for Results Sectoral Session was held on January 25-26, 2005, in Ottawa. The President of the Treasury Board, Reg Alcock, hosted the event as the Minister responsible for this file within the Government of Canada. He opened the session by making three commitments which he described as "getting the federal house in order". Those commitments are:

- to provide full disclosure of federal spending on policies and programs concerning aboriginal peoples;
- to provide a 'mapping' of how federal government policies and programs pertaining to Aboriginal peoples function; and,
- to develop a means to rationalize reporting requirements before the end of 2005.

In addition, Minister Alcock acknowledged that the development of an Aboriginal Report Card, as promised in the most recent Speech from the Throne, would require the prior development of a new framework within which to assess accountability for the conditions faced by Aboriginal people across Canada.

These early commitments by the Minister set a positive tone for the session that followed as they reflect considerable progress from positions taken by the Government of Canada in the period leading to the sectoral session, and an acceptance of perspectives put forward by the Assembly of First Nations during preparatory meetings and in its background paper.


Key Questions

1. How can clarifying accountability relationships contribute to improved results?
2. What principles and information lead to 'Good Reporting' and how can it drive transformative change?
3. What should the process be to move forward on an Accountability Framework and a Report Card?

Recommendations

1. Accountability and Results

Accountability is about the relationship between those with power and those affected by the use of that power. A holistic view of these relationships is required to develop an understanding that is respectful of the diversity of parties



involved. First Nations should stand in relation to the federal and provincial governments as an equal partner, as symbolized in the three-figure wampum belt. We need a joint process to define and implement a new accountability framework, fully mandated by all governments.

These issues appear unnecessarily complex. The Government of Canada's approach denies historical and ongoing legal responsibilities and insists that decisions are solely policy-based. This undermines the foundation of the accountability relationship and confuses efforts to address negative results. There must be jurisdictional clarity, built on a mutual recognition of rights (including historical Aboriginal and treaty rights of First Nations) and codified by legislation. Clarity will allow for the appropriate delegation of authority and support accountability.

Financial arrangements with First Nations should resemble those between the federal and provincial governments. A new fiscal framework should be ongoing, adequate for need, and delivered through a single window (e.g. CHST, SUFA arrangements). To have accountability, the full honour of the Crown must be restored through the acknowledgement and fulfillment of all of its fiduciary and other obligations to First Nations.

2. Good Reporting and Transformative Change

Current funding processes involve a lot of proposal writing, funds sometimes being granted, and the preparation of a burdensome number of reports on how funds are used. Neither the funding nor the reporting is related to the achievement of results in communities. To drive transformative change, both the Government of Canada and First Nations governments must change their focus from accounting for how money is spent to accountability for results within communities. This requires mutual understanding, transparency regarding information, and capacity building where needed. Most importantly, governments will need to act on results. To do this, governments need a new accountability framework (as discussed above) which includes mutually-agreed upon outcomes, appropriate performance measures and indicators, and data ownership and control protocols. This should lead to a limited number of simple reports - available to all community members on and off reserve - that explain the results and the reasons for success or failure.

To support good reporting, First Nations will need to be funded for reporting activities, which should give further impetus to the need to integrate and streamline reporting requirements. New and better tools for data collection and reporting are crucial, as are protocols that ensure First Nation participation in data collection, thus promoting the completeness and accuracy of data collected. As with the development of an accountability framework, reporting requirements must be developed jointly with First Nations, fully reflecting the views of the communities.

Support for community level strategic and business plans that are linked to the broader accountability framework will lead to reports on the success or failure of those plans, and will provide measures and indicators for higher level reports. New performance measures and indicators will need to be developed to include such dimensions as 'cultural safety' and the health of the ecosystem, as well as measures relating to the development of the government-to-government relationship and overall progress on self-government.

3. Accountability Framework and Report Card

The principles of transformative change and collaboration are essential, meaning that First Nations must have an equal lead at all stages in the development of an accountability framework and any report that follows. This should be accomplished through a joint committee or inter-governmental working group to develop the principles and set-up a consultation process. Starting points for this work can be identified, such as the accountability model recommended by the *Report of the Royal Commission on Aboriginal Peoples* (RCAP) and the need for a foundational legal commitment to recognize and implement historical, Aboriginal and treaty rights (per S.35 of the *Constitution Act, 1982*).

With regard to the report itself, it was strongly suggested that the title 'Aboriginal Report Card' is inappropriate. In addition, the Treasury Board Report, *Canada's Performance*, was not seen as a useful basis for design as it reflects the old federal government approach, denying the legal basis for federal responsibility and excluding First Nations involvement and authority.

A variety of other miscellaneous recommendations are worthy of note:

- Reports should be provided by an independent body to Senate or House committees and First Nations governments to ensure continuity regardless of changes to governments;
- Amend the Treasury Board policy on results-based management accountability frameworks to fully include and engage First Nations in planning, priority setting, monitoring, reporting, results and evaluation processes;
- Directly involve First Nations in changes to the 'machinery of government';
- Provinces and Territories must be included in the development of a new accountability framework;
- Establish voluntary ISO certifications on accountability;
- Aggregate First Nations governments to enable legislation and administration of programs and services including the development and monitoring of standards; and,
- Create a First Nations Auditor General or Ombudsperson.

Next Steps

1. Seek specific process to engage on the commitment to a First Nations accountability framework as the basis for the development of the Aboriginal Report Card.
2. Consideration of information / options for engagement to be presented to Executive in the Spring 2005.
3. Reporting and confirmation of approach to move forward at the Annual General Assembly 2005.

Background Paper on Accountability

Vision:

The establishment of a framework for managing First Nations policy development and program delivery that:

- Enables those who are responsible to account for their decisions and for the results of those decisions; and,
- Enables First Nations to hold those who are responsible to account both for the decisions and their results.

Issue Statement

During the April 19th Canada-Aboriginal Peoples Roundtable, the Prime Minister proposed a new relationship with First Nations, built on a principle of collaboration and aimed at transformative change. In the most recent Speech from the Throne, the Federal Government committed to the development of an Aboriginal Report Card. In the spirit of collaboration, First Nations support that objective. However, we also recognize that a report card that is not situated within the context of an appropriate accountability framework will not lead to transformative change. Therefore, within this Sectoral Session on Accountability, we seek to identify principles and processes that lead to a functional accountability framework for managing First Nations policy development and program delivery within which First Nations and the Government of Canada can jointly design an appropriate report.

The need for transformative change is not in doubt. The Prime Minister has recognized the “shameful conditions” in which First Nations live. The Auditor General has highlighted in consecutive reports how the government is failing with regard to *Streamlining First Nations Reporting to Federal Organizations*, *Economic Development of First Nations Communities*, and most recently, *Indian and Northern Affairs Canada – Education Program and Post Secondary Student Support*. Indian and Northern Affairs Canada (INAC) recently have produced a Community Well-Being Index which demonstrates that disparities between First Nations and Canadians have not narrowed since the department set a 2% cap on program spending growth in 1996. These authorities are now reaching the conclusion that First Nations have been pointing to for years; that real results will require a significant increase in political will and commitment to fundamental, systemic, transformative change.

It is equally clear that the Government of Canada needs to demonstrate the necessary political will for change by committing to collaborate fully with First Nations, as the Prime Minister has called on it to do. For their part, First Nations are more than ready to work collaboratively with the Federal Government and to provide the necessary leadership for transformative change. This session of the Canada – Aboriginal Peoples Roundtable presents an opportunity for both parties to concretely demonstrate their commitment.

Key Objectives of the Accountability Sectoral Session:

This session should provide a clear picture of the problems encountered with current accountability practices and develop suggestions for improving:

- Accountability – to describe the structure of decision-making concerning First Nations policies and programs and to address issues of jurisdiction and control by identifying how decision-makers should be held accountable;
- Reporting - to reduce the burden on communities by eliminating overlap and inconsistency and to enhance accountability through improved reporting;
- Data and Performance Measurement - to support accountability by improving the utility of performance measures and indicators, and by addressing data concerns; and,
- Sustainability – to ensure ongoing support by establishing First Nations led processes and to support continuity by providing adequate funding for those processes.


Key Questions/Discussion Topics

ACCOUNTABILITY

The Auditor General of Canada has defined accountability “as a relationship based on the obligations to demonstrate, review, and take responsibility for performance, both the results achieved in light of agreed expectations and the means used”.

As the Auditor General’s definition makes clear, accountability is a relationship, with two sides of equal importance. On one side, there are those who are accountable. They have the responsibility and authority to make and implement decisions and to provide an account of what decisions were made and what happened as a result. The other side is made up of those to whom the first group is accountable. They do not have decision-making authority or responsibility, but they do have the right to demand an account from the first group and to demand that, once an account is provided, action is taken to improve results. Without respect for both roles and a full implementation of each, there is no accountability.

To date, with regard to policies and programs affecting First Nations, the Federal Government has played the second role. It has been prepared to demand that First Nations governments provide accounts for funds received and to demand changes when they have been dissatisfied with the reports they receive. For their part, First Nations governments have played the first role of providing the required reports. But the Federal Government, which has held the greater responsibility and authority, has not been accountable to First Nations for the decisions they have made nor for the disastrous results of those decisions. And neither First Nations governments nor their communities have been empowered to hold the Federal Government to account or demand the changes that those disastrous results so clearly require. There has been no real accountability.



Now, the Government of Canada has committed to developing an “Aboriginal Report Card” which they say will allow Canadians “to hold all to account and to drive progress”. But there is no framework for defining the various accountabilities involved, for identifying the responsible parties, or for defining the results expected from policies and programs. Worse, there is no recognition of the unique position of First Nations in this process. As the subject of the policies and programs, it is First Nations who are directly affected. Moreover, given the nation-to-nation relationship that First Nations rightly demand from the Government of Canada, their views can not be aggregated in equal proportion with those of other Canadians, nor can the results achieved by the Government of Canada with regard to First Nations be aggregated with those results relating to other aboriginal peoples in Canada. Such a “pan-aboriginal” approach denies the significant distinctions between these groups. More broadly, the fiduciary obligation of the Crown as concerns First Nations demands recognition of the special duty owed by way of accountability to First Nations. These issues must be addressed before a meaningful report can be developed.

Respect for these distinct roles demands that a process be established, jointly led by First Nations and the Government of Canada, to define appropriate responsibilities and authorities so that a proper account may be given. It also demands that the role of communities in holding decision-makers to account be facilitated and fully respected. It is only by supporting communities to analyze reports and provide feedback and, most importantly, to then act on that feedback that real accountability can be achieved.

The Auditor General of Canada has set out five principles of effective accountability:

1 — Clear roles and responsibilities. Roles and responsibilities should be well understood and agreed on by the parties.


2 — Clear performance expectations. The objectives, the expected accomplishments, and the constraints, such as resources, should be explicit, understood, and agreed on.

3 — Balanced expectations and capacities. Performance expectations should be linked to and balanced with each party’s capacity to deliver.

4 — Credible reporting. Credible and timely information should be reported to demonstrate what has been achieved, whether the means used were appropriate, and what has been learned.

5 — Reasonable review and adjustment. Fair and informed review and feedback on performance should be carried out by the parties, achievements and difficulties recognized, appropriate corrective action taken, and appropriate consequences carried out.”

The Assembly of First Nations supports this view and notes the significance of requiring roles and responsibilities as well as performance expectations to be agreed on by the parties. In this case, those parties include, on one side, the Government of Canada as well as provinces, territories, service provider organizations and First Nations governments, and on the other side, First Nations themselves. This speaks to the need for a process, led jointly by First Nations and



government, to establish those roles and responsibilities and performance expectations. We would also highlight the need for review and adjustment, for corrective action based on feedback from those most affected, namely the First Nations themselves.

REPORTING

There are 14 different departments and agencies of the Federal Government that have policies or programs directly aimed at First Nations. In addition, provinces, territories, service provider agencies and First Nations' governments all make decisions affecting the design or delivery of those programs. The complexity of this situation is a significant barrier to effective reporting. In addition to the problem of complexity, there is the question of utility. Federal departments demand reports from First Nations that are overlapping, inconsistent, irrelevant to decision-making and a significant burden on communities.

In her December 2002 report on *Streamlining First Nations Reporting to Federal Organizations*, the Auditor General identified opportunities to integrate and streamline administrative arrangements between First Nations and the Federal Government. The 2002 report identified a minimum of 168 different reports required of First Nations by the four main funding organizations of the Federal Government. As the Auditor General noted, these requirements are especially burdensome when one considers that more than half of First Nations communities have less than 500 people:

"First Nations reporting requirements established by Federal Government organizations are a significant burden, especially for communities with fewer than 500 residents.....We are concerned about the burden associated with the federal reporting requirements. Resources used to meet these reporting requirements could be better used to provide direct support to the community".

Other problems cited in the Auditor General's 2002 report include:

- overlap and duplication among the required reports;
- limited use being made of reports;
- reporting requirements dictated with insufficient consultation;
- information reported not being used to set funding levels;
- reports that do not reflect community priorities;
- insufficient feedback to First Nations; and,
- a lack of information on program performance or results.

First Nations know this to be the case, but there is no requirement for us to prove what the Auditor General has said. In its response to this report, the Government of Canada agreed to its recommendations and committed to undertaking such changes. At this time, we are unable to identify concrete results from that commitment, but clearly this Sectoral Session and the discussions to follow are an opportunity to demand positive transformative change.

What change?

Within the context of a functional accountability framework, a discussion of good reporting involves two basic questions:

- What information is needed in order to provide a proper account?
- How do we ensure that the decisions taken and the results of those decisions are made clear to those who receive that report?

The answer to both these questions begins with relevance. Information must inform decision-making to enable management for results. As noted, reports must identify what works and what does not work so that the right decisions can be made in response. To give a proper account, the following elements must be clearly and simply identified:

- the objective of the policy or program being reported on;
- the decision-maker or responsible party;
- the method by which the policy or program was implemented;
- the funds invested;
- the actual results observed;
- analysis of the relationship between decisions and results; and,
- a plan for responding to the results, including a discussion of whether increased investment is needed to attain expected results.


In addition, a report should only have to be made once. Systems should be common and integrated to facilitate streamlining and appropriate aggregation. The expectations should be the same for all of the parties involved, including provinces, territories and non-governmental agencies, as well as the federal government and First Nations governments. Reports themselves must be clear and transparent to those who will be holding decision-makers to account. Common and integrated reporting has the added advantage of facilitating integrated programming, which reduces costs, clarifies procedures and enhances access to programs.

Most importantly, reports must be set within a functional accountability framework that has established the objectives of the policies and programs based on consultation with affected communities, that has considered the appropriate governance structure so that the responsible party is the one best placed to respond to the concerns of the affected community, and that will actually use the report to improve results performance.

Finally, and perhaps obviously, reports must be based on reliably accurate information, which means that data and performance measurement issues must be resolved in order to produce a reliable, accurate and meaningful report.

DATA AND PERFORMANCE MEASUREMENT

The Royal Commission on Aboriginal Peoples reported that the “gathering of information and its subsequent use are inherently political [and that] in the past, Aboriginal people have not been consulted about what information should be



collected, who should gather that information, who should maintain it, and who should have access to it. Information gathered may or may not have been relevant to the questions, priorities and concerns of [First Nations] people. [Furthermore], because data gathering has frequently been imposed by outside authorities, it has [often] been met with resistance”.

In order to ensure that reports include data that is accurate, relevant, and functional, the process must fully engage First Nations from initial development through implementation, including the collection and analysis of data collected.


As noted, First Nations are not simply ‘stakeholders’ in the area of accountability, reporting and data collection, they have treaty and inherent rights of self-government, and; as such, they comprise an independent jurisdiction with unique rights and interests. The development of an accountability framework must respect the principles of the nation-to-nation and government-to-government relationship when discussing data collection, data sharing, information management and research. These principles must be embedded in the process and in any policy or legislative instruments that describe the process.

There are several key considerations surrounding data and performance measurement development processes, including:

- maximizing the utility and relevance of performance measures and indicators;
- creating governance practices regarding the collection of data on First Nations that respect the principles of Ownership, Control, Access and Possession (OCAP)
- developing First Nations led data collection processes; and,
- establishing data infrastructure and data sharing protocols.

Increasing the utility of performance measures and indicators is essential to making an accountability framework function. Performance measures are those elements of data that pertain to the performance (i.e. results) of a policy or program. Indicators are groups of measures that show or “indicate” success or failure of the policy or program. Together, they describe the relationship between observed results (what actually happens on the ground) and the objectives of a program or policy (what was intended to happen). It is by these measures and indicators that evaluation of success or failure is enabled and through which recommendations for change to a policy or program can be developed.

In order for performance measures and indicators to be useful, Federal, Provincial, Territorial and First Nations governments must collaborate in their development as equal partners, as each party has responsibility for some portion of the decision-making process and each is in some way accountable for the results. On the other side, First Nations communities need to be fully engaged in discussions to identify indicators that best demonstrate the value of policies and programs. Given the significance of culture in determining value, it is imperative that reporting information is produced and analyzed from a First Nations perspective. While the development of these indicators should respect scientific methodology, taking into account internal and external validation, reliability, and accuracy, there must be a balance with cultural relevance and legitimacy to First Nations.



Beyond this, First Nations must have the primary role in identifying, developing and defining statements of objectives, goals, outcomes, or results expectations upon which measures and indicators are based. By whatever term they may be called, these statements describe the end-point at which policies and programs are aimed and that description must be meaningful on the ground to the people who are the target of those policies and programs.


With regard to data, the principles of Ownership, Control, Access and Possession (OCAP) are essential. The OCAP principles originated in 1998 as a response to rigid research and data collection practices that were imposed on First Nations communities. In its most basic assertion, OCAP is defined as self-government applied to research and data collection. While implications are still being debated, it is commonly understood that OCAP defines how communities relate to their information. OCAP upholds the collective rights of communities and articulates that communities own their information in the same manner that an individual would own information about herself. First Nations must own, control, access, and possess any information collected within their community relating to program or policy performance.

An important method of respecting the OCAP principles is to ensure that any data collection processes are in fact First Nations driven. Gaps that have currently been identified pertaining to the collection of data on First Nations have been widely attributed to methodological inaccuracies in information collection, such as: the exclusion of First Nations people from survey designs; inadequate First Nations' participation to support full analysis; and, the inability to identify First Nations data in various administrative databases.

Any data collection strategies must be accompanied by adequate resourcing within communities to ensure that communities have adequate capacity to respond adequately to reporting requirements. Moreover, First Nations privacy codes, ethics codes (where in place) and the OCAP principles must be fully complied with in order to encourage complete and accurate reporting.

Data infrastructure is also of key importance in the development of a First Nations Accountability Framework. Current reporting mechanisms consist of hundreds of disjointed databases which are unable to shed light on the big picture. This often results from a lack of planning for data infrastructure, mechanisms and sustainable funding to support these structures prior to reporting requirements being implemented. As a result, information collected through these mechanisms may not be accurate.

Current infrastructure (established through ongoing First Nations, Federal, Provincial, and Territorial data collection initiatives) must be critically evaluated in the context of a new accountability framework to identify duplication and gaps in reporting and to reduce the administrative burden on First Nations communities. Data sharing protocols should be developed that clearly define the roles of First Nations governments and F/P/T governments with respect to defining the types of data collected, how the data will be used, the mechanisms and infrastructure available for data collection, how the OCAP principles will be respected and how to ensure security and confidentiality of the data collected (of note here is the success of the First Nations Regional Longitudinal Health Survey and its regionally-driven process).



As can be seen, much of the discussion concerning data and performance measures and indicators centres on process. Inappropriate processes lead to bad information and reports that can not be used to improve programs, which in turn ensures that the “shameful conditions” of which the Prime Minister spoke will continue. The task is to identify and engage in the kind of process that will lead to transformative change through real accountability based on good information. This demands a better process.

SUSTAINABILITY

Creating a sustainable process requires that the support of those involved is obtained and that the capacity to carry on is assured. As with much that concerns Government of Canada policies and programs for First Nations, the process to date has been unsustainable. Two examples of how not to build a sustainable process are particularly informative with regard to accountability and reporting.

The first example is existing *Statistics Act* which governs the collection of data on First Nations programs and policies. As a direct result of the process used in its development, specifically the failure to respect the rights and interests of First Nations, it does not have support within the communities and is not sustainable. The raft of problems with data development and collection and the general unreliability of statistics pertaining to First Nations is proof of the failure of the *Statistics Act* in this regard. Similar comments could be made regarding the pending legislation, Bill C-20, and the controversy it is generating, again due to a failure to employ an appropriate process in its development.

The second example is the Aboriginal Health Reporting Framework (AHRF). This has been cited by some as a possible model or “best practice” for the development of an Aboriginal Report Card. While the AHRF merits some discussion in this context, developing a report based on this model is not in the best interests of First Nations. Components of the AHRF process that have been identified as problematic include:

- the Pan-Aboriginal approach which has been adopted;
- the lack of First Nations jurisdiction at the decision-making tables;
- consultations led by the Provincial and Territorial governments (as opposed to First Nations);
- the failure to respect the principles of ownership, control, access and possession (OCAP);
- the lack of a First Nations-led approach; and,
- the lack of data infrastructure development.

The AFN is not part of the AHRF process and there will be a failure to gain widespread support and compliance unless the process is changed to address the above concerns.

First Nations do not want the Government of Canada to repeat this failure in its development of an Aboriginal Report Card, nor more broadly in this Roundtable process. As noted, we support the goals identified and the principles of collaboration and transformative change that are driving it.

The preceding discussion of the substantive issues at play all point to the need for a different kind of process than has been used in the past, one built on a new set of principles both for the process and for the report that is expected to result from the process.

Principles for the Process

Transformative change: The first of two fundamental principles emerging from the Roundtable, it recognizes that “shameful conditions” will not be addressed by better reports on a broken system. This entails development of a new accountability framework that identifies current responsibilities, that is capable of shifting responsibilities to respond to failed policies and programs, that engages First Nations’ views on the success or failure of those policies and programs, and that accepts the responsibility to make the changes that are dictated by such an analysis. It has long been our position - now supported by a considerable body of academic literature - that significant change will not occur without meaningful progress toward the implementation of First Nations Government. It requires recognition and implementation of First Nations control and jurisdiction, and with that, assignation of the appropriate accountability relationships.

Collaboration: The second fundamental principle of the Roundtable, collaboration involves commitment to a nation-to-nation, government-to-government approach from the outset; a full seat at the table for First Nations.

Accountability: All major players in this process, Federal, Provincial, Territorial, First Nations governments and other service providers will need to demonstrate full commitment to the principles set out here if they are to continue to be involved in decision-making.

Transparency: This process requires nothing less than full transparency about why decisions were made and what financial considerations pertain to those decisions (i.e. how much was actually spent on what and what difference increases to spending might make).

First Nations Led and First Nations Specific: This phrase defines the necessary approach for dealing with First Nations communities. It is what is required to show respect for both the legal jurisdiction of First Nations’ governments and the role of First Nations’ unique culture in defining what is of value to them. As noted, this will impact upon everything from the way data is collected to statements of ultimate outcomes expectations for policies against which reports will be constructed and success measured.

First Nations Dialogue: Processes must be built on full engagement with First Nations communities in a free and open dialogue to identify the following:

- Clear statements of the objectives, goals, outcomes or results expected;
- Useful indicators of success or failure as measured against those expectations;
- Meaningful performance measures that will form the basis of indicator development;
- Reliable and accurate data, developed with respect to the OCAP principles;

- Capacity and data infrastructure development needs to support the collection, development and analysis of data gathered; and,
- Reporting requirements.

Sustainability: Beyond the principles outlined above, any process requires that adequate funding be identified and committed to carry out these tasks.

Principles for Reporting:

Reporting requirements must be redesigned to give effect to the issues raised by the Auditor General, including:

- the need to reduce the reporting burden on communities,
- overlap and duplication among the required reports;
- limited use being made of reports;
- reporting requirements dictated with insufficient consultation;
- information reported not being used to set funding levels;
- reports that do not reflect community priorities;
- insufficient feedback to First Nations; and,
- a lack of information on program performance or results.

And, reports themselves must clearly and transparently explain the following:

- the objective of the policy or program being reported on;
- the decision-maker or responsible party;
- the method by which the policy or program was implemented;
- the funds invested;
- the actual results observed;
- analysis of the relationship between decisions and results; and,
- a plan for responding to the results, including a discussion of whether increased investment is needed to attain expected results.

Summary: Accounting and Reporting, Definitions and Principles

Accountability Principles

Understanding accountability requires clear definitions. First, accountability and responsibility are similar but distinct concepts. Accountability (the ability to account), implies that the account is given by whomever has responsibility (the ability to respond). This helps us understand accountability requires that:

- The account must be given by the responsible party;
- The responsible party must have the information necessary to provide an account;
- The account must be provided in such a manner that the recipient of the account can understand the decisions taken and the results (or outcomes) of those decisions; and,

- The recipient of the account must be able to demand an appropriate response from the responsible party; i.e. to hold that party to account for what was done.

Once an account is provided and evaluated and feedback is given, accountability requires that the responsible parties will actually respond to that feedback. Appropriate responses may include altering policy directions, program parameters or funding arrangements to reflect observed results, but it can also mean replacing the responsible party with another decision-maker in order to enable better results and greater responsiveness.

Clearly, it is essential that we have an understanding of roles and responsibilities. These include:

- the responsible party - whoever exercises decision-making authority on a given issue, which may be multiple parties on complex issues;
- those who may hold the responsible parties to account
- for questions of how money is spent, this may include all taxpayers (including First Nations);
- on a more fundamental level, this is First Nations alone, as the recipients of the services and the target of the policies and programs at issue.

There are processes in place for taxpayers' views to be heard, whether through elections or other aspects of parliamentary accountability. Better processes are needed for reporting to First Nations, for supporting their capacity to analyze and to provide feedback to those reports, and for governments to respond to that feedback in a meaningful way. This goes to the heart of accountability and of governance and of what it means for First Nations to exercise jurisdiction and control over the policies and programs that affect them.

Reporting Principles


A discussion of good reporting involves two basic questions:

What information is needed in order to provide a proper account?

How do we ensure that the decisions taken and the results of those decisions are made clear to those who receive that report?

Currently, there are a wide variety of problems with the nature of reporting on the policies and programs of importance to First Nations. The sheer number of reports is an enormous burden on communities and raises questions of overlapping and inconsistently applied reporting requirements. Clearly, there are opportunities for restructuring and integrating reporting requirements and the various programs under which reporting is done.

Simplifying requirements might assist with some of the many related data issues, though much more than simplification will be required. There are questions relating to the completeness, accuracy, availability, and reliability of the data that would support good reporting, as well as questions over who should own, access, control and possess the data and how to enable that.




In addition, reports are not used to inform decisions. This lack of relevance explains the challenge in using current reports to manage results. Results-based management relies on the identification or development of information that can inform decision-making. It involves reporting on what works and what does not work so that the right decisions can be made in response. This requires performance measures and indicators that show how well a program or policy is performing as compared to its objective and suggest what responses might work.

Information should be reported in such a way that decision-makers can use it, but also in a manner that can be understood by those who will be holding decision-makers to account. That means there must be clarity and transparency; that the relationship between a decision and a result is made clear to all concerned. Transparency around funding and how much investment is needed to attain expected results is of the highest concern in this regard. Making information useful also means that each of the parties involved in developing or implementing any policy participate in the reporting, including provinces, territories and non-governmental agencies, as well as the Federal Government and First Nations.

Finally, the question of defining results expectations must be fully addressed, providing a clear sense of what was supposed to happen so that an evaluation of what worked and what did not work can be made. This involves identifying what results (or outcomes, goals, objectives) are sought, as well as who defines them and how that is done. Defining appropriate results expectations and then holding the responsible party to account when they are not met are the keys to making accountability meaningful.

There has been little coordinated effort to address these issues to date, perhaps because they are seen as esoteric or as secondary to the urgent work of actually designing policies and programs and delivering them, perhaps because of the many different players and processes involved and the complexity that entails, or perhaps because of a simple lack of political will to tackle the difficult issues of governance that go into a functional accountability framework. Whatever the reason, the importance of how information flows, what information decision-makers look at when designing and delivering policies and programs, and how feedback is given and dealt with once actual results are known has been undervalued. It has been principally a strategic rather than immediately practical concern.

However positively we view the commitment of the Federal Government to developing a report card, it must be understood that this is the beginning of a long process, that full consultations with First Nations communities must take place after this Sectoral Session, and that it would be a critical mistake to rush to conclude a report structure simply in order to have a report without doing the hard work and careful analysis that leads to making it useful. All parties must realize that it will take time, effort and good faith to fully explore the current situation, to seek advice on how to best define the results expectations from which a reporting structure will flow, to identify relevant performance measures and indicators, to clarify how data will be identified or developed, and to design a report that meaningfully transmits this information.



Even more importantly, the government must recognize that its own analysis and basic logic demand that we come together on defining the elements of a functional accountability framework before we conclude the design of a report card. This means a full discussion of roles and responsibilities, how decision-makers will be held to account, and by whom. This is a critical test of the government's willingness to carry through on the Prime Minister's commitments to collaboration and transformative change.

To obtain clarity on these issues, we will need to seek the views of First Nations on all of the issues raised here. There will be significant investment required to consult, develop good data, report appropriately, support analysis, build capacity and implement these processes. These are some of the challenges.

On the other hand, the benefits of a well-developed accountability framework with a useful reporting process are improved policies and programs leading to more effective spending and better results both for First Nations and for all Canadians. This is the opportunity.


Addendum: A Practical Proposal

This paper has discussed how to build an accountability framework and, within that framework, how to construct a report that could make it work. These objectives are fundamental to ensuring greater accountability concerning First Nations policies and programs. It should be noted, however, that a report is not the only way to give practical meaning to accountability principles. The creation of a function such as an Auditor General, or Commissioner, or perhaps Ombudsman for First Nations would go beyond reporting to proactively explore issues of accountability and to practically assist First Nations governments in enhancing their accountability practices.

This idea is still at a developmental stage; however, the notion of a general review function for, by, and of First Nations appears to have a measure of merit and support. At this point, it would be too early to describe the institution that might be created, but something can be said of the function it might perform and the benefits that it could bring.

First Nations governments were not considered in the definition and description of existing audit structures. Consequently, they have been treated as a version of a municipality, a situation which is satisfactory to no one. A First Nations specific function could be designed to meet the unique circumstances of First Nations governments.

Generally, auditors are able to investigate issues relating to compliance with rules under an accountability framework, to ensure record-keeping and reporting is adequate, and to evaluate the performance of a policy or program to determine whether it is providing value for money. The information provided through such examinations can be of enormous value in amending procedures, policies and programs to meet the observations of an auditor. Such a function could also assist in determining how to best streamline and integrate reporting requirements to ensure that audit requirements are met while reducing the burden on communities. Commissioners, such as the Commissioner for Sustainable Development, can perform similar functions, but also have an



advocacy role to move issues forward in other ways. An Ombudsman would also be able to increase transparency and credibility, but with an emphasis on non-financial issues.

By increasing transparency, it is also likely that any of these functions would enhance the confidence of both First Nations citizens and the Canadian public in the administration of First Nations governments. It should be noted, however, that like the development of the Aboriginal Report Card, the idea of a First Nations Auditor General, Commissioner or Ombudsman can not proceed without first establishing the accountability framework within which the office would function.



Getting from the Roundtable to Results

Part III



LESSONS LEARNED

Based on the strong advocacy of the AFN during the planning phase, the Government agreed that the CAPR Sectoral Sessions would be broken down into three areas based on Section 35(2) of the *Constitution Act, 1982*. Each sectoral area would have a First Nations, Inuit and Métis session. In addition, it was agreed that each area would consider the cross-cutting interests of women, youth and urban.

For each Sectoral Session, the Assembly of First Nations (AFN) prepared a Background Position Paper which was based on resolutions and direction from the Committees. Prior to the Sectoral Session on Health, the AFN held a national policy forum to engage a wide audience on the preparation of the AFN background position paper and to confirm the AFN First Nations Health Action Plan. While it was not possible to convene such forums for all policy areas, the AFN has canvassed views as widely as possible and will be holding additional policy forums on education, housing and environmental stewardship on April 19-21, 2005.

Prior to each Sectoral Session, the Director of a particular Sectoral area organized a caucus for AFN participants. This provided participants an opportunity to coordinate their views and provide a united voice for First Nations. Many of the First Nations participants found the caucus to be very helpful in strategically engaging in the session.


Following each Sectoral Session, AFN developed an outcome statement based on the participation and dialogue during the First Nation session. The first three outcome statements were ratified by the Special Assembly in December, 2004, and the final three outcome statements will be tabled at the Special Assembly in March, 2005.

Problems with the Process

The Government of Canada, in coordinating the planning process, set a limit of 100 participants for each session. Each National Aboriginal Organization was given the opportunity to confirm ten participants for the Sectoral Session. In addition, each organization could forward nominations of additional participants for the consideration of the Government. The Federal Government determined the final list of participants after consulting with the other federal and provincial/territorial interests.

The AFN was overwhelmed by many calls and e-mails from interested participants for the Sectoral Sessions. While accommodations were made for a limited number of additional participants in some sessions, many more were turned away. The limitation of participation for First Nations – limiting 633 First Nation communities to ten core participants represents the greatest frustration with the CAPR process.

The AFN also heard concerns about the lack of a women's and youth perspective at the Sectoral tables. The AFN Youth and Women's Councils would have liked to



see members of their Councils at all of these tables but given the limitations it was not possible. In this case, it was beneficial that the Native Women's Association of Canada (NWAC) was a part of the process and where possible additional First Nations women were included through NWAC. However, with respect to the youth, the same cannot be said. The restrictions on the number of participants meant that the youth's voices were not heard. If this process is to continue, then efforts must be made to ensure that First Nations' youth are more fully engaged throughout the process.

First Nation Governments represent all of their members regardless of residence and therefore advanced issues relating to urban and off-reserve citizens. However, the lack of certainty regarding representation of these interests by the Federal Government caused confusion during the CAPR process. The urban perspective is increasingly important and one which the AFN will continue to advance to ensure thorough consideration in the future.

Finally, the AFN had originally advanced the notion that these forums should be co-Chaired to fully engage the First Nation, Métis and Inuit peoples. The fact that the Government of Canada chaired all planning meetings and the sessions themselves constrained the process and fell short of the commitment to deliver effective joint policy development.

LOOKING FORWARD 2005-2006

Building on our participation through the CAPR and our specific outcomes, the AFN is preparing to participate in the next critical phase that will require action and implementation.


The Assembly of First Nations (AFN) is committed to getting results to recognize and empower First Nations governments and improve the economic prospects and social conditions of all First Nations peoples. This includes children and youth, women, elders and those First Nations that live in urban areas or away from their communities.

The AFN Getting Results Strategy, a comprehensive plan that brings action to the immediate priorities of First Nations while providing a framework for the long-term work on fundamental issues is the foundation of our work. It is based on three central themes:

- Recognizing and Implementing First Nations Government;
- Securing the Place of First Nations in Canada and the World; and
- Strengthening First Nation Communities.

While the AFN has been successful in making progress on some of the issues related to each of these themes, our success in affecting policy reform at the federal level has thus far been limited. This is due, in part, because the preconditions for a new relationship based on the recognition and implementation of First Nations government have not yet been achieved. Therefore, the AFN's priorities leading up to the Federal Cabinet Retreat in spring 2005 and the First Minister's Meeting on Aboriginal Issues in fall 2005 involve ongoing work to this affect. To do so, the AFN is focusing on four key areas:

1. **Healing and Reconciliation** through fair settlements to victims of Indian Residential Schools. Progress cannot be made in moving forward on our other priorities until the tragic history of residential schools is dealt with in a fair and comprehensive manner.
2. **Strengthening and Securing the Relationship** with the Federal, Provincial and Territorial Governments. The AFN is seeking full and effective participation of First Nations governments in federal/provincial/territorial (F/P/T) forums and decision-making processes. We are looking to secure a 'full seat at the table' through a formalized role in F/P/T machinery as well as the development of formalized policy partnerships
3. **Recognizing and Implementing First Nations Government** based on nation-to-nation and government-to-government principles. Although First Nations are facing many challenges, there is a growing body of research evidence that confirms what we have always believed – self government is a key to improving and maintaining their quality of life and that significant change will not happen without meaningful progress towards the Recognition and Implementation of First Nations Government. Thus, we are seeking a commitment to a new negotiation framework encompassing self-government, claims and treaty implementation that is multi-dimensional and



multi-jurisdictional. We are also seeking renewed provincial interest in participating actively in these processes.

4. **Raising the Quality of Life for First Nations** by addressing critical needs and comparability gaps on an urgent basis. Housing, health, education and the environment are all priorities. This is foundational work. First Nations need healthy citizens to build healthy nations. These efforts must however be linked to progress on self-government as the key determinant of health is self-determination. Scattered program spending in these priority areas will not create long-term change. Rather, spending must be part of an investment to stabilize the crisis conditions and build sustainable First Nation government systems for the future.

In addition to these thematic priorities, the AFN is seeking specific action in several specific sectors.

- **Health** remains a central priority of the AFN. Building on the success of the First Ministers Meeting on Health in September 2004, at which time the Federal government committed \$700 million over five years to ease a growing aboriginal health crisis. In addition, the Government of Canada committed to work with First Nations to secure the sustainability of First Nations health systems by negotiating a funding escalator clause to match funding with real costs and needs. Moreover, for health gains to be achieved, First Nation communities need the resources and capacity to be able to move beyond responding to crises and begin to address prevention and disease control through Public Health infrastructure.
- **Education and Skills Development** is a lifelong learning process that starts before birth and is critical to good health and building strong families and communities. AFN will be seeking stronger funding mechanisms for early childhood development, and enhancing all K-12 First Nation education programming including ensuring comparability with the provinces. Another important aspect of this priority is the development of a strategy to ensure that First Nations youth have the skills and opportunities to fully participate in Canadian society and become a source of hope and progress for First Nations communities.
- **Housing** is a critical link to education, health, economic development and employment. AFN will be seeking to ensure that there is adequate funding to effectively and sustainably address the housing backlog on-reserves as well as funds to remediate the mold and vermiculite containments in many existing homes. Furthermore, the AFN will seek the recognition of First Nations jurisdiction over housing and the development of First Nation institutions to replace the existing government systems and processes.
- **Environmental Stewardship** is another critical health determinant. As such, AFN seeks to support to enable First Nation jurisdictions to address contamination issues and plan effective management and protection strategies into the future. Moreover, the AFN will seek to begin a process in order to resolve Treaty rights and achieve recognition of Aboriginal Title to increase First Nations access and management of natural, renewable and non-renewable resources.

- Other key sectors that the AFN is working on include: ensuring **economic opportunities**, achieving clear recognition of First Nations authority over determining **citizenship**, building effective justice systems to support First Nations government, improving two-way **accountability** through such vehicles as a First Nations Auditor General and ensuring the effective **participation of First Nations citizens in the Canadian economy and society**.




CONCLUSION

The AFN remains optimistic about the direction set by the CAPR initiative. But this is a critical time. Having identified the 'process', it is time to focus on the implementation of 'transformative' change. The upcoming joint Cabinet Retreat (Spring 2005) and First Ministers Meeting (Fall 2005) will each represent an important litmus test with which to gauge Prime Minister Martin's commitment to a new relationship. The Federal Government's Budget, released February 23, 2005, failed to deliver the funds necessary to address the wide-ranging challenges faced by First Nations across Canada. For these meetings to be deemed successful, they must include specific commitments – both fiscal and policy – that will result in transformative change and a truly renewed relationship.

For the joint Cabinet Retreat, the AFN is focusing on reconciliation based on the recognition of Aboriginal and Treaty rights. In particular, the AFN is seeking to strengthen its relationship with the Federal Government by defining what it will mean to have a 'seat at the table'. The AFN hopes to develop a proposal, jointly with the Federal Government, that can be brought to the First Ministers in the fall. This process would focus on the meaningful, ongoing involvement of First Nations in federal/ provincial/ territorial machinery that has the potential to affect First Nations. This involvement would be based upon a formalized policy partnership, and a framework for reciprocal accountability. The new policy partnership would be premised on the recognition and implementation of self-government, and would involve a new multi-dimensional negotiations framework to account for differences between First Nations based on their status vis-à-vis treaties, self-government agreements, and outstanding specific claims. It would also define a clear fiscal relationship, with an emphasis on First Nation jurisdiction and sustainability in such key areas as health, education and housing. A priority must be placed on those issues where the need is urgent, for example, on eliminating the back-log in housing and securing comparable services in respect to health and education.

For the First Ministers Meeting, the focus remains the same, but the emphasis is on continuing to move priority issues forward. For example, the AFN will seek to reach an agreement with the First Ministers and Federal Government on the nature of ongoing First Nation participation in intergovernmental processes. The AFN will also be looking at how to implement First Nation government with respect to the integration and coordination of services under First Nation control. This would include developing a fiscal framework for the provision of services to First Nation peoples both on and off reserve, and multi-jurisdictional issues pertaining to fiscal relationships, resources and traditional lands. Finally, the AFN will seek to engage directly with the Provinces on key issues, such as the implementation of the Health Blueprint, education, urban and children's issues.

While both the Cabinet Retreat and First Ministers Meeting represent unique opportunities for First Nations, there is no doubt that many issues will remain unresolved. To this end, the AFN is also looking beyond the current year to other opportunities that are likely to arise in coming years. Among them, the AFN continues to develop an annual Pre-Budget Submission for the Federal Government outlining its priorities under the Federal Budget. We can anticipate that new



funding priorities will emerge as a result of policy changes in relation to treaty implementation and First Nation government. Moreover, economic development funding is a perennial issue, as are access to land and resources and resource revenue sharing opportunities. Other issues that have become increasingly prominent include those pertaining to Youth, particularly youth programming and skills development. Environmental Stewardship is also likely to gather more attention, not the least of which because of the recent implementation of the Kyoto Protocol. And finally, as First Nations begin to re-assert their role in governing themselves, the area of Justice has the potential to generate significant new activity.

The AFN is committed to making the most of the opportunities that are before it. To this end, the AFN wishes to acknowledge the success of the CAPR process in bringing the parties together. The sectoral follow-up sessions were particularly useful in fostering a dialogue between Aboriginal groups and government. Many important issues were raised in the context of the sectoral sessions. For example, First Nation leaders and delegates had the opportunity to sit down with senior government officials - such as members of the Treasury Board - many of whom typically remain behind the scenes in the workings of government. These opportunities were welcomed and provided an important occasion to share information and build relationships.

It is our hope that the dialogue that occurred as a part of the CAPR process has a value beyond the specific outcomes that might be sought. Indeed, it is our hope that government officials were able to develop a more meaningful appreciation of the circumstances that are often only captured in sound bites that reduce First Nations concerns to those of 'funding'. No doubt, funding is a foremost concern. But funding is only a solution to the extent that it is tied to a sound information base, the effective development and implementation of policy, and the provision of sustainable and integrated services (under First Nations control).

Without adequate funding most problems cannot be addressed – a housing backlog, below average health, a growing education gap – but funding in and of itself does not solve most problems. It is the initiatives that the funding supports that will determine whether a particular strategy leads to an effective result. For this reason, First Nations need to be at the table. A policy framework needs to be in place to ensure that First Nations leaders are involved in crafting the policies that have the potential to affect them, rather than responding to policy proposals that have been developed in isolation. Governments are likely just as tired of hearing complaints from First Nations, as First Nations are tired of uttering them. The now-dead *First Nations Governance Act* is a case in point.

Many First Nations have treaties or self-government agreements, many others are negotiating them. The policy framework that will move First Nations into a new relationship with the Federal Government must be designed to recognize this, and must advance a process that supports self-government, rather than constrains it. An approach that fails to differentiate First Nations from other Aboriginal groups necessarily undermines one of the most fundamental objectives of the AFN: the recognition and implementation of self-government through government-to-government negotiations.

The format of the sectoral follow-up sessions was an important part of what made them work. While First Nations, Inuit and Métis peoples share some

important commonalities, many of these commonalities have their roots in colonial-era policies. The sectoral follow-up sessions represent an important precedent in shifting government thinking from one of 'all-Aboriginal-peoples-are-the-same', to one that is based on three distinct 'streams': First Nation, Inuit, and Métis. The way forward cannot be based on the historically ill-conceived policy assumption of pan-Aboriginalism.

Given the structure of Canadian federalism, and the distribution of powers under Sections 91 and 92 of the *British North America Act, 1867*, it is necessary to include the Provinces and Territories in discussions that purport to give affect to a renewed policy partnership. However, other governments must be prepared to recognize the Aboriginal and Treaty rights protected by Section 35 of the *Constitution Act, 1982*. On this basis, it should be possible to move forward on an accord or other instrument with the Federal Government that would define the circumstances for First Nation involvement in federal / provincial / territorial processes. The 2004 First Ministers Meeting on health was a good example of how the involvement of First Nations can facilitate positive outcomes. A 'full seat at the table' can only be achieved to the extent that all parties recognize the circumstances that would trigger First Nation involvement.

A new policy partnership is at hand, and significant momentum has been created. The AFN looks forward to the opportunities that are likely to present themselves during the course of this year. As the National Chief has said, "[W]e are now at the crossroads. We can embark on a period of unprecedented progress, prosperity and partnership, or we can continue to prop-up a broken system... All we need now is the political will to act on these innovative ideas."



Getting from the Roundtable to Results

Part IV





ASSEMBLY OF FIRST NATIONS BULLETIN

A Communiqué from National Chief Phil Fontaine

September 2004

The Assembly of First Nations is issuing regular updates on the National Chief's activities and work underway at the national office. More information can be found on the AFN's website at www.afn.ca.

UPDATE ON THE CANADA-ABORIGINAL PEOPLES ROUNDTABLE FOLLOW-UP

September 2004

National Chief Phil Fontaine

This Bulletin is being sent to all First Nations and representative organizations to ensure you have the latest information on issues and events of concern to our people. In particular, I want to use this opportunity to provide information about follow-up on the April 19th Canada-Aboriginal Peoples Roundtable.

As you will recall, the Canada-Aboriginal Peoples Roundtable was an important event for First Nations. It was an opportunity for us to engage directly with the most senior officials in the Government of Canada, to speak to our priorities and our vision of building strong First Nations citizens, communities and governments.

I believe the Roundtable signalled the beginning of a renewed relationship with Canada — one in which we will see real progress on our fundamental issues. The Prime Minister made a commitment to secure “a full seat at the table” for Aboriginal peoples and announced, “no longer will policy be developed in isolation.” I see our participation in the Council of the Federation meeting with Provincial and Territorial leaders in July and the recent First Ministers Meeting on Health as a positive start. The Roundtable also signalled a new environment in policy making.

Since the Roundtable, the AFN has participated in discussions with the Privy Council Office on the implementation of key commitments. We have been working with federal departments, Inuit Tapiriit Kanatami (ITK) and the Métis National Council (MNC) in developing a series of follow-up policy discussions.

Six policy tables will be held on the issues of Health, Lifelong Learning (Early Childhood Development and Post-Secondary Education), Housing, Economic Opportunities, Negotiations, and Accountability – Aboriginal Report Card. The series of discussions will begin this fall and will lead to a Joint Policy Retreat of the Cabinet Committee and Aboriginal leaders in February 2005.

The tentative schedule for the discussions is as follows:

<u>Sectoral Discussion Topics</u>	<u>Lead Department</u>	<u>Date</u>	<u>Location</u>
Health	INAC	Nov. 3 - 4	Ottawa
Lifelong Learning	Health Canada		
a) ECD and K-12		Nov. 13 - 14	Winnipeg
b) PSE and skills development		Nov. 18 - 19	Ottawa
Housing	CMHC	Nov. 24 - 25	Ottawa
Economic Opportunities	Industry Canada	Dec. 14 - 15	Ottawa
Negotiations	INAC	Jan. 12 - 13	Alberta tbd.
Accountability	Treasury Board	Jan. 25-26	Ottawa

Similar to the Roundtable, the AFN has continued to assert the need for the recognition of the three distinct groups of Aboriginal peoples. To this end, the following principles and structures will guide the process:

1. An Oversight Committee has been established to oversee progress on the Prime Minister's commitments at the Roundtable (such as sectoral follow-up sessions, Aboriginal Report Card and Policy Retreat). The committee includes representatives from the AFN, ITK, MNC, Prime Minister's Office (PMO), Privy Council Office – Aboriginal Affairs Secretariat (PCO-AAS), Privy Council Office – Federal Interlocutor for Métis and Non-Status Indians (PCO-FID), and Indian and Northern Affairs Canada (INAC).
2. A Planning Committee will be developed for each sectoral discussion. The committees will include First Nations, Inuit, Métis, PCO-AAS, PCO-FID, INAC, Health Canada, Industry Canada, Treasury Board, Canada Mortgage and Housing Corporation (CMHC) representatives and other participants.
3. In order to recognize and respect the diversity of Aboriginal peoples, each sectoral discussion will have First Nations, Inuit and Métis breakout sessions within the larger sectoral discussion.
4. Sectoral discussions will consist of a balance of participants (political representatives, service delivery providers with expertise, academics and experts in the area, etc.) to ensure a productive and inclusive discussion.

First Nations have challenged the government to work with us in collaboration and partnership. The policy discussions will provide an opportunity for us to put forward our vision and priorities on these critical issues and to have a direct influence on policy-making at the federal level.

Opportunities for Participation

The AFN has the opportunity to put forward participants for each of the sectoral discussions. While participation will be limited, we will secure participation of as many Chiefs' and Technical Committee members as possible in the respective sectors.

In addition, we encourage First Nations and regional organizations to nominate individuals – subject experts or frontline workers – to contribute to the policy discussions. While we cannot guarantee participation, the AFN office will lobby for maximum involvement to ensure our interests and issues are well-represented. Please forward nominations to the attention of Jennifer Brennan (jbrennan@afn.ca) or Dean Janvier (djanvier@afn.ca) by **Friday, October 1**.

I assure you that this process is just the beginning. In our efforts to engage First Nations throughout the process, we will be posting the draft policy papers on the AFN website (www.afn.ca) in the near future. The documents will outline the vision, objectives and discussion questions for each of the policy tables. I encourage you to review the documents and send us your feedback.

An update on the Roundtable follow-up will also be presented at the December Confederacy of Nations meeting for your review and input, as well as direction on next steps.

Meegwetch!



ASSEMBLY OF FIRST NATIONS BULLETIN

A Communiqué from National Chief Phil Fontaine

November 2004

The Assembly of First Nations is issuing regular updates on the National Chief's activities and work underway at the national office. More information can be found on the AFN's website at www.afn.ca.

UPDATE ON THE CANADA-ABORIGINAL PEOPLES ROUNDTABLE FOLLOW-UP

November 2004

National Chief Phil Fontaine

This Bulletin is being sent to all First Nations and representative organizations to ensure you have the latest information on issues and events of concern to our people. In particular, I want to use this opportunity to provide information about follow-up on the Canada-Aboriginal Peoples Roundtable.

As you will recall from my last Communiqué, the Canada-Aboriginal Peoples Roundtable in April 2004 was an important event for First Nations. It was an opportunity for us to engage directly with the most senior officials in the Government of Canada, to speak to our priorities and our vision of building strong First Nations citizens, communities and governments.

As I mentioned, beginning in September, AFN has participated with the Privy Council Office and other federal departments to begin discussing a follow-up process. Six specific follow-up policy discussions have been set as follows.

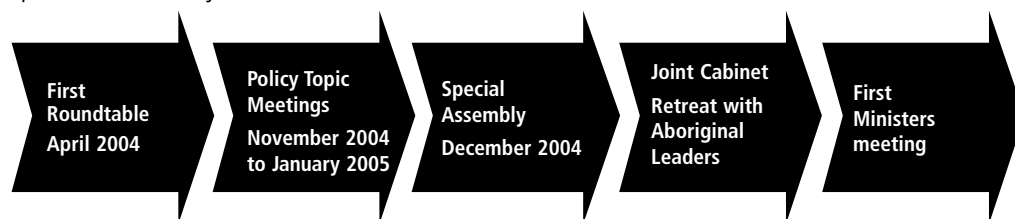
<u>Sectoral Discussion Topics</u>	<u>Lead Department</u>	<u>Date</u>	<u>Location</u>
Health	Health Canada	Nov. 4 - 5	Ottawa
Lifelong Learning	INAC		
a) ECD and K-12		Nov. 13 - 14	Winnipeg
b) PSE and skills development		Nov. 18 - 19	Ottawa
Housing	CMHC	Nov. 24 - 25	Ottawa
Economic Opportunities	Industry Canada	Dec. 13 - 14	Ottawa
Negotiations	INAC	Jan. 12 - 13	Calgary
Accountability	Treasury Board	Jan. 25-26	Ottawa

Similar to the Roundtable, the AFN has continued to assert the need for the recognition of the three constitutional groups of Aboriginal peoples. To this end, each of these policy discussions will be organized with three break-out groups: First Nation, Inuit and Métis.

First Nations have challenged the government to work with us in collaboration and partnership. The Assembly of First Nations, working with our Regional Chiefs, has the opportunity to designate ten representatives from our Chiefs and technical Committee structures to attend these meetings. As these technical policy discussions aim primarily to bring together 'experts' and those with greatest direct experience dealing with these matters, we also have the opportunity to nominate First Nations peoples from across Canada to contribute to these discussions. I was very pleased that many of you forwarded nominations prior to the October 1st deadline as outlined in the last Communiqué. As a result, we have been able to forward excellent nominations to participate in the process.

I strongly agree with many of you who have expressed the view that there is not *enough* representation at these policy sessions and that the time frames are short. We have lobbied to get to the point where at least the discussions are beginning – but they certainly do not end here.

In fact, these policy discussions represent only the first step in the follow-up process. We have made it very clear to all Government officials that this process is separate and apart from our political processes. We will carefully compile the findings of these sessions and provide them to you for a full discussion at our Special Assembly.



It will be through our Special Assembly that we will begin to confirm our overall vision and strategy on follow-up to the Canada-Aboriginal Peoples Roundtable. We will have the opportunity to fully discuss the outcomes of the policy sessions that have occurred to that point and determine the path forward and the direction that we, as the Assembly of First Nations, should follow. This process will create the proper preparation for the proposed joint Cabinet Retreat between Cabinet members and the leaders of National Aboriginal organizations scheduled for February or March 2005. More importantly, this should begin the process towards the planned First Ministers meeting.

In our efforts to engage First Nations throughout the process, we will be posting the draft background papers on the AFN website (www.afn.ca) as soon as they are available. The documents will outline First Nation direction that results from the many resolutions on these subject matters, objectives and discussion questions for each of the policy tables. I encourage you to review the documents and send us your feedback. If you have any questions or comments, please contact Jennifer Brennan (jbrennan@afn.ca) or Dean Janvier (djanvier@afn.ca).

Meegwetch!



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