Self-Government and Fiscal Relations: Fundamental Changes in the Relationship

W.J.R. Austin*

ABSTRACT
In 1995, the government of Canada recognized the inherent right of self-government as an existing aboriginal right under section 35 of the Constitution Act, 1982. Recognition is based on the view that aboriginal people have the right to govern themselves in relation to matters that are internal to their communities and their unique cultures, and with respect to their special relationship to their land and their resources. This paper provides an overview of self-government negotiations and fiscal relations across Canada and describes the evolving approach to implementing self-government.

Experience across Canada shows that negotiations do provide a way forward. Implementing self-government extends beyond reconciling jurisdictions of aboriginal and other governments. Negotiations must also address aboriginal governments’ structural and capacity challenges, new fiscal relationships, and program delivery capacities, and must do so within the framework of the constitution. The key challenges in this process include the participation of provinces and territories; limited public knowledge of self-government; the varying capacity of groups to take on self-governing functions; the building of financial institutions; the sustainability of self-government over time; and Canada’s need to fulfil its responsibilities under the Indian Act while participating in self-government agreements.

Canada’s goal is the development of aboriginal governments that are stable, legitimate, and accountable to their people; that have the power and resources to solve problems locally; and that can provide programs and services comparable to those received by other Canadians. In turn, these governments would provide the foundation for stable, self-reliant communities that can participate in the social and economic growth of Canada.

* Assistant deputy minister, Claims and Indian Government Sector, Department of Indian Affairs and Northern Development, Ottawa.
PREFACE

This paper has been prepared as a contribution to the Canadian Tax Foundation conference. It provides an overview of the status of self-government negotiations and fiscal relations across Canada and describes the evolving approach to the implementation of self-government.

In a policy document issued in 1995, the government of Canada recognized the inherent right of self-government as an existing aboriginal right under section 35 of the Constitution Act, 1982. Recognition of the inherent right is based on the view that the aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities and integral to their unique cultures, identities, traditions, languages, and institutions, and with respect to their special relationship to their land and their resources.

In the same document, the federal government set out its approach to the implementation of the inherent right and the negotiation of aboriginal self-government. The federal policy guide strongly advocates negotiation over litigation as the way forward. It sets out Canada’s view in the following terms:

The Government acknowledges that the inherent right of self-government may be enforceable through the courts and that there are different views about the nature, scope and content of the inherent right. However, litigation over the inherent right would be lengthy, costly and would tend to foster conflict. In any case, the courts are likely to provide general guidance to the parties involved, leaving it to them to work out detailed arrangements.

For these reasons, the Government of Canada is convinced that litigation should be a last resort. Negotiations among governments and aboriginal peoples are clearly preferable as the most practical and effective way to implement the inherent right of self-government.

Experience in self-government negotiation processes across Canada over the past five years is showing that negotiations do provide a way forward. The recent Nisga’a treaty has demonstrated that self-government arrangements can be successfully negotiated.

In Yukon, work with First Nations is focusing on the capacity and programming challenges of implementing self-government agreements. More lessons

2 Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11.
3 Supra footnote 1, at 3.
4 Bill C-9, An Act To Give Effect to the Nisga’a Final Agreement, first reading October 21, 1999; SC 2000, c. 7; given royal assent April 15, 2000.
about what self-government can look like and how it can be implemented are
being learned daily in negotiations currently in progress across the country.

In these processes, we have learned that the challenge of implementing self-
government extends far beyond the legal techniques for reconciling jurisdictions
or powers of aboriginal, federal, provincial, and territorial governments. Self-
government negotiations must address not only the legal status and foundation
of aboriginal governments, but also their structural and capacity challenges, new
fiscal relationships, and program delivery capacities. Negotiations must also
address mechanisms for managing these new, ongoing government-to-government
relationships within the framework of the Canadian constitution.

Studies around the world show that effective governance is a key factor in
social and economic growth. Building understanding among the general public
and the legal, financial, and academic communities on the objectives of self-
government and the accompanying challenges and opportunities is critical to suc-
cess. It is hoped that this paper will contribute to that understanding by
identifying the range of issues that are being addressed in self-government
negotiations across the country. Without altering the federal policy, it also at-
ttempts to reflect evolving approaches and thinking on self-government.

INTRODUCTION
Aboriginal self-government is not a new concept. But the recent generation of
negotiations resulting in agreements such as the Nisga’a treaty in British Colum-
bia is ground breaking. And we continue to learn more as we go.

In endorsing the policy of self-government, Canada recognizes aboriginal
governments and their authority to make decisions over issues that are internal
and integral to their people and communities. Self-government is about the
ability of aboriginal people to determine and control their internal governance
structures and systems. It is also about a new relationship between aboriginal
governments and federal, provincial, and territorial governments.

The nature of the challenges we face in implementing self-government has
been highlighted in the Report of the Royal Commission on Aboriginal Peoples\(^5\)
and in Gathering Strength: Canada’s Aboriginal Action Plan.\(^6\) Self-government
requires that aboriginal people and Canadian society address the historic legacy
of assimilationist policies and Indian Act\(^7\) administration, which together have
dismantled traditional governance systems, disaggregated First Nations, and

\(^{5}\) Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Abo-
\(^{6}\) Canada, Department of Indian Affairs and Northern Development, Gathering Strength: Cana-
\(^{7}\) Indian Act, RSC 1985, c. I-5, as amended.

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marginalized aboriginal peoples socially and economically. At the same time, we face the challenge of implementing self-government in ways that can address the social and demographic needs of an aboriginal population that is growing at twice the national average, that is significantly younger than the general population, and that falls markedly below the national average on most social and economic indicators.

Studies in the United States and around the globe show that effective governance is the basis for sustained social and economic development. How aboriginal communities structure their governments, and how they address their capacity to function effectively, will ultimately determine the success of self-government.

As a result, aboriginal people are facing the challenge of rethinking and rebuilding their internal government structures as they negotiate self-government. This involves the transformation of Indian Act band councils, and aboriginal community governments, tribal councils, and political organizations into effective, accountable governments with the ability to assume jurisdiction and the capacity to deliver programs and services to First Nation citizens or members. In this regard, a significant number of the self-government processes under way are addressing issues of aggregation, the rebuilding of nations, or the creation of new levels of aboriginal government.

Self-government also entails a fundamental restructuring of relationships between and among aboriginal people and federal, provincial, and territorial governments. Self-government agreements do not simply provide a negotiated alternative to litigation over aboriginal rights. Rather, they establish new government-to-government relationships within the framework of the Canadian constitution.

The building of new relationships through self-government agreements provides a means for aboriginal governments to assume control over matters internal and integral to their communities and culture. Additionally, it provides a means for aboriginal governments to participate in the social and economic life of the country in a manner that preserves cultural identity and integrity, while promoting harmonization with neighbouring communities.

Understandably, the negotiation of self-government arrangements is neither an easy nor a quick process. It involves fundamental changes in attitude, by all parties involved. It alters existing relationships of dependency and control that are deeply entrenched. The fact that there is limited public understanding of self-government and its underlying objectives also presents a major challenge.

Given this context, this paper is intended to provide, from the perspective of the federal government,

- an update on the status of self-government negotiations across the country;
- an overview of the evolution of federal self-government policy; and
- an outline of new policy directions in the negotiation of aboriginal self-government and the establishment of new government-to-government relationships.
SELF-GOVERNMENT NEGOTIATIONS ACROSS THE COUNTRY

There is no single model for implementing self-government. Negotiation processes have had to adapt to the differing objectives, perspectives, and situations of aboriginal people, and to the varying positions of provincial and territorial governments. As a result, while agreements have many common elements, they differ in terms of the specific needs they are designed to meet, as well as aboriginal priorities for self-government jurisdiction.

The vast majority of First Nations and Inuit communities in Canada are involved in a self-government process in some way. A number of processes involve individual First Nations or aboriginal communities. However, almost half of the processes involve groupings of aboriginal communities, looking at issues of aggregation and the establishment of regional, tribal, or province-wide institutions of government.

In British Columbia, Yukon, the Northwest Territories, parts of Quebec, and Labrador, self-government is being negotiated in conjunction with comprehensive land claims. Comprehensive land claims are based on the assertion of continuing aboriginal title to lands and natural resources.

Canada’s land claims policy stipulates that land claims may be negotiated with aboriginal groups in areas where claims to aboriginal title have not been addressed by treaty or through other legal means.

In the Atlantic, the Prairie provinces, Ontario, and parts of Quebec, self-government is being negotiated in a variety of stand-alone processes—some dealing with a comprehensive range of jurisdictions, others with a single jurisdiction or a limited range of subject matter.

The following brief overview indicates the range of negotiations and different approaches under way across the country.

**British Columbia**

Self-government and aboriginal land claims are being negotiated on a tripartite basis through the British Columbia treaty process at 44 tables. A number of tables are with single First Nations; others are with groups. The recent Nisga’a agreement, although not a template for other agreements in British Columbia, demonstrates that it is possible to negotiate a treaty encompassing both self-government and land claims.

**Yukon**

Self-government negotiations in Yukon predate the federal inherent right policy and are based on a non-treaty self-government model. Seven self-government

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8 Supra footnote 1.
agreements have been concluded, while an additional seven are still under negotiation. Negotiations are tripartite and are conducted according to the umbrella final agreement, which provides a framework for individual self-government agreements. Lessons are being learned in Yukon about the challenge of implementing agreements, including ongoing program and service transfer agreements and continued negotiations on jurisdictional areas involving taxation and administration of justice.

Northwest Territories
Self-government is being negotiated through processes that look at the relationship between evolving public government structures and new aboriginal government structures. In some cases, self-government is being negotiated as part of land claims negotiations. In other cases, claims settlements are already completed. Each of the tables is negotiating structures that suit their respective communities. Negotiations are tripartite.

Alberta
The Blood Tribe, Canada, and Alberta are engaged in negotiating a sectoral self-government agreement on the exercise of jurisdiction over child welfare on reserve. Discussions are also beginning with Treaty 8 First Nations in northern Alberta through a process established to look at governance, jurisdiction, and treaty-related issues.

Saskatchewan
Self-government and a new fiscal relationship are being explored on a province-wide basis via the Common Table process, established in 1996 by the Federation of Saskatchewan Indian Nations, Canada, and Saskatchewan. Two tables have been established (Governance and Fiscal Relations). In their exploratory phase, the parties examined issues related to principles of governance, intergovernmental relationships, potential governance models, and fiscal issues such as comparability of programs and services, sources of revenue, and accountability. On May 27, 2000, the parties signed a framework agreement to guide them in governance and fiscal negotiations. They have agreed to focus initially on sectoral agreements on education and child and family services, and umbrella governance and fiscal agreements in principle. The Common Table process is also being informed by work at the Exploratory Treaty Table, which is examining common understandings of the historic treaty relationship. In a separate process,

negotiations with the Meadow Lake Tribal Council are yielding a model of self-government for nine First Nations with a comprehensive range of jurisdictions.

**Manitoba**

The Manitoba framework agreement, signed in 1994, is concerned with recognition of First Nations governments and restoration of First Nations jurisdiction.\(^{11}\) This is a large and extensive self-government initiative, involving 62 First Nations and a wide variety of federal and provincial government programs. Extensive research and consultation at the community level has been conducted by the Assembly of Manitoba Chiefs and Manitoba First Nations. The parties are now attempting to move the process toward formal negotiations so as to arrive at agreement by 2004, the target date set in the framework agreement.

**Ontario**

A number of tables are addressing issues of implementing self-government on a regional or treaty-wide basis. Bilateral negotiations with the United Anishaabeg Councils are nearing a final agreement on a self-government arrangement involving 8 First Nations. The Nishnawbe-Aski Nation (representing 46 First Nations) and the Anishinabek Nation (involving 43 First Nations) have focused on addressing core governance systems as well as jurisdiction in education. The Grand Council of Treaty 3\(^{12}\) is developing an approach to nation building.

Within Treaty 3, sectoral negotiations are also proceeding on jurisdiction over education. Akwesasne discussions have centred around a protocol to support the social and economic development of the community, as well as the negotiation of arrangements to facilitate the exercise of jurisdiction.

**Quebec**

A variety of negotiations are in progress, including those in a comprehensive claims context with the Atikamekw and Montagnais groups, and stand-alone self-government negotiations. The Canada/Kahnawake Relations process is producing an innovative legislative approach to implementing self-government through the progressive takeup of jurisdictions. Additionally, the Nunavik Commission is examining a form of public government for Inuit and non-Inuit in northern Quebec. The Quebec government is involved in negotiations in various ways.

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\(^{11}\) Framework Agreement on the Dismantling of the Department of Indian Affairs and Northern Development, the Restoration of Jurisdictions to First Nations Peoples in Manitoba and Recognition of First Nations Governments in Manitoba, signed by the Minister of Indian Affairs and Northern Development, the Chiefs of 60 First Nations and a representative of the Assembly of Manitoba Chiefs on December 7, 1994.

\(^{12}\) Treaty 3 Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians, signed at the Northwest Angle on the Lake of the Woods on October 13, 1873, as amended.
Atlantic
Negotiations to date are in the context of comprehensive land claims with the Labrador Inuit Association and the Innu Nation. The province of Newfoundland and Labrador is a participant. Some developmental work on models of self-government for small First Nations is ongoing with the Miawpukek First Nation in Newfoundland. Additionally, exploratory discussions to look at governance over social programs and services are taking place with the Atlantic Policy Congress, representing 31 First Nations in the four Atlantic provinces.

Additional Approaches
Aside from the negotiations noted above, the federal interlocutor for Métis and non-status Indians (a federal minister) has the mandate to enter into self-government negotiations with Métis south of the 60th parallel and Indian people who reside off a land base. These negotiations necessarily involve the provincial governments concerned, consistent with the position of the government of Canada that provinces have a primary responsibility for Métis and aboriginal people living off-reserve.

Approaches for self-government arrangements in these circumstances may include, notably, the development of institutions providing services, advisory mechanisms, and forms of public government. Discussions can be sectoral in nature, and arrangements in a given sector can be implemented while the tripartite process continues on other subjects.

Currently, tripartite negotiation processes are active in the four western provinces, specifically involving the following Métis and aboriginal organizations:
- Manitoba: Manitoba Métis Federation; and Aboriginal Council of Winnipeg;
- Saskatchewan: Métis Nation of Saskatchewan;
- Alberta: Métis Nation of Alberta Association and Métis Settlements General Council; and
- British Columbia: Aboriginal Peoples Council (comprising the United Native Nations and the British Columbia Association of Friendship Centres) and Métis Provincial Council of British Columbia.

Some forms of tripartite discussions are also taking place in the Atlantic provinces. While some processes had been developed in Nova Scotia, New Brunswick, and Prince Edward Island, these approaches are being revisited.

The Office of the Federal Interlocutor for Métis and Non-Status Indians has concluded multiyear funding agreements for bilateral processes and tripartite negotiations with the Métis Nation of Saskatchewan, the Manitoba Métis Federation, the Congress of Aboriginal Peoples, and the Aboriginal Council of Winnipeg. Similar agreements are in the works and will be concluding with other recipients.

Federal departments have pursued their efforts toward restricting their reporting requirements, in order to lessen the administrative burden faced by Métis and off-reserve aboriginal groups.
What is clear from this cross-country journey is that self-government is not about prescriptive models. Rather, it is about exploring the possibilities available in building a new relationship; developing approaches that are meaningful from a practical political, legal, and cultural perspective; and determining how all the parties will work together in making that relationship function over time.

**EVOLUTION OF FEDERAL ABORIGINAL SELF-GOVERNMENT POLICY**

Before discussing further some of the emerging policy thinking around aboriginal self-government, it is worthwhile reviewing how federal policy approaches to self-government have evolved over time.

**Penner Report, 1983**

In 1982, the Standing Committee on Indian Affairs and Northern Development sought authority from Parliament to “examine the government of Canada’s total financial and other relationships”\(^{13}\) with Indian people. Pursuant to this authority, a Sub-committee on Indian Self-Government was appointed and then upgraded to a special committee by the House of Commons on December 22, 1982. The special committee submitted its report in 1983.

The Penner report drew a direct connection between the creation of a new relationship between the Crown and First Nations, aboriginal self-government, and the improvement of the social and economic well-being of aboriginal people. Specifically, the report said:

A new relationship would be beneficial to Canada; it would eliminate the tensions, the inefficient use of funds and the unacceptable social conditions that keep Indian peoples from contributing to the country’s progress. In a democratic age, it is incongruous to maintain any people in a state of dependency. . . .

Indian people would likewise benefit from a new approach. Ending dependency would stimulate self-confidence and social regeneration. Instead of the constant and debilitating struggle now faced by band councils, which are expected to administer policies and programs imposed by the Department of Indian Affairs, Indian First Nation governments would get on with the business of their own governmental affairs.

Self-government would also simplify the political position of Indian leaders, who are caught between the demands of their electors and those of the federal government, which funds their programs.\(^{14}\)

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14 Ibid., at 41.
To achieve this new relationship, the report recommended a two-track approach to self-governance. First, it recommended that “the right of Indian peoples to self-governance be explicitly stated and entrenched in the Constitution of Canada”, and second, while recognizing that “the surest way to lasting change is through constitutional amendments, it [that is, the committee] encourages both the federal government and Indian First Nations to pursue all processes leading to the implementation of self-governance, including the bilateral process.”

Community-Based Self-Governance, 1985

Partly as a response to the Penner report, the federal government announced its community-based self-government (CBSG) policy in 1985. The policy had the overall objective of creating a new relationship between the Crown and aboriginal people, independent of the Indian Act, through the negotiation of self-government arrangements with First Nations. Implementation of agreements would be through self-government legislation, which would delegate a range of jurisdictions to individual First Nations on reserve and replace the Indian Act. It would also provide legal capacity to bands and provide for new First Nation constitutions.

While there was a high participation rate by First Nations in CBSG negotiations, agreements were few. A number of variables contributed to the lack of success. Politically, the policy was unacceptable to most First Nations because the jurisdiction was to be delegated rather than premised on the inherent right of self-governance. In addition, the policy provoked concerns of federal “offloading.” Often, the objective was perceived as transferring jurisdiction and responsibility to First Nations without addressing capacity building and financial arrangements that would build sustainable First Nation governments that could meet the needs of First Nation citizens.

The Charlottetown Accord, 1992

In parallel to CBSG negotiations, a process aimed at constitutional recognition of the aboriginal right of self-government proceeded at the first ministers level. The draft Charlottetown accord contemplated a constitutional amendment to recognize that the aboriginal people of Canada have an inherent right of self-government. The draft accord further proposed that the recognition of the inherent right should be interpreted to recognize aboriginal governments as one of

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15 Ibid., at 44.
16 Ibid., at 46.
17 Canada, Department of Indian Affairs and Northern Development, Policy Statement on Indian Self-Government in Canada (Ottawa: the department, 1986).
three orders of government in Canada, paving the way for the negotiation of a set of aboriginal governance authorities whose source would have been the inherent right. This initiative ended with the failure of the Charlottetown accord in 1992.

INHERENT RIGHT POLICY, 1995

It was against this backdrop that the inherent right policy\(^{19}\) was adopted by the federal government in 1995. Its underlying objectives are to build a new partnership with aboriginal people and to strengthen aboriginal communities by enabling them to govern themselves. The policy also represented a major step forward, in the federal government’s general recognition of self-government as an existing aboriginal right within the meaning of section 35 of the Constitution Act, 1982.

The policy is characterized by a number of elements. In addition to recognizing the inherent right of self-government, it

- proposes that legal and constitutional debates be set aside to focus on negotiation of practical self-government arrangements within the Canadian constitutional framework;
- provides for application of the Canadian Charter of Rights and Freedoms and laws of overriding national importance;
- requires agreement among aboriginal governments and federal, provincial, and territorial governments on the relationship of their laws and the rules for resolving conflict to provide clarity for all the parties; and
- provides for constitutional protection of aspects of self-government agreements, where the aboriginal group and federal and provincial/territorial governments agree.

The negotiation of self-government does not lead to the exclusion of federal and provincial or territorial laws. Rather, federal, provincial, territorial, and aboriginal laws apply concurrently. Negotiated rules of priority may provide for the paramountcy of aboriginal laws in many cases, although federal and provincial or territorial laws of overriding national or provincial/territorial importance will prevail over conflicting aboriginal laws.

The implementation of self-government is not expected to be uniform. Arrangements are to be designed to meet the unique needs of aboriginal groups, and to respond to their specific situation from a political, legal, financial, historical, cultural, and social standpoint. Likewise, self-government can be given effect through a variety of different means, including treaties, legislation, contracts, and non-binding memorandums of understanding.

\(^{19}\) Supra footnote 1.
There is a strong federal preference that self-government agreements be tripartite. The federal policy envisions a provincial or territorial role in self-government to provide a secure legal basis for arrangements, to ensure harmonious jurisdictional relationships, and to provide stability within the Canadian constitutional context. Federal policy requires that provinces be party to arrangements that affect their jurisdiction or create modern treaty rights within their borders. The policy does allow for the negotiation of bilateral self-government arrangements in areas of federal jurisdiction only, although the province is to be consulted and its views and support sought.

**EMERGING POLICY CONTEXT**

In the five-year period since the inherent right policy was announced, federal approaches to negotiating and implementing self-government have evolved in response to a number of factors. These include the recommendations of the Royal Commission on Aboriginal Peoples (RCAP),\(^{20}\) the implementation of *Gathering Strength: Canada’s Aboriginal Action Plan*,\(^{21}\) experience obtained at negotiating tables across the country, and pressure in aboriginal communities for improved governance and accountability.

**Royal Commission on Aboriginal Peoples**

In its 1997 report, RCAP called for a new relationship between the Crown and aboriginal people based on the principles of mutual respect, mutual recognition, mutual responsibility, and sharing. While RCAP called on government to recognize the right of aboriginal people to self-determination and the inherent right of self-government, it suggested that these rights rested at the level of aboriginal nations and noted that the exercise of jurisdiction by local communities may not always lead to effective or sustainable governments in the long term. RCAP further called attention to the legacy of the disaggregation of nations, inadequate governance capacity, and dependency fostered by over 100 years of Indian Act administration. Finally, it noted the social and economic challenges facing First Nations and the challenge of rebuilding nations and governments with the power, legitimacy, resources, and capacity to deliver adequate programs and services to members of their communities.

These recommendations have shifted the focus of the federal approach to a broader view—one that looks beyond the jurisdictional components of self-government to the challenges of building strong, legitimate aboriginal governments with the capacities and resources required for meaningful self-government.

\(^{20}\) Supra footnote 5.

\(^{21}\) Supra footnote 6.
Gathering Strength

*Gathering Strength*, the federal government’s response to the RCAP report, was announced in January 1998. It identified four themes for changing the Crown-aboriginal relationship, consistent with the recommendations of RCAP:

1) renewing the partnership;
2) strengthening aboriginal governance;
3) developing new fiscal relationships; and
4) supporting strong communities, people, and economies.

To strengthen aboriginal governance, the federal government supports the concept of self-government exercised by larger groupings of aboriginal people and is helping to foster moves in that direction. We now include a focus on capacity building in the negotiation and implementation of self-government.

Among other things, the federal government is helping to establish governance resource centres, promote capacity development in the areas of administrative and financial management, ensure the involvement of aboriginal women in self-government processes, and facilitate professional development in financial, land, and resource management.

Similarly, the federal government is working with aboriginal leaders to develop new fiscal relationships that provide for more stable and predictable financing, better information systems, improved accountability, and the internal generation of own-source revenues. New transfer arrangements aim at ensuring that programs and services provided by aboriginal governments are reasonably comparable to those provided in non-aboriginal communities.

*Gathering Strength* situates self-government negotiations as part of a broader range of efforts to build new relationships with aboriginal people. It recognizes that the historical experiences of aboriginal people have created major governance challenges and that a sustained commitment is required to support the rebuilding of strong and effective aboriginal governments. While *Gathering Strength* does not change the basic parameters of the inherent right policy, it has had a significant impact on the federal government’s approach to negotiations.

Efforts to strengthen aboriginal governance and build new fiscal relationships are seen as critical to building stronger, healthier communities that can participate in, contribute to, and benefit from Canada’s economic growth.

**Experience and Application at Negotiation Tables**

Until early 1998, the federal approach to self-government negotiations was heavily modelled on the experience of CBSG negotiations: the achievement of a legal, jurisdictional framework to replace the Indian Act. Since the launch of *Gathering Strength*, self-government agreements are now seen as one step in a continuum of activities required to strengthen aboriginal governance, build new fiscal relationships, and, as a result, improve the lives of aboriginal people.
At one end of the continuum are those communities that operate under the Indian Act with no delegated authority or responsibility for service delivery. At the other end are aboriginal governments exercising a full range of self-government powers and delivering a complete slate of programs and services to their citizens. All aboriginal groups in Canada fall somewhere between these two ends of the continuum and vary in terms of their needs and capacities, as well their governance aspirations and objectives. There is no right or wrong place to be. While many will choose the exercise of full self-government powers as their ultimate objective, others may choose alternative or more incremental governance options.

Capacity building is no longer seen as a post-agreement implementation activity but as a range of investments to strengthen governance during the negotiation and implementation of self-government. It includes investment in the strengthening of governance systems for aboriginal communities for which the conclusion of self-government agreements may be some time off.

Likewise, the focus of negotiation has broadened from jurisdictional recognition to the establishment of a framework for new, ongoing, and evolving government-to-government relationships, focusing on five key, interacting components:

1) **Core governance.** What is the nature of the aboriginal government with which Canada is entering into a relationship? Who does it represent and govern? How is it constituted? Who in that government has authority to manage intergovernmental affairs with Canada?

2) **Jurisdiction.** What law-making powers and authorities does the aboriginal government have? What is the relationship of its laws to federal, provincial, and territorial laws?

3) **Fiscal.** What types of fiscal relationships will the aboriginal government have with federal, provincial, and territorial governments to address such issues as financial transfer systems, data, comparability of services, accountability, own-source revenues, cost sharing, and taxation?

4) **Programming.** What programs and services will the aboriginal government deliver to its communities? What are the linkages to federal, provincial, and territorial programs, services, and funding arrangements and standards?

5) **Implementation.** What are the one-time and ongoing obligations of the parties for bringing the self-government agreement into effect? What are the mechanisms for managing the ongoing government-to-government relationship?

Overarching these five components, there is a further need to explore bridges between self-government agreements and historic treaties or land claims agreements. The federal government does not propose to reopen, change, or displace existing treaties through the negotiation of self-government agreements. Rather, new self-government agreements with treaty First Nations can build on and be harmonized with the relationship established by the treaties, and they can receive constitutional protection where the parties agree. Further work is needed to find mutually agreeable ways of accomplishing this objective.
In essence, this approach is reflective of a more pragmatic and developmental approach: the focus cannot simply be on jurisdiction without addressing in some way the other fundamentals of effective governance. There is a need to ensure that governance structures and systems will be in place to sustain a government-to-government relationship and, more important, that they have the capacity to work.

The importance of good governance to social and economic development cannot be overemphasized. Research has consistently found that secure powers of government, combined with capable institutions of management and administration, are indispensable keys to successful long-term development. These linkages have yet to be tested thoroughly in the context of aboriginal self-government in Canada.

In keeping with the trends in research, there has recently been a much stronger federal focus, through Gathering Strength, on investing in governance capacity in a number of interrelated areas:

- The advancement of self-government negotiations to produce workable models of self-government.
- The negotiation of comprehensive claims agreements, such as the Nisga’a Treaty.
- The negotiation of stand-alone self-government agreements, both comprehensive and sectoral.
- The fostering of a broad framework of nation-building approaches, as in the Saskatchewan Common Table process and, in Ontario, with the Grand Council of Treaty 3.
- Encouragement of other, related institutional development to ensure that appropriate systems are in place to support aboriginal governments and promote information sharing and best practices, including, for example, a governance transition centre.
- Demystification of “federal/provincial/municipal” governance regimes through benchmarking, modelling, and projects to assist First Nations in realizing modern comparable governance regimes that are sensitive to culture and situation. In Alberta, for example, work is proceeding on financial, access-to-information, and privacy regimes.
- Program reform initiatives that build governance capacity. For example, the overall objective of the income security reform initiative is to transform the on-reserve welfare regime from passive income support to an active, case-managed system of integrated programming that promotes self-sufficiency. Under this initiative, First Nations, through demonstration projects, can develop and test innovative responses to local needs, as well as build capacity to implement and manage a reformed income security system.
- A significant investment of effort to develop a new fiscal relationship, including the fostering of greater accountability (see the following section).
Developing a New Fiscal Relationship
We are working with our aboriginal partners to create and support more stable, transparent fiscal models and strong accountability processes that will strengthen the operations of aboriginal governments—including enabling self-reliant aboriginal governments to benefit from revenue-generating opportunities such as taxation. We know that economic development and self-sufficiency go hand in hand; acting to realize this potential means that we are truly investing in the future.

Strengthening Fiscal Accountability
Fiscal accountability programs include the development of fiscal mechanisms that promote accountability (such as improved accounting and auditing standards, and strengthened accountability frameworks for governance and program delivery) and the building of professional capacity in administrative, financial, and fiscal management in aboriginal governments and institutions. This will help satisfy the reporting needs of funding governments. Accountability programs also provide a link between First Nations members and their own governments. When transfers to the community from Canada are seen by First Nations members as a resource belonging to the community and to be used for their benefit, the First Nation government will put more emphasis on informing members of the disposition of those funds.

Fiscal Mechanisms
First Nations are conducting standardized community accountability and management assessments in order to identify areas requiring capacity building. As of January 2000, 97 percent of the community assessments across the country were complete, and work is proceeding in accordance with management development plans.

Regional Accountability Workshops
First Nations across most regions organized a new type of workshop to explore ways and means to update their accountability regimes based on principles common to governments in Canada but equally respectful of First Nations culture and appropriate to their situation. These workshops clear the air around accountability issues, including improving followup on complaints of members. They also provide a forum for discussion of difficult and sensitive issues, such as the separation of political and administrative functions in a small local government setting.

Canada/First Nations Funding Agreement
This national model agreement has been completed and will be implemented with First Nations that have the capacity and willingness to manage under it. It is a multiyear agreement that clarifies the accountability relationship between the parties and offers a funding mechanism through which other government
departments, in addition to the Department of Indian Affairs and Northern Development, can channel funds to First Nations.

**Benchmarks and Modelling**

A major research study was commissioned to identify the key components of the federal and provincial financial systems, in order to develop a First Nations financial code that will be recognized as comparable to that of other governments. Four demonstration projects were launched in Alberta to test the model. Similar projects were launched on access to information and privacy, and on codes of ethics and conflict of interest.

**Other Working Tools**

Other working tools encompass special projects focusing on opportunities for change, such as learning to exploit technology. One example from 1999-2000 is an automated First Nations fiscal planning calendar, in which generic planning, budgeting, and accountability cycles are set out on a wall chart, accompanied by an interactive CD-ROM reference.

**Capacity Building Through Professional Training**

We are investing in professional development and an aboriginal public service—for example, through work with the Aboriginal Financial Officers Association (AFOA) and professional development opportunities in land and resource management. The AFOA was incorporated in July 1999 to increase professional development opportunities for First Nations people and professional support for First Nations governments. Its first annual conference, held in February 2000, attracted 300 delegates from across Canada. This conference was also the occasion of the awarding of the first certified aboriginal financial manager (CAFM) designations, a valuable hiring standard for First Nations and a measure of capacity for funding agencies and financial institutions.

**Auditor General**

We have worked with the auditor general to replace a past federal “command and control” orientation with the reciprocal accountability of partnership arrangements, while recognizing that ministerial accountability to Parliament remains in this more “hands-off” environment.

**Accounting and Reporting Standards**

The Assembly of First Nations-Certified General Accountants Association of Canada (AFN-CGA) accountability project released its second draft of a First Nations accounting and reporting standards guide,22 which will soon be followed

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by a best practices manual. The two manuals will help First Nations to strengthen their annual financial statements and better present financial information to their members.

**Supporting Community Development Through New Fiscal Arrangements**

The development and adoption of new fiscal arrangements will support aboriginal governments as they move toward increased autonomy and self-reliance. The new fiscal arrangements will also allow First Nations people to benefit more fully from and participate more directly in the Canadian economy.

Together with the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations has successfully completed exploratory fiscal relations discussions, with topics that include accountability, transfers, the treaty relationship, and revenue options, such as taxation and First Nations own-source revenues.

As more First Nations move along the self-government continuum toward greater jurisdictional autonomy, there is an equally important move, among First Nations, toward greater economic self-sufficiency. The creation of First Nation-controlled national institutions supports this drive toward greater financial independence.

Canada and the Assembly of First Nations have signed a memorandum of understanding establishing a National Table on Fiscal Relations (NTFR), through which the parties will work together to share information, establish national First Nations fiscal institutions, and develop models of government-to-government transfer systems. The NTFR will not only strengthen the capacity of First Nations for good governance through information development and sharing, and better financial management and accountability; it will also use new technologies to share best practices and work to secure more stable revenues, so that First Nations can provide better services and infrastructure to their communities.

National fiscal institutions will provide First Nations with an important arm’s-length relationship, free from political interference and at the same time supportive of and sensitive to First Nations needs and aspirations. The development of national institutions through the NTFR will also give the federal government and First Nations an opportunity to clarify roles and responsibilities through a clearly articulated legal and policy framework. Clear and understandable standards and policies in the areas of statistics and information development, taxation, borrowing, and financial management will facilitate the work of First Nations to strengthen accountability as well as increase investor confidence. While just one part of strengthening the fiscal relationship, the creation of national fiscal institutions is an important step toward increased economic independence through information sharing, revenue generation, and strengthened accountability.
CONCLUSION

This paper has provided an overview of how negotiations for First Nations self-government have unfolded over the past five years and how experience at negotiating tables has affected the federal approach to the implementation of self-government. While lessons are being learned and agreements such as Nisga’a are being achieved, numerous challenges remain, both for bringing agreements to completion and for building understanding and support for the process. These include the following:

• Provinces and territories, while generally supportive of the concept of self-government, have varying views on the degree to which they wish to participate in its negotiation and implementation.

• Public education on self-government has been limited. The consequent lack of knowledge about self-government in both aboriginal and non-aboriginal communities can result in resistance to change and greater difficulty in bringing some agreements to conclusion. Public education efforts now under way are leading to improved understanding, but building a knowledge base in the community is not a short-term activity.

• The capacity of aboriginal groups to take on self-governing functions varies widely throughout the country. A sustained effort must be made to develop capacity during the negotiations process, to ensure that agreements can be successfully implemented when they come into effect.

• There are questions about the sustainability of self-government. These require a more thorough exploration of the concept of nation building and the development of structures of government that are large enough to fully accommodate the exercise of self-government powers.

• The federal government, as an organization, needs to consider how it operates in order to continue to fulfil its responsibilities under the Indian Act while at the same time planning for and participating in new self-government relationships.

It is clear from the overview of experience at negotiation tables that the federal government is not acting alone but is simply one of a number of partners in the development of First Nations self-government. Aboriginal groups and communities have been at the forefront in initiating a more pragmatic approach and are taking ownership of initiatives related to rebuilding and reinstating their governance systems, in partnership with other key players such as provinces, territories, the private sector, and professional associations, among others.

Working with aboriginal people and other governments in Canada, we continue to find a way forward. In many respects, we are in the early stages of evolution and are still coming to terms with significant and fundamental issues. Self-government, and indeed governance generally, is not a static concept and is not formulated in a vacuum. Our understanding continues to grow and evolve as
negotiations, capacity activities, and experience with implementation demonstrate achievement and give rise to new possibilities.

Our goal is the development of aboriginal governments that are stable, legitimate, and accountable to their people; that have the power and resources to solve problems locally; and that provide programs and services comparable to those received by other Canadians. First Nations governments can foster stable and self-reliant communities able to participate in and benefit from Canada’s social and economic growth by attracting support, investment, and partnership to promote economic development and improve social conditions for First Nations people throughout the country.

APPENDIX: SUGGESTED READINGS


