Characteristics of a Nation-to-Nation Relationship

Discussion Paper

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CANADIANS FOR A NEW PARTNERSHIP
LES CANADIENS POUR UN NOUVEAU PARTENARIAT

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Introduction

> *There is no relationship more important to me – and to Canada – than the one with First Nations, the Métis Nation, and Inuit. It is time for a renewed, nation-to-nation relationship with First Nations Peoples: one that is based on the understanding that the constitutionally guaranteed rights of First Nations are a sacred obligation that we carry forward.*
>
> -Prime Minister Justin Trudeau, 2016 Mandate Letters

The new federal government has committed to pursuing a Nation-to-Nation relationship based on recognition, rights, respect, co-operation and partnership with Indigenous people in Canada, acknowledging this as both the right thing to do and a path to economic growth. This commitment invites the opportunity for thoughtful reflection and discussion of the path forward to achieve genuine Nation-to-Nation relationships. As the nation looks to mark the sesquicentennial and celebrate 150 years since Confederation, important conversations are being had about the Canadian identity, both past and future. As the Royal Commission noted, our relationship with Indigenous nations is a fundamental aspect of our past, present and future, and therefore a necessary part of our identity. At the same time, the nation-to-nation relationship with the Indigenous Peoples of Canada has been identified as a seminal priority for Canada. Prime Minister Trudeau has revamped the Indigenous portfolio, endorsed the Truth and Reconciliation Commission on residential schools' final report, adopted the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP), and created a national public inquiry into missing and murdered Indigenous women.

> *By adopting and implementing the declaration, we are excited that we are breathing life into Section 35 and recognizing it as a full box of rights for Indigenous Peoples in Canada.*
>
> - Indigenous and Northern Affairs Minister Carolyn Bennett, United Nations speech May 2016

A new nation-to-nation relationship is a fundamental component of fostering reconciliation and restoring resilience to Indigenous Nations. Over the course of the past 30 years – from *Section 35* negotiations, through the Royal Commission, to the recommendations of the Truth and Reconciliation Commission - Indigenous leadership has articulated the many aspects of what the nation-to-nation relationship means. Establishing a new relationship with the Crown includes Indigenous self-government founded in self-determination, legal capacity and access to resources; the recognition of inherent Aboriginal and Treaty rights, as well as the ability to exercise and implement inherent rights and responsibilities; treaty renewal and treaty implementation; fiscal arrangements and resource revenue sharing; and closing the social and economic gaps faced by Indigenous peoples.

Developing a new relationship with Indigenous people in Canada will present a challenge to both federal and provincial governments, however it is necessary from a social, legal and economic perspective. In a 1997 address in response to the RCAP report, Charles S. Coffey, Executive Vice-President at Royal Bank urged:

> "…we see Aboriginal issues as a matter of concern for all Canadians and Aboriginal economic development as having a significant impact on the national economy and the corporate sector….. With this in mind, the costs that I want to explore with you today are the **opportunity costs** of doing nothing ― the missed chances, foregone gains ― a future less than it might otherwise be."[1]

In addition to the significant and expanding market opportunity, Coffey sites renewed economic and mutually beneficial relationships with Aboriginal people:

- as important source of new entrants and new skills for the workforce;

[1] Charles S. Coffey, The Cost of Doing Nothing: A Call to Action, Royal Bank Address: October 23, 1997.

- contributing to community support for resource development;
- bringing new knowledge and values into the corporate sector — especially in terms of respect for land, traditional knowledge and sustainable development; and
- opening international opportunities for Canadian companies.

In other words, a renewed relationship is important to the economic growth of Canada:

> "The [RCAP] Commission makes the case, in other words, that cost of the status quo amounted to $7.5 billion in 1996 because of the net cost of foregone production, the extra cost of remedial programs and financial assistance, and the cost of foregone government revenues. Furthermore, if we keep with present policies, it is estimated that the cost of the status quo will escalate to $11.0 billion by the year 2016."[2]

Recognizing the opportunities this moment presents, the IOG is convening a dialogue around the "Nation-to-Nation Relationship." The IOG believes that nations and leaders must have the opportunity to share their vision in an open forum and direct the agenda moving forward. By convening experts and facilitating the exchange of knowledge, this project aims to bring to the forefront systemic governance challenges that have impeded advancements in relationship building to date. We are seeking to articulate the characteristics of a nation-to-nation relationship, as defined by Indigenous leaders and government departments – as well as identify key issues, challenges and opportunities.

The IOG is setting the table to continue the dialogue around the "Characteristics of the Nation-to-Nation Relationship." This series of dialogues, hosted in partnership with Canadians for a New Partnership, builds and expands on a foundation of timely and relevant dialogues hosted by the IOG that convened all parties in a neutral and respectful environment:

- In 2012-2013 the IOG hosted the *Beyond Section 35* symposium series across Canada (Ottawa, Calgary, Vancouver), bringing together community leaders, academics, senior public officials and other experts to reflect on the promise of *Section 35* of the Canadian Constitution and how to continue to advance relationships.
- In 2014 the IOG gathered leaders from governments, Indigenous leadership, the private sector and academia at the *Towards Reconciliation Symposium* in Toronto to discuss the future of Indigenous governance and to share perspectives on important legal, governance, social and economic advancements made since the 1996 Report of the Royal Commission on Aboriginal Peoples.
- In 2016, the IOG facilitated two panels: "Characteristics of a Nation-to-Nation Relationship"; and "How can Indigenous shared governance institutions support a Nation-to-Nation relationship?"

This discussion paper focuses on four themes that are central to the nation-to-nation relationship: Nation Building and Nation Re-Building; Jurisdiction; New Intergovernmental Fiscal Relationships; and Wealth Creation. Promises to forge a new nation-to-nation relationship with the Indigenous Peoples of Canada as a federal priority will not happen overnight. The foundation of an effective relationship is trust and mutual respect. Governments will need to work with Indigenous people to develop a blueprint with tangible objectives for a renewed relationship. Relationships must transform before systems can transform. Moving forward with structured and respectful dialogues can help provide the basis for greater prosperity and the realization of the full potential for a changed relationship between Indigenous peoples and Canada. As Justice Murray Sinclair has noted, "Reconciliation is about forging and maintaining respectful relationships. There are no shortcuts."

[2] Kelly J. Lendsay MBA and Wanda Wuttunee LLB MBA, "Historical Economic Perspectives of Aboriginal Peoples: Cycles of Balance and Partnership", Joint Project of Council for the Advancement of Native Development Officers and the Royal Bank of Canada: October, 1997.

Nation Building and Nation Re-Building

From Treaty Making to the Indian Act

In the *Royal Proclamation, 1763*, the British Crown recognized the existence of Aboriginal title and declared that the British Crown would first have to obtain land via treaties with Indigenous people before British subjects could acquire it.[3]

> The proclamation portrays Indian nations as autonomous political entities, living under the protection of the Crown but retaining their own internal political authority. It walks a fine line between safeguarding the rights of Aboriginal peoples and establishing a process to permit British settlement. It finds a balance in an arrangement allowing Aboriginal and non-Aboriginal people to divide and share sovereign rights to the lands that are now Canada. More than a hundred years later, in 1867, the arrangement we know as Confederation would also allow for power sharing among diverse peoples and governments. But the first confederal bargain was with First Peoples.[4]

The Crown proceeded to negotiate treaties with Indigenous peoples as British settlement advanced westward. RCAP describes this phase as one of 'cautious co-operation': "For the most part, Aboriginal and non-Aboriginal people saw each other as separate, distinct and independent. Each was in charge of its own affairs. Each could negotiate its own military alliances, its own trade agreements, its own best deals with the others."[5] Confederation, RCAP notes, was negotiated between "English and French colonists to manage lands resources north of the 49th parallel" and was "negotiated without reference to Aboriginal nations, the first partners of the French and the English. The *British North America Act, 1867* (BNA Act) divided Crown powers between the federal and the provincial governments, with section 91(24) assigning exclusive jurisdiction for Indigenous peoples and their lands. According to RCAP:

> Parliament took on the job with vigour - passing laws to replace traditional Aboriginal governments with band councils with insignificant powers, taking control of valuable resources located on reserves, taking charge of reserve finances, imposing an unfamiliar system of land tenure, and applying non-Aboriginal concepts of marriage and parenting.

The *Indian Act, 1876* and its subsequent amendments sought to fundamentally change Indigenous governance and culture – attempting to replace traditional governments with band councils and criminalizing the potlatch and sun dance, for example – regarding Indigenous peoples as wards of the federal government.[6] The Department of Interior (later Indian Affairs) actively enforced these laws. The Indian Residential School policy removed Indigenous children from their families at a young age, prevented them from speaking their language, learning their customs from and building healthy relationships with their families, communities and cultures. Residential schools operated for over 100 years, affecting four generations of survivors, their families, communities and cultures.

These policies of assimilation and domination fundamentally impacted Indigenous peoples, battering their institutions of governance and culture and resulted in the significant socio-economic gap that continues to persist between Indigenous people and other Canadians today.[7]

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[3] Indigenous Foundations. Royal Proclamation,1763. UBC.
[4] Royal Commission on Aboriginal Peoples (RCAP). People to People, Nation to Nation. Looking Forward, Looking Back: The Royal Proclamation.
[5] RCAP. Looking Forward, Looking Back: Stage 2: Nation-to-Nation Relations.
[6] RCAP. Looking Forward, Looking Back: Policies of Domination and Assimilation.
[7] RCAP. Looking Forward, Looking Back. Stage 4: Renewal and Renegotiation.

Enshrining Indigenous Rights in the Canadian Constitution

While Indigenous elders and leaders continued to fight for their title and rights to self-government, signs of a new possibility in the relationship between the Crown and Indigenous peoples began to shift in the latter part of the 20th century. In *Calder v. Attorney-General of British Columbia* [1973], Frank Calder and other Nisga'a elders argued Nisga'a title had never been extinguished. While the lower courts denied the existence of Indigenous title, the Supreme Court of Canada (SCC) acknowledged that title had existed at the time of the Royal Proclamation in 1763. This was the first time the Canadian legal system acknowledged the existence of Indigenous title. Moreover, it acknowledged that Indigenous title was not derived from or granted by colonial law, but is a *sui generis,* or unique collective right, stemming from Indigenous peoples' prior occupation of and connection to their territories.[8]

When discussions concerning the re-patriation of the constitution began gaining momentum in the late 1970s, First Nation, Métis and Inuit representatives saw an opportunity to re-vitalize the relationship between Indigenous communities and the Canadian state. There was also a great sense of urgency attached to Indigenous responses. In 1978, Prime Minister Trudeau had introduced his plan to unilaterally entrench a charter of rights and freedoms within the *Constitution*. First Nation leaders feared such a charter (not having any provisions for Aboriginal rights) would have greater force in the courts than the *Indian Act*[9] and would, therefore, put an end to the status of Indigenous people in Canada.[10] Furthermore, there was no discussion of constitutional protection for Aboriginal rights during this period.

In the fall of 1981, following a series of failed negotiations with the provinces as well as a decision by the Supreme Court on a reference brought by the federal government, the Prime Minister convened a round of negotiations to attempt once more to gain provincial support for patriation. On November 5, 1981, the federal government announced it had reached agreement with the Anglophone provinces and would now patriate the constitution. Indigenous leaders discovered that the Aboriginal rights provision had been dropped to obtain provincial support. They acted instantly, assembling 500 leaders in Ottawa to strategize for reinstatement.[11] All Premiers eventually agreed to reinstatement with the exception of Peter Lougheed of Alberta, who, following days of negotiations with Indigenous negotiators, agreed to reinstatement if the word "existing" was added to the provision. Additionally, *Charter* protection was given to the *Royal Proclamation, 1763* under *Section 25*.

By 1982, existing Aboriginal and treaty rights were enshrined within the *Constitution Act, 1982*. The wording of *Section 35* was deliberately left vague.[12] Subsequent constitutional conferences were largely unsuccessful in giving further definition to the section. Further definition would come through a series of landmark cases at the Supreme Court of Canada (SCC), several of which established tests to determine the content and existence of Aboriginal rights and have had a significant impact on Canadian policy making with respect to Aboriginal rights and title.

Section 37 of the *Constitution Act, 1982* obligated the Prime Minister of Canada and the First Ministers of the provinces to convene a constitutional conference within a year of its entry into force. *Section 37(2)* required the inclusion of an agenda item to deal specifically with "constitutional matters that directly affect[ed] the Aboriginal peoples of Canada, including the identification and definition of the rights of

[8] Calder et al. v. Attorney-General of British Columbia, [1973] S.C.R. 313.
[9] *An Act Respecting Indians,* R.S.C. 1985, c.1-5. (Canada)
[10] Peter McFarlane. "The Peoples' Movement." *Brotherhood to Nationhood. George Manuel and the Making of the Modern Indian Movement.* Toronto: Between the Lines, 1993. 247-63. p.253.
[11] Ibid. Pg. 247-302.
[12] David C. Nahwegahbow and Nicole D.O. Richmond. "Impact of the 1982 Constitution on First Nations: Reflections on Section 35: Whether the *Constitution Act* has made a difference for First Nations?" *National Journal of Constitutional Law* 23. (2007/2008): 153-171. p.165

those peoples to be included in the Constitution of Canada." The Prime Minister was obligated to invite "representatives of [the Aboriginal] peoples to participate in the discussions on that item."[13]

The First Ministers Conferences on Aboriginal Constitutional Matters was successively held in 1984. Two more conferences were then held in 1985 and 1987, where attending parties attempted to agree on language that would expressly recognize a right of Aboriginal self-government.[14] However, the discussions failed to produce any substantive result as the representatives were unable to reach an agreement. Following the convening of the March 1987 conference, *Section 37.*1 was repealed on April 18, 1987 by *Section 54.1* of the *Constitution Act*.

Following the failure of the *Meech Lake Accord* in 1990, the *Charlottetown Accord* in 1992 was another attempt at constitutional change. It aimed to resolve long-standing disputes around the division of powers between federal/provincial/territorial (F/P/T) jurisdictions, to address the issue of Aboriginal self-government, and to formally include Aboriginal participation in the F/P/T process. Despite having the support of major political parties in Canada, the *Charlottetown Accord* failed to pass in a national referendum (Quebec held its own referendum); however, the *Accord* did have the effect of bringing important considerations on Indigenous-Crown relations back into public discourse.

The Royal Commission on Aboriginal Peoples

In 1991, the Royal Commission on Aboriginal Peoples (RCAP) was established in response to a number of events, including the failed *Meech Lake* and *Charlottetown* Accords, the Kanehsatake Resistance (Oka Crisis) and other blockades and protests throughout the country. RCAP was tasked with investigating and responding to the following question: "What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?" It visited 96 communities, held 178 public hearings, heard briefs from thousands of people and commissioned hundreds of research studies on matters including historical relations between the government and aboriginal people, self-government, the Royal Proclamation of 1763, the *Indian Act*, the numbered treaties and Aboriginal case law. The 1996 final report made more than 400 recommendations and scathingly concluded: "The main policy direction, pursued for more than 150 years, first by colonial then by Canadian governments, has been wrong."

The Commission noted that while First Peoples were once strong trading partners with vibrant communities and cultures, conditions had deteriorated to a dependence relationship. RCAP stressed the need for the Crown and Canadian society to recognize the injustices of the past, including the intergenerational trauma of residential schools and other colonial policies, noting that a lack of awareness or willingness to confront this painful past on the part of non-Indigenous people has been a major factor limiting transformation of the relationship. Accordingly, the Commission highlighted the need for public education and raising awareness.

RCAP Commissioners noted that Indigenous peoples had lost at least two-thirds of their land base since Confederation. They found the failure to honour treaties a moral failing of government and advocated for increasing Indigenous access to lands and resources to help provide an economic base to close socio-economic gaps, to increase financing from taxation for self-government and to help resolve friction between Indigenous and non-Indigenous Canadians. The Commission called on federal and provincial governments to recognize of the existence of Aboriginal rights and title and treaty rights affirmed in *Section 35* and not to pursue extinguishment of Aboriginal title in any ongoing negotiations.

[13] *Constitutional Conference*, Part IV of the *Constitution Act*, *1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982.
[14] Eberts, McIvor and Nahanee, Supra note 26.

The Commission took a holistic approach to comprehensively restructuring the relationship between Canada and First Peoples. The report set out a 20-year agenda for change, starting with calling for a First Ministers' Meeting within six months, and setting out seven steps for restructuring the relationship between Aboriginal people and other Canadians (emphasizing that steps should be undertaken in close consultation with national Aboriginal organizations and provincial and territorial governments and in conjunction with a public education campaign to promote understanding on the part of all Canadians). Major recommendations included the following:

- legislation, including a new Royal Proclamation stating Canada's commitment to a new relationship and companion legislation setting out a treaty process and recognition of Aboriginal nations and governments;
- recognition of an Aboriginal order of government, subject to the *Charter of Rights and Freedoms*, with authority over matters related to the good government and welfare of Aboriginal peoples and their territories;
- replacement of the federal Department of Indian Affairs with two departments, one to implement the new relationship with Aboriginal nations and one to provide services for non-self-governing communities;
- creation of an Aboriginal parliament;
- expansion of the Aboriginal land and resource base;
- recognition of Métis self-government, provision of a land base, and recognition of Métis rights to hunt and fish on Crown land; and
- initiatives to address social, education, health and housing needs, including the training of 10,000 health professionals over a ten-year period, the establishment of an Aboriginal peoples' university, and recognition of Aboriginal nations' authority over child welfare[15].

Additional recommendations related to the dialogue can be found in Appendix C of this document. In 1998, the federal government issued *Gathering Strength: Canada's Aboriginal Action Plan*, set forth an overarching policy framework based on four objectives:

- **Renewing the Partnership**: working towards an initial Statement of Reconciliation acknowledging historic injustices to Aboriginal peoples and establishing a $350-million "healing fund" to address the legacy of abuse in the residential school system (Aboriginal Healing Foundation); preservation and promotion of Aboriginal languages; increasing public understanding of Aboriginal traditions and issues; including Aboriginal partners in program design, development and delivery; exploring how existing systems might be improved; and addressing the needs of urban Aboriginal people more effectively.

- **Strengthening Aboriginal Governance**: developing the capacity of Aboriginal peoples to negotiate and implement self-government; establishing additional treaty commissions, and Aboriginal governance centres; creating an independent claims body in co-operation with First Nations; creating a Métis enumeration program; funding Aboriginal women's organizations to enhance women's participation in self-government processes; and developing an Aboriginal governments recognition instrument.

- **Developing a New Fiscal Relationship**: working toward greater stability, accountability and self-reliance; developing new financial standards with public account and audit systems that conform to accepted accounting principles; assisting First Nations governments to achieve greater independence through development of their own revenue sources; enhanced data collection and information exchange.

[15] http://www.lop.parl.gc.ca/content/lop/researchpublications/prb9924-e.htm

- **Supporting Strong Communities, People and Economics**: improving living standards in Aboriginal communities (housing, water and sewer systems); reforming welfare to reduce dependence and increase job creation; developing a five-year Aboriginal Human Resources Development Strategy; expanding the Aboriginal Head Start program; reforming education; increasing focus on health-related needs and programs; improving access to capital; and establishing urban youth centres.

At the time the federal government also issued a Statement of Reconciliation and committed $350 million to support community-based healing to deal with the legacy of residential schools. Many found the statement insincere coming from the Minister of Indian Affairs and not from the Prime Minister directly. Others noted $350 million would not be nearly be enough to adequately support healing from four generations of residential schools. There was very little uptake of the report by provincial governments. While federal officials indicated *Gathering Strength* was meant as an interim response to RCAP, it proved to be the only response.[16]

RCAP received significant support from Indigenous peoples and significant media attention, but faded from public attention within months as the federal government claimed it needed time to study the recommendations prior to taking action and as Canada opted not to call a First Ministers' Conference as the report recommended. In April 1997, the Assembly of First Nations (AFN) held a national day of protest to express anger over government inaction and the refusal of the Prime Minister to meet to discuss the report.

Renewed Relationship

RCAP called for recognition of three orders of government: federal, provincial and self-governing Indigenous governments. It defined self-government simply, as "the ability to assess and satisfy needs without outside influence, permission, or restriction." It recognized self-government could take a variety of forms due to the diverse nature of Aboriginal peoples and that governance is deeply tied to cultural practices. RCAP highlighted the need for Indigenous peoples to reconstitute their nations, for recognition of their authority and inherent right to self-govern, for stable fiscal arrangements to restore and support self-government capacity and access to lands, resources and other levers of social and economic development.

The Commission recommended that a Department of Aboriginal Relations focused on the new relationship, including assisting Indigenous peoples in transitioning to self-government and supporting the implementation of the new relationship across other departments, replace the Department of Indian Affairs and Northern Development. A Department of Indian and Inuit Programs would be maintained in the interim to provide services to communities not ready to make the transition to self-government and to provide increased funding to address pressing health, educational, employment and housing needs. The Commission proposed four principles as the basis of a renewed relationship:

1. **Recognition** calls on non-Aboriginal Canadians to recognize that Aboriginal people are the original inhabitants and caretakers of this land and have distinctive rights and responsibilities flowing from that status. It calls on Aboriginal people to accept that non-Aboriginal people are also of this land now, by birth and by adoption, with strong ties of love and loyalty. It requires both sides to acknowledge and relate to one another as partners, respecting each other's laws and institutions and co-operating for mutual benefit.

[16] Dickason, Dr. Olive Patricia. *Recognized at Last? Some Reflections on the Royal Commission on Aboriginal Peoples.* The Stanley Knowles lecture conducted from the University of Waterloo. (October 22, 1998).

2. **Respect** calls on all Canadians to create a climate of positive mutual regard between and among peoples. Respect provides a bulwark against attempts by one partner to dominate or rule over another. Respect for the unique rights and status of First Peoples, and for each Aboriginal person as an individual with a valuable culture and heritage, needs to become part of Canada's national character.

3. **Sharing** calls for the giving and receiving of benefits in fair measure. It is the basis on which Canada was founded, for if Aboriginal peoples had been unwilling to share what they had and what they knew about the land, many of the newcomers would not have lived to prosper. The principle of sharing is central to the treaties and central to the possibility of real equality among the peoples of Canada in the future.

4. **Responsibility** is the hallmark of a mature relationship. Partners in such a relationship must be accountable for the promises they have made, accountable for behaving honourably, and accountable for the impact of their actions on the well-being of the other. Because we do and always will share the land, the best interests of Aboriginal and non-Aboriginal people will be served if we act with the highest standards of responsibility, honesty and good faith toward one another. [17]

Defining Nation-to-Nation

Beyond reconciliation, empowerment of Aboriginal nations with the capacity for self-government was and remains a significant feature of creating a modern, renewed relationship. Recognizing and enabling Aboriginal governments would require a significant investment but is considered by many a natural extension of the rights affirmed in *Section 35 of the Constitution Act*. Progress on the transfer of governing authority, lands and resources has been slow and often mired in legal complexity. Both Natan Obed, current President of the ITK (Inuit Tapiriit Kanatami) and Clem Chartier, President of the MNC (Métis National Council) have publically stressed the need for an approach that recognizes and respects the distinctions between Indigenous peoples.

According to RCAP, "an Aboriginal Nation should be defined as a sizeable body of Aboriginal people that possesses a shared sense of national identity and constitutes the predominant population in a certain territory or collection of territories. Thus, the Mi'kmaq, the Innu, the Anishnabe, the Blood, the Haida, the Inuvialuit, the western Métis Nation and other peoples whose bonds have stayed at least partly intact, despite government interference, are nations. There are about 1,000 reserve and settlement communities in Canada, but there are 60 to 80 Aboriginal nations."

First Nations

Much of the ongoing dialogue and development on nation (re)building to date has focused on First Nations. RCAP recommended restructuring the 633 Indian Act bands to approximately 50 nations. Justice Binnie has noted this is a very complex arrangement to put together; how the federal, provincial and Indigenous powers interlock when there are over 600 First Nations in Canada and approximately 2,100 reserves and vast numbers of off-reserve residents. He notes that self-definition by nations is not necessarily something that all other Indigenous entities would accept, which may be illustrated by a number of overlapping territorial issues and land claim.[18]

[17] Highlights from the Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation. The Way Forward.
[18] IOG Nation-to-Nation Panel Breakfast. April 22, 2016.

At a RCAP 20th anniversary conference in November 2016, the National Chief, Perry Bellegarde, put forward three issues of significance to the Assembly of Fist Nations:

- the right to self-determination including the spirit and intent of treaties;
- the Nation-to-Nation relationship (noting there are different views on this among Chiefs); and
- a vehicle to get out from under the *Indian Act* (both Nation and Treaty options are required).

He cited his priorities for the Federal Government as:

1. The PM's commitment to implement the 94 calls to action.
2. Implement the UNDRIP (seeing this as key to the nation to nation relationship).
3. Lifting the 2% cap with $8.4B budget investment.
4. Reaching a fiscal relations MOU.
5. Investment in education.
6. A federal law review (including a policy review of comprehensive and specific claims, additions to reserve policy, and the Inherent Right policy).

Métis

The recently released *A Matter of National and Constitutional Import*, a report by Tom Isaac, Ministerial Special Representative, to provide clarity on Métis rights under *Section 35*,[19] has underscored the primary desire and demand by Métis is recognition of Métis nationhood, by Canada, First Nations and the public. Isaac met with the Métis National Council and its governing members, the Métis Settlements General Council, provincial and territorial governments, other Indigenous organizations and other parties to outline a process for dialogue on Métis rights under *Section 35*, first identified in the 2003 *Powley* decision.[20] Earlier in 2016, in response to the 2013 *Manitoba Métis Federation* (MMF) decision[21] the federal government and the Manitoba Métis Federation (MMF) concluded a Memorandum of Understanding (MOU) to set the stage for exploratory talks on reconciliation.

Métis groups have responded favourably to Isaac's report, which urges Canada to pursue a "nation-to-nation, government-to-government relationship" with Métis. The Isaac report provides 17 recommendations, including that Canada:

- Create a framework for recognizing and addressing Métis rights.
- Establish a Métis land claims process. The report notes there is no forum for the Métis to negotiating their rights and claims, while First Nations and Inuit have access to specific and comprehensive claims processes to deal with outstanding land claims. Isaac calls on Canada to either include the Métis in these existing processes or to create a new system for the Métis.
- Review existing laws and policies pertaining to Métis people and establish a dedicated entity to deal with all Métis matters in the country.
- Provide long-term, stable funding for Métis organizations governments.

Isaac uses the term "government" to refer to a Métis organization in two ways. Either:

a) Traditional geographic-based governments, such as the Métis Settlements in Alberta, or
b) Governments that have the legal authority to represent their constituents/communities' interests and, in particular, their *Section 35* rights. [22]

[19] Tom Isaac. *A Matter of National and Constitutional Import.* Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Metis Federation Decision. June 2016.
[20] R. *v.* Powley, [2003] 2 S.C.R. 207, 2003 SCC 43.
[21] Manitoba Métis Federation Inc. *v.* Canada (Attorney General), 2013 SCC 14, [2013] 1 S.C.R. 623. Notably, this case found the federal government failed on its promise of land for Métis close to 150 years ago.
[22] Tom Isaac. *A Matter of National and Constitutional Import.* Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Federation Decision. June 2016. Pg. 13.

In response to concerns that, aside from the Métis Settlements in Alberta, the other Métis governments are not land-based, with clear geographic parameters to governmental authority, Isaac notes they are still governments, with the following types of authority:

- Métis-specific programs and services.
- *Section 35* rights and related consultation representation.
- Management of *Section 35* rights such as a right to hunt, as acknowledged in *Powley*.
- Protection and maintenance of Métis culture and heritage.
- Operation of objectively verifiable Métis registries.
- Democratic political representation regarding Métis-specific interests.[23]

Other Métis commentators have noted key aspects of a nation-to-nation relationship, including:

- Recognition by the federal government Métis registries and Métis governments' ability to define who their citizens are.
- Jurisdiction akin to that expressed in the *Inuvialuit Final Agreement*, to deliver a range of services such as childcare, early child development, training and housing. In Manitoba, Métis government organizations involved in program delivery have approximately 800 public servants.
- A distinct entity within the federal government dedicated to the Métis and establishment of *Section 35* implementation processes.
- Adequate funding to reflect and support nationhood status. The federal government is now renewing its $50 million commitment to the urban Aboriginal program, but there is nothing in it specifically for the Métis. Métis-specific program funding put in place after the *Powley* decision supported registries and governance - which expires this year.

The federal government will need to establish a new policy framework for Métis and respond to the Isaac Report. Feedback received is that the federal government's policy orientation is that Métis have special problems not special rights, despite court cases proving otherwise. The system in place today is the same as it was in 1970s; focused on economic development and training programs with very little support for governance capacity. "The MNC's ultimate objective is to achieve a self-government agreement with reliable government-to-government financing arrangements. Toward that end, the MNC is working on a Métis Nation Constitution that will define the nature of Métis government that will exercise powers under a self-government agreement."[24]

Inuit

The Inuit relationship with Canada is unique. Contact with European peoples came later for the Inuit, with many elders alive today who recall never having met a *qallunaat* (non-Inuit) before their adolescence. According to Former Inuit Tapiriit Kanatami (ITK) President Mary Simon, there has never been a federal entity devoted to Inuit, noting that former Prime Minister Paul Martin was shocked to learn that out of close to 250,000 federal public servants, there was not one whose job description was exclusively devoted to the federal government's relationship with Inuit. Inuit also recently experienced the arbitrariness of colonial border-drawing: "Residents of Nunavik, in Arctic Quebec, find some humour in saying that, on a far-off date at the beginning of the last century, they went to bed living in the Northwest Territories and woke up living in Quebec. And without ever moving camp." Mary Simon notes none of these political or jurisdictional arrangements, all of which were officially formalized, involved consultations with the Inuit.

Shortly after the new federal government was elected ITK President Natan Obed made it clear the Inuit are not looking for a nation-to-nation relationship with Canada, but an Inuit-Crown relationship. He emphasized Inuit are proud Canadians who "want to be seen as a part of Canada, but also to be Inuit in

[23] Ibid. Pg. 14.
[24] Métis National Council. *The Emergence and Evolution of the Métis Nation*, June 2016.

Canada on our own terms, with our own identity."[25] For ITK, a renewed Inuit-Crown relationship includes:

- An Inuit-specific education system.
- Protecting, promoting and revitalizing the Inuit language.
- Action on suicide prevention and other mental health issues.
- Implementing the Truth and Reconciliation Commission's calls for action.
- Action on murdered or missing Indigenous women.[26]

Obed highlights Nutrition North Canada (NNC) as a core example of a unilateral approach by the federal government, having been designed by INAC without the involvement of ITK or regional Inuit organizations, despite the majority of program users being Inuit. This exacerbated Inuit distrust of the federal government. He calls for the federal government to use the UNDRIP standard of free, prior and informed consent (FPIC) in decisions affecting Inuit and notes that Canada's collaborative approach to Health Canada's First Nations and Inuit Health Branch (FNIHB) partnerships with Inuit communities is an early example that could be described as approximating a proto-FPIC standard that respects the Inuit right to self-determination and better meets Inuit health needs.[27] Others have called for a second Kelowna Accord, which would help deal with food insecurity, education, suicide prevention, housing, lateral violence and other difficult social issues. They have also called for financial support for local hunters, noting Canada provides a subsidy to farmers to help if crops fail and that something similar should be in place for Inuit as hunting peoples.[28]

Jurisdiction

The 1763 Royal Proclamation provided the first declaration of jurisdiction by the Crown. It made clear that British subjects were required to deal with the Crown in the acquisition of land and not directly with Indigenous peoples, that the Crown had sole authority to secure land from Indigenous peoples, via treaty, which launched over a century of treaty making. Then in 1867 with the creation of the *BNA Act* and Parliament, Sections 91 and 92 delineated the jurisdictions of the federal and provincial governments assigning the federal government jurisdiction over Indigenous peoples in *Section 91(24)*. As a result, and in an attempt to fulfill this obligation, the federal government provides funding for services and programs on reserve while provincial governments provide services for off reserve Indigenous populations. Social programs that are typically delivered by the provinces (education, health care, child welfare, others) are delivered through federal grants and contribution agreements directly by First Nations to on-reserve populations.

With patriation, the *Constitution Act, 1982* included *Section 35* recognizing and affirming Aboriginal and treaty rights. *Section 35* has widely been regarded as an empty box, to be given definition over time through the courts. With the adoption of *Section 35*, federal government has shown greater resistance to constitutionally protected self-government. In the final *Section 37* First Ministers' Conference, Canadian governments argued that self-government was a granted right, deriving from the good will of the Crown, to be fully defined and delimited by the Crown, while Indigenous representatives argued it was an inherent right. It was clear at that point that self-government was perhaps the key issue that had to be tackled in resolving the question of whether and how to include Aboriginal rights in the Constitution at the time.

[25] Jim Bell. New national Inuit president marks his territory. Nunatsiaq Online. November 30, 2015.
[26] Ibid.
[27] Natan Obed. Free, Prior & Informed Consent And The Future Of Inuit Self-Determination. Northern Public Affairs. Volume 4, Issue 2. May 2016.
[28] Sima Sahar Zerehi. Inuit leaders ask Justin Trudeau for Inuit issues committee, CBC News. January 28, 2016.

Sui Generis

In the ground-breaking *Calder* decision in 1973, the SCC recognized that Aboriginal Title had existed at the time of the Royal Proclamation. Frank Calder and other Nisga'a elders sued the BC government, stating Nisga'a title had never been lawfully extinguished through treaty or any other means. This decision was the first time the legal system acknowledged the existence of Aboriginal Title and that title was *sui generis*, or existed outside of and was not derived from Canadian law.

In 1995, the federal government established the Inherent Right Policy, recognizing an inherent right to self-government for deriving from *Section 35* and stated its commitment to negotiate self-government arrangements.[29] This policy also stated that the right to self-government exists within the framework of the Canadian Constitution, implying that any subsequently negotiated agreements must be consistent with the *Charter* and ensure the harmonization of laws in specific areas, while leaving other areas of a general, internal nature to Aboriginal jurisdiction. To date, the progress stemming from this policy has been more limited than many expected and the socioeconomic outcomes expected have not fully materialized.

In 2014, in its *Tsilhqot'in* decision, the SCC unanimously recognized the Tsilhqot'in Nation's claim to 1700 square km of land in BC. This marks the first time in a Canadian court has declared Aboriginal title on lands outside of a reserve. The SCC rejected the "postage stamp" interpretation of Aboriginal title, in which title was held to be limited to small, intensively used sites. The decision has profound effects on the negotiation of outstanding land claims and economic development, particularly resource development, on Indigenous title lands. The case establishes that Aboriginal title confers on the nation the right to benefit from development of the land and its resources and that the Tsilhqot'in has the right to control the land, managing it according to Tsilhqot'in laws and governance, for traditional or modern purposes, so long as those purposes do not deprive future generations from controlling and benefitting from the land. The SCC noted infringements could occur if the duty to consult and accommodate is met or the purpose of the infringement is to meet a substantial public purpose. Notably, the SCC ruled that the provincial *Forest Act* does not apply to Tsilhqot'in title lands, because the statute is described as applying to "Crown timber." Because the timber is on Tsilhqot'in title land, the timber on their land is Tsilhqot'in and not Crown timber. As a result, BC cannot authorize forestry companies to harvest timber on Tsilhqot'in title lands.[30] Justice Binnie has noted that in *Tsilhqot'in*, the SCC was not prepared to determine whether *Section 35* covers self-government, but instead looked the issue of the right to control lands. He noted that its findings with respect to Aboriginal title feeds into a potential interpretation of self-government, as the decision discusses the right to control the land.[31]

Three Orders of Government

Over the past several decades there have been moves within the federal government to become more enabling than prescriptive of local decision-making and control. First Nation governments have increasingly become the decision-makers on reserve with the federal government largely withdrawn from administering the day-to-day lives of their citizens. However, currently, the Constitution only recognizes two levels of government: federal and provincial. *Section 37* included the agenda item of giving greater definition to *Section 35* and gaining explicit acknowledgement of Indigenous governments as a third order of government within the Canadian Constitution.

Many view the *Charlottetown Accord* (1992) as the high watermark of recognition of self-government, because of its recognition of the inherent right of self-government and a third order of government. Justice

[29] Canada. Aboriginal Affairs and Northern Development Canada. General Briefing Note on Canada's Self-Government and Land Claims Policies and the Status of Negotiations. Ottawa: GPO, 2012
[30] Tsilhqot'in Nation. Summary of the Tsilhqot'in Aboriginal Title Case (William Case) Decision.
[31] IOG. RCAP Symposium Report. 2014. Pg. 11.

Binnie, on the other hand, maintains this high-water mark was achieved in 1973 in *Calder*, which recognized the right to self-government had never been lawfully extinguished. Having a right to self-government recognized is one thing, but what is being governed is the most important matter. Justice Binnie notes there is a big difference between a third order of government that can license grocery stores and one that has the can regulate its economy. Furthermore, if a nation can regulate its existing economy, much will depend on the land and resource base available for that economy.[32]

At an IOG panel earlier this year, Justice Binnie has noted that the notion of First Nations as nations has always been in the law. Indigenous rights have always been considered collective and not individual rights. He noted that in *Calder*, the judge noted all the Nisga'a wanted was to simply carry on living as their forebears had lived, as a nation in their territory. Justice Binnie contends that what self-determination means in the context of Canadian confederation is that Indigenous peoples will no longer be treated in top down manner or as wards. They will speak as equals at the bargaining table and their right to determine their own fate in areas that affect them will be respected, where First Nations will have the last word. Co-panelist William David, Executive Director of the Indigenous Rights Centre, on the other hand, countered by saying that a nation-to-nation relationship has to, somehow, take on the idea of sovereignty as part of the bundle associated with self-determination and autonomy.

Though challenging for the state, this discourse remains important to many Indigenous leaders and is likely to remain part of the conversation, as demonstrated in a defining statement by Idle No More on a National Day of Action in late 2012:

> Idle No More seeks to assert Indigenous inherent rights to sovereignty and reinstitute traditional laws and Nation-to-Nation Treaties by protecting the lands and waters from corporate destruction. Each day that Indigenous rights are not honored or fulfilled, inequality between Indigenous peoples and the settler society grows.[33]

The challenge in recognizing a third order of government is determining the division of powers amongst each order. Negotiation will still have to determine who can do what under what circumstances and whose laws are superior to the other levels of jurisdiction. This has become more complicated with the *Daniels* decision, which appropriately brings Métis, non-Status Indians and Inuit into the mix. With *Daniels*, the expansion of Aboriginal peoples under *Section 91(24)* jurisdiction to these other constituencies is massive.

Defining Your Nation's Jurisdiction

Former President of the Council of the Haida Nation (CHN), Miles Richardson noted that a key step in self-governance is clarifying which jurisdiction a nation will exercise. Governance is about power, the making and executing of decisions. As the Crown has usurped most pre-existing First Nation jurisdictions, to reclaim their self-governance First Nations need to define and prioritize jurisdictions, while building the capacity to exercise them. Richardson notes that Haida definitions of jurisdiction had nothing to do with the *Indian Act*. The CHN unilaterally passed legislation to protect Gwaii Haanas reading, "This area will remain in its natural state in perpetuity." At the time, the Province of BC was allowing clear cut logging in Gwaii Haanas, a site of profound value to the Haida. The Haida blockaded logging operations and several renounced their Canadian citizenship when arrested to demonstrate to the courts that they were not breaking Canadian law, but contesting it as Indigenous rights are inherent rights and do not derive from the Crown.[34]

[32] IOG. Closing the Gap Symposium Report. 2013. Pg. 13-14.
[33] Idle No More. The Story. http://www.idlenomore.ca/story
[34] IOG. Closing the Gap. 2013. Pg. 20.

Research by the Harvard Project has confirmed that governing institutions must have legitimacy with their people to be successful. This means that the citizens have to view those institutions as appropriate for them or a cultural match. There must be "a fit between the formal institutions of governance and the underlying political culture of the society being governed."[35] However, for decades, Indigenous peoples have functioned within regimes driven by federally imposed structures and funding regimes. The implication of this finding by the Harvard Project is that many Indigenous citizens have no authentic connection to the systems and structures of governance they currently live under.

Former Chief of the Tsawwassen First Nation (TFN), Kim Baird, has explained that the TFN has replaced the *Indian Act* with new legislation and new institutions, rebuilding their governance from the ground up. While she acknowledged the treaty did not deliver everything the nation wanted, the TFN conducted a risk assessment to assess whether the treaty would be better or worse for the TFN than remaining under the *Indian Act*. Several years after the treaty was concluded, Baird was able to assess that the jurisdiction the TFN holds serves the TFN better than the *Indian Act* many times over. The TFN is now able to pass its own laws without permission from the federal government. TFN lands are no longer considered reserve lands falling under the purview of *Section 91(24)*. However, the parties have not agreed how to classify TFN lands, with the federal and provincial governments refuse to recognize this land as TFN land.[36]

Capacity

Critical to the operation of self-government and its "acceptance" by other levels of government is capacity. Achieving self-governance goals depends on capable administration. While some nations or communities have their administrative houses and good management practices in order, others may have difficulty organizing effective administrations or establishing good management practices. First Nation governments need to take the opportunity to reflect on what forms of governance best suit their needs and cultures, determine what needs to be done and establish their own governing frameworks in support of the First Nation's goals, including appropriate redress mechanisms such as tribal courts or other mechanisms to resolve internal disputes and address conflicts. For most First Nations, operating under the long-standing application of the *Indian Act* has been an impediment to the creation of their own governance structures. For the Inuit in Nunavut, this may simply be a matter of reconciling a decentralized governance system with localized administrations that are vast distances apart and have varying capacities and infrastructure. As Métis governance structures evolve, efficiency and effectiveness will be tied to greater legal authorities and predictable financing that will enable them to fulfil the needs of their constituents.

At the IOG Closing the Gap symposium, Justice Minister Jody Wilson-Raybould - then BC AFN Regional Chief - asked, if the federal government provided full acknowledgment of self-government for all Indigenous nations and communities today, would all of them be ready?[37] Many would not. Former RCAP Commissioner Paul Chartrand identified three principles of good governance that Indigenous leaders should adopt in order to achieve a workable model of self-government:

- *Legitimacy:* legitimacy of government requires that people recognize it and that the government has the support of others (in this case the Crown), echoing the National Chiefs' position that the right to self-determination is reconciled with Canada's assumed authority;

- *Power:* wherein a government has the legal capacity to act (in other words the full implementation of the *Inherent Right*); and,

[35] Manley Begay Jr. et al, "Development, Governance, Culture: What are they and what do they have to do with rebuilding native nations" in Miriam Jorgensen, *Rebuilding Native Nations* (Tucson: University of Arizona Press, 2007) at 48.
[36] IOG. Closing the Gap Symposium Report. 2013. Pg. 24-25.
[37] Ibid. Pg. 16.

- *Resources:* including both the necessary and financial and human resources to ensure that a government capacity meets the needs of its people (which directly correlates to a fair share in economic benefits).[38]

Indigenous nations and communities need to lead their own governance renewal and nation rebuilding processes, while Canada can play a supporting role in this nation and capacity building. Canada can invest in community engagement and decision-making processes, so that nations have a clear vision for what they will do with self-government and how they will do it, and Canada can provide funding support to help build and sustain self-government capacity.

Limits of Litigation

There are significant risks and disadvantages to Indigenous peoples when relying primarily on the courts to provide answers. When the SCC leaves issues unaddressed or ambiguous, federal and provincial governments often turn to lower court decisions for direction or justification. Lower court rulings often provide far less favourable interpretations of the scope and existence of Aboriginal rights. Moreover, Aboriginal title and rights are sui generis and based in Indigenous peoples prior occupation of and governance in their territories. Canadian law, stemming as it does from a European source and perspective, is unlikely to be able to reflect and appropriately represent the values and principles that are central to Indigenous law.

At the IOG Closing the Gap symposium, Jim Aldridge stressed the risks of Indigenous peoples pursuing self-government through litigation, as this approach yields a very limited interpretation of rights that have to be tied to pre-contact practices.[39] For example, in *R. v. Pamajewon*, the SCC decided not to look at the broad question of self-government, but to focus on gambling. They asked what historic governance and regulation of gambling was before contact and found it to be a modern practice.[40] This is the risk of turning to the courts to fill in the box. In addition to imposing a huge burden on First Nations to find and pay for expert anthropologists to document the pre-contact existence of such practices in the courts, it chains self-governance to pre-Contact practices only. The more narrowly the SCC defines self-governance in each case, the less helpful these cases will be for Indigenous peoples.

Current Assembly of First Nations' National Chief Bellegarde has also cautioned Indigenous people against turning to the Canadian court system for the enforcement of their treaty rights, as it is a foreign court system based on different legal and cultural principles and will have an inherent bias against Indigenous people it lacks Indigenous representation and will apply a different cultural understanding and frame of reference.[41]

New Intergovernmental Fiscal Relationships

A nation-to-nation relationship in which Canada recognizes and supports the Indigenous right to self-government carries an accompanying need for equitable and stable funding to support that governance capacity. Colonization has left large numbers of Indigenous people impoverished. When institutions fall short of what they set out to do, trust is lost, and their legitimacy can be called into question. Changing these unfair conditions will require collaboration of other levels of government, along with the private sector to address infrastructure, program and services, and economic and social gaps. Fiscal relationships are a key element of a nation-to-nation relationship. Sufficient and appropriate resources are essential for institutions and communities to achieve and sustain their vision.

[38] IOG. Beyond Section 35 Symposium Report. 2012. Pg. 8.
[39] IOG. Closing the Gap Symposium Report. 2013. Pg. 8-9.
[40] *R. v. Pamajewon*, [1996] 2 S.C.R. 821.
[41] IOG. Closing the Gap Symposium Report. 2013. Pg. 17.

A new fiscal relationship is needed for several reasons:

- The sustainability and fairness of funding levels impact the ability of Indigenous governments to provide needed services to their citizens.
- Indigenous peoples face some of the most severe socioeconomic disparities in the country and, result, their governments often have a more challenging time delivering adequate services than other governments.
- A stable, reliable funding base is necessary for economic development and transforming socioeconomic disparities.[42]

Move from Two Percent Funding Cap & Grants & Contribution Funding Method

While RCAP called immediate investments in health, education, and social infrastructure to end the disparities experienced by Indigenous peoples, a 2% cap on annual expenditure increases has been in place for First Nations receiving INAC funding since the mid-1990s[43]. As a result, support for social programs and needed infrastructure have not kept up with inflation and population growth, with Indigenous peoples being one of the youngest and fastest growing demographics in the country. This is a major reason many Indigenous communities are experiencing a housing shortage and issues with clean water, amongst a plethora of other social and health issues.

The AFN has drawn a clear and stark comparison, showing the fundamental inequity in services delivered through funding from the federal government relative to those delivered to other Canadians by other jurisdictions. Funding for all of these services ultimately comes from the federal government. In the case of First Nations, funding is typically provided via grants and contributions, while provinces and territorial governments receive funding for these core services through dedicated transfers:

- Canada Health Transfer (CHT): largest major transfer, which provides long-term, predictable funding for health care. These transfers are legislated to grow by 6% annually.
- Canada Social Transfer (CST): a federal block transfer to support post-secondary education, social assistance, social services, early childhood education and childcare. They are legislated to grow by 3% annually.
- Territorial Formula Financing (TFF): provides funding to the three territorial governments, supporting essential public services in the North, including hospitals, schools, infrastructure and social services. It is designed to recognize the high costs of providing these services to a large number of small and remote communities.
- Equalization: addresses fiscal disparities amongst provinces, enabling less prosperous provinces to provide comparable public services to their populations as other provinces. These payments have increased at least 3.5% annually for a number of years.

In contrast, First Nation governments are required to accept uncertain, discretionary program funding with no legal protection. Annual increases of 6%, 3.5% and 3% are made available for funding to support services and programs for provinces and territories stands, versus the 2% cap for Indigenous program spending. Moreover, the AFN notes that "when adjusted for inflation and the rapid population growth of First Nations communities since 1996, the total budget for INAC has decreased by 3.5% and funding for

[42] Assembly of First Nations. Delivering Fairness, Stability and Results: Transforming Fiscal Accountability relationships between First Nations Governments and the Government of Canada. Discussion Paper. September 2011.

[43] "Indigenous Affairs Minister Carolyn Bennett says the Liberal government remains committed to removing a 2-per-cent cap on funding increases for First Nations programming in its first federal budget." Source: Toronto Star, February 22, 2016.

core services such as education, economic and social development, capital facilities and maintenance has decreased by almost 13% since 1999-2000.[44]"

Another comparison: while First Nations received approximately $8,400 per capita for all services (including provincial and municipal) in programs and funding in 2009; federal, provincial and municipal governments government spent an average of $18,178 per capita, more than twice as much spent on First Nations.[45] Not only is the 2% funding cap inadequate in meeting the serious unmet needs of many Indigenous people, it is patently unfair and inequitable. In 2007 the AFN and the First Nations Child and Family Caring Society of Canada launched a case resulting in the Canadian Human Rights Tribunal ruling that the federal government discriminates against on-reserve First Nation children by failing to provide the same level of child welfare services that exist in the provinces.[46]

While funding for provinces and territories is stable and predictable, current funding arrangements for services for First Nations are determined annually, with unilateral realignment and adjustments (i.e., reductions) subject to changing program parameters and reporting obligations. The Auditor General's 2011 Status Report found that the problem federal government efforts to address Indigenous poverty goes deeper than existing programs lacking efficiency and effectiveness, but that key structural impediments play a major role in limiting improvements in service delivery and quality of life in in Indigenous communities:

- Lack of transparency about service levels: While in some cases there is a policy commitment for the federal government to provide services on reserves that are otherwise provided by provincial or municipal governments at a comparable rate to those in other jurisdictions, the range and level of services and level of comparability to those in other jurisdictions is poorly defined.
- Lack of a legislative base: While other jurisdictions have legislation outlining the provision of services and associated responsibilities, the federal government provides core services and programs to First Nations on a policy and discretionary basis, resulting in vulnerability for First Nations.
- Lack of an stable funding mechanism: Using contribution agreements to fund core services and on-going programs (e.g., health care or education) leads to poor stability and inability to plan; issues with timeliness of; difficulty for Indigenous governments to be accountable to their citizens; and onerous reporting.
- Lack of civil society organizations to support service delivery at the community level:Indigenous governments generally do not have access to institutions that support service delivery, such as school boards or other regional bodies.[47]

In addition to providing equitable levels of funding support, a nation-to-nation relationship also entails moving away from the grants and contributions approach that has characterized funding for First Nations to-date to a new form of fiscal transfers that provide predictability of revenues, potentially along the lines of provincial or territorial transfers and potentially negotiated at those negotiation tables. If Canadian citizens living in different provinces are entitled to receive comparable service levels and quality, via equalization payments, why should this not also be the case for Indigenous peoples? True support for self-government should also include changing funding mechanisms to enable Indigenous governments to set

[44] Assembly of First Nations. Delivering Fairness, Stability and Results: Transforming Fiscal Accountability relationships between First Nations Governments and the Government of Canada. Discussion Paper. September 2011.
[45] Ibid.
[46] Tim Fontaine. Canada discriminates against children on reserves, tribunal rules. On-reserve child welfare system receives up to 38% less funding than elsewhere. CBC News. January 26, 2016.
[47] Assembly of First Nations. Delivering Fairness, Stability and Results: Transforming Fiscal Accountability relationships between First Nations Governments and the Government of Canada. Discussion Paper. September 2011.

their own funding and policy priorities. Block funding should be provided allowing for discretion along with agreed upon socioeconomic objectives.

The AFN advocates for a new fiscal relationship to include the following priorities:

- *Equity.* Funding commitments to First Nation governments that are at least equal to that provided to provincial and territorial governments.
- *Fairness and Security.* Ensuring that basic services enjoyed by all Canadians are not jeopardized and a standard of care guaranteed
- *Stability.* Long-term, legislated funding transfers that have automatic escalators.
- *Predictability.* The ability to engage in financial planning with confidence regarding future revenues and expenditure obligations.
- *Accountability.* Delivering transparency, effective and appropriate reporting to First Nation citizens, from First Nation governments and to the Government of Canada
- *Authority/Autonomy.* Greater authority to set priorities and determine how the fiscal priorities of First Nation communities are determined.
- *Flexibility*. Fiscal transfers that are flexible enough to enable effective decision making power for First Nation governments.
- *Access to capital*: Increasing First Nations' economic growth will require improved access to capital so that First Nations can build the necessary physical infrastructure and attract business investment.[48]

While Inuit have access to the same non-insured health benefits as Status Indians, Inuit are ineligible for many other health and social programs dedicated to Status Indians, particularly on reserve. The federal government's focus on the Arctic and sub-Arctic excludes regional Inuit homelands of Nunavik and Nunatsiavut (northern Labrador) overlooks how ocean-oriented Inuit are as people - Inuit marine territorial use is larger in scope than their land-based territorial use and occupation. Perhaps most importantly, Mary Simon notes, the federal government provides strong support for education and other language programs for Anglophones and Francophones Nunavut, but little funding support for the Inuktitut, the majority language in Nunavut. This contributes to a host of socioeconomic challenges, including lower graduation rates, unemployment and other issues that become a vicious cycle.[49]

Tom Issac's report notes that current programs designed for First Nations often exclude the Métis, which can have serious consequences for Métis. For example, Métis are not able to access programs that support the costs of medication for Status Indians.

Own Source Revenues & Revenue Sharing

Another fiscal issue pertaining to the nation-to-nation relationship is the "clawing back" of First Nations' own source revenues (OSR) by the federal government, which institutionalized the poverty of First Nations people. This makes it difficult for Indigenous people to break free of the cycle of poverty and gear up for innovation. A legitimate argument could be made that Indigenous peoples should adopt the principle that OSR claw backs are off the table until the quality of life in their community or nation on par with the quality of life experienced by other Canadians. Moreover, OSR "clawbacks" without equal living conditions removes a key incentive for First Nations to become economically independent. As former Chief Commissioner of the BC Treaty Commission Sophie Pierre has pointed out, when a First Nation benefits, the whole region and country benefits, but the reverse is not necessarily true.[50] The concept of OSR needs to be reexamined so as not to penalize communities that are achieving some success.

[48] Ibid.
[49] Mary Simon. How do Canada and Inuit get to win-win in the Arctic? Policy Options: The Public Forum for the Public Good. August 1, 2012.
[50] IOG. Closing the Gap Symposium Report. 2013. Pg. 30.

Accountability and Capacity Building

Within Indigenous governments, self-government and equitable, stable financing will require mechanisms and practices in place to transparency and accountability expectations, both of federal funding partners and Indigenous governments' own citizens. This requires a specific form of capacity building to put these mechanisms and practices into place. The terms of reference for transparency and accountability expectations should be negotiated between Indigenous governments and the federal government. Former National Chief Phil Fontaine also suggested the addition of a National Aboriginal Auditor General to oversee implementation of the transparency and accountability standards. William David suggests one of the biggest changes we need is to distinguish accountability from responsibility. Currently, he notes, "We work in a framework of accountability with respect to First Nations because we are counting beans. We don't think of necessarily in terms of their governance responsibilities to their own citizens."[51]

Institutional Arrangements

The *First Nations Fiscal and Statistical Management Act* (FSMA) was entered into force in 2006 and was developed to address economic development and fiscal issues on-reserve so as to improve certainty, confidence and infrastructure for participating First Nations, taxpayers and investors. It created the legislative framework to establish four national institutions:

1. The First Nations Tax Commission (FNTC), a shared-governance corporation that regulates and streamlines the approval of property tax and new local revenue laws of participating First Nations, builds administrative capacity through sample laws and accredited training, and reconciles First Nation government and taxpayer interests.
2. The First Nations Financial Management Board (FNFMB), a shared-governance corporation that assists all First Nations in strengthening their local financial management regimes and provides independent certification to support borrowing from First Nations Finance Authority and for First Nation economic development.
3. The First Nations Finance Authority (FNFA), a non-profit corporation that permits qualifying First Nations to work co-operatively in raising long-term private capital at preferred rates through the issuance of debentures, and provides investment services to First Nations and organizations.
4. The First Nations Statistical Institute (FNSI), an autonomous First Nations-led Crown corporation established to increase the quality and accessibility of First Nations statistics to improve planning, decision-making, and investment for all First Nations as well as federal, provincial, and territorial governments. This institute has been closed due to lack of funding support from the federal government.

In addition, Indigenous peoples have led the development of the *First Nations Lands Management Act (FNLMA)*, the *First Nations Commercial and Industrial Development Act (FNCIDA)*, the *First Nation Oil and Gas and Moneys Management Act (FNOGMMA)*, and the *First Nations Fiscal Management Act (FMA)*. Through the *FMA*, First Nations may protect and expand First Nation taxation jurisdiction, borrow money at fixed interest rates for amortization periods up to 30 years, and increase financial literacy and financial management capacity, along with being measured against international standards.

It has been suggested that the *FMA* can help support the transition period, moving from a dependency based relationship to a relationship where jurisdictional and fiscal room is made for Indigenous governments so they can participate in the significant economic development occurring in their traditional territories. Initially there was concern that the legislation was only beneficial to urban bands with possible tax bases, but non-urban bands are now looking to improve the accountability and transparency of their governments. Harold Calla has emphasized that Indigenous nations and communities have been shut out

[51] IOG FNFMA Panel Discussion. July 5, 2016.

of the wealth generated in their traditional territories and that Indigenous peoples deserve to unlock the value in their lands and take that value into the capital markets to leverage opportunities.

Greater financial support for *FMA* institutions would allow them to provide better support in the regions. Government acknowledgement of these *FMA* institutions would also play a valuable role, as would transfer of responsibilities from the federal government that would fit better within *FMA* institutions.[52] The FNFMB relies on the Aboriginal Finance Officers Association (AFOA) to create capacity at an individual level where the FNFMB supports capacity development at the institutional level. Both roles need to be built up to create opportunities for wealth.

First Nations Tax Commission (FNTC) Chief Commissioner C.T. (Manny) Jules notes that other fundamental changes are needed in federal legislation and policy in order to attain a true 'nation to nation' relationship, including institutional development with respect to property rights and tax jurisdiction, as First Nations have not been allowed to own land either as individuals or collectives. Another suggestion is an Aboriginal resource tax, to be applied to resources developed from Aboriginal title or other Aboriginal lands, would provide additional fiscal resources to Indigenous governments and benefit Indigenous populations.

Wealth Creation

Before colonization, Indigenous peoples had thriving trading-based economies and a high quality of life. As newcomers arrived, they continued to thrive as master traders. The introduction of the *Indian Act* and reserve system, the loss of two thirds of their original land base and removal of four generations of children from their families and communities to residential schools led to the disruption of their access to resources and passed down economic practices. Indigenous people are now in the process of recovering from attempts at assimilation and are working to regain control of their lands and resources, fueled with a desire to exercise their *Section 35* rights and title, and engage in wealth-generating enterprises compatible with the long-term sustainability of their territories and nations. Adequate financial resources are an important aspect of effective self-government. As RCAP noted, increasing opportunities for wealth-generation, through access to land and resources, as well and redistribution and economic development, is an important aspect of advancing the governance capacity of Aboriginal nations.

Closing Persistent Socioeconomic Gaps

> "It is well documented that Aboriginal Canadians lag far behind the Canadian average on almost every socio-economic indicator, including housing, education, unemployment, child poverty, and health and well-being…the Kelowna Accord was a $5.1-billion, five-year agreement designed to bridge the life gap between Aboriginal Canadians and the rest of the population."[53]

RCAP recommended restructuring health and social services to provide greater control to Aboriginal Canadians to address persistent disparities in health and wellness between Indigenous and non-Indigenous Canadians. A number of provinces have begun to implement innovative measures to provide better services through collaboration. The most notable example is in British Columbia, where the province, Health Canada and First Nations signed a tripartite agreement (in 2007), leading to the creation of the First Nations Health Authority (FNHA) in 2012. The FNHA sets out a new governance structure for the control of health care services provided to all Aboriginal people in BC. Similarly, in 2010, Saskatchewan signed a memorandum of understanding to establish its own tripartite agreement in view of a 10 year health plan

[52] IOG FNFMA Panel Discussion. July 5, 2016. Ottawa.
[53] Christopher Alcanatara, Zac Spicer, "Learning from the Kelowna Accord", The Public Policy Forum for the Public Good: July 6, 2015.

for First Nations, while in Ontario, the Trilateral First Nations Health Seniors Officials Committee was created in 2011 in partnership with the Chiefs of Ontario and the federal government.

The RCAP report recognized that advancing the socio-economic and health outcomes for Aboriginal peoples necessitates a holistic view of the determinants of health. Housing conditions were identified as a priority, including the recommendation that government uphold its obligation to provide adequate water, shelter, and sanitation services. Recommendations for on-reserve housing consisted of providing funds for regular maintenance, providing rental subsidies and other financial incentives. Solutions for off reserve housing related largely increasing funding for new social housing under Aboriginal off-reserve programs of the Canada Mortgage and Housing Corporation. In 2011, the federal government released an evaluation of First Nations housing which concluded that on-reserve housing shortages were severe and would only get worse. The report suggested 20,000-35,000 new units were needed to address the immediate shortage. The challenge is further compounded by the poor living conditions and overcrowding that afflicts many First Nations, with residents facing mold, flooding, and general deteriorating. Prior to AANDC's evaluation, the AFN predicted that between 2010 and 2031, a backlog of 130,000 units will emerge, 44% of existing units will require major repairs, and 18% will require replacement.

Canada is a world leader in education, yet numerous gaps persist between the educational attainment of Indigenous and non-Indigenous Canadians. Recommendations under the education section ranged from developing education authorities and Aboriginal controlled education systems, early childhood education, Aboriginal educators, and the creation of an Aboriginal People's University. After Stephen Harper's 2008 Indian Residential Schools' apology, the AFN applied increased pressure for action on First Nations education. Ultimately, an agreement was reached in 2014. The statutory framework includes five conditions, which AFN pushed for throughout the process:

- Respect and recognition of inherent rights and title, Treaty Rights and First Nations control of First Nations education jurisdiction,
- Statutory guarantee of funding,
- Funding to support First Nations education grounded in Indigenous languages and cultures,
- Mechanisms to ensure reciprocal accountability and no unilateral federal oversight or authority.
- Ongoing meaningful dialogue and co-development of options.

The resulting legislation, Bill C-33, the *First Nations Control of First Nations Education Act*, promised $1.9 billion in funding over 10 years to close the funding gap between Aboriginal and non-Aboriginal schools. However, numerous First Nations leaders called for the bill to be rejected, seeing it as an attempt to force a one-size fits all approach on the diverse nations that would be impacted. First Nations leaders have called on the federal government to negotiate unique agreements, instead of the single-agreement approach that was originally taken. High school graduation rates have not risen since 1996 (35% for First Nations schools), yet graduation rates have begun to rise for First Nations controlled schools, such as those administered by the Mi'Kmaw Kina'matnewey in Nova Scotia.[54]

Further, *Daniels* found *Section 91(24)* of the Constitution Act, 1867 applies to Métis and non-Status Indians in addition to Status Indians. This does not mean that the *Indian Act* applies to Métis or non-Status Indians. The key impact of the case is that, up until this ruling, Métis and non-Status Indians had to rely simply on the "goodwill" of the government for any sort of program or funding support. While it had been maintained that *Section 91(24)* did not apply to them, they were left to fall through the cracks of inter-jurisdictional disputes between the federal and provincial governments over who should pay for programs and services they received. The SCC clarified that Métis and non-Status Indians should turn to one entity, the federal government to address their historical disadvantages.

[54] IOG. Revisiting RCAP Discussion Paper. 2014. Pg. 39

Ensuring Access to a Healthy Land Base

Committing to a nation-to-nation relationship involves rapidly increasing the fair settlement of First Nation land claims and resource revenue sharing agreements. RCAP recommended increasing Indigenous peoples' land base as central to creating wealth, that can further social outcomes for communities.

In 1996, 14 First Nations and the federal government signed the Framework Agreement on First Nations Land Management, which was ratified through the 1999 *First Nations Land Management Act*. The Act creates the First Nations Land Management Regime, which allows participating First Nations to opt out of certain land-related provisions of the *Indian Act* and enact their own laws to manage reserve land, resources and environment under a land code established by the First Nation. While the regime does not provide for full-fledged self-government, some see it as a practical step towards self-government.[55]

In 2014, the federal government announced it would take several key steps to increase the Indigenous land base, including:

- Negotiating Non-Treaty Agreements: The Government signaled its willingness to consider proposals for treaty negotiation with Aboriginal groups not currently engaged in negotiation. The government will also consider participating in similar provincially-led negotiations.
- Negotiating Incremental Treaty Agreements: intended to be a more flexible approach to negotiation, the federal government is introducing a mandate to negotiate incremental treaties for groups already in the treaty process. A final treaty is the ultimate goal, however incremental treaties are seen as a way to achieve more immediate benefits for nations.
- Enhancing Canada's Approach to Aboriginal Consultation: the government plans to negotiate more consultation protocols in areas of high resource development, while also engaging on the existing guidelines for federal officials. Engagement will also include new guidance for industry.
- Facilitating Resolution of Shared Territory Disputes: the government signaled their willingness to provide support for Aboriginal nations engaged in territory disputes, noting that while the ultimate resolution must be decided by those nations. Proposed measures include providing support for alternative dispute resolution and information gathering.[56]

Governance & Separating Business from Politics

To ensure their own conditions of prosperity Indigenous nations need to ensure their governance processes are in order. As Stephen Cornell of the Harvard Project says, "At the end of the fight for self-determination there is a prize for the winners: it's called the governance challenge." Communities need to work through how they can ensure that the benefits they stand to receive from resources development results in meaningful community change. Professor Cornell argues "economic success in Native nations depends less on their resources than on how they organize to make use of those resources." Translating influence over decisions into meaningful community change requires communities to develop a vision for how new wealth will be used. Creating a shared community vision could involve answering difficult questions such as "what will we leave for those generations of our people who are yet to come?" For some indigenous communities, this vision includes the creation of sustainable enterprises that will live on when resource wealth comes to an end. It could also relate to the creation of cultural strategies and programs that ensure socio-economic advancements do not come with a resulting loss of language, history, values or environmental degradation.[57]

Chief Norm Hardisty Jr. of the Moose Cree First Nation noted that traditional systems of governance and decision-making were eliminated under the *Indian Act*, so to be able to advance as a nation the Moose

[55] Ibid. Pg. 28.
[56] Ibid. 44-45.
[57] IOG. Building Relationships Symposium Report. 2013. Pg. 10.

Cree focused on developing an engagement process to help set local priorities. Through self-funded community information sessions and referendums held before the signature of major agreement, they have developed governance capacity and good governance processes that are transparent and values-based. The emphasis has been on separating business from politics, to ensure decisions adequately reflect the best interests of the community, while securing the support and buy-in of the community. While often the decisions faced are complex, the community process emphasizes information and transparency, to create a meaningful decision-making process. The Moose Cree are now planning the development of a Moose Cree constitution, to formalize the governance practices that have allowed them to develop strong industry partnerships and create significant wealth for the community.[58] To attract outside investment, an Indigenous nation or community has to be an attractive governance entity to business.

Overlapping Claims

Another issue that has emerged a number of times is disputes stemming from overlapping claims. To the extent Indigenous nations or communities can come together to deal with overlapping claims, they stand to see a significant economic benefit. Take for example, the collaboration of the Musqueam, Tsleil Waututh and Squamish Nations in purchasing the Jericho Lands in Vancouver earlier this year. With Vancouver real estate soaring, these three First Nations with overlapping territories will be able to earn revenue off of the rents generated from developing those lands. This deal was made easier by previous working relationship in the lead up to the 2010 Vancouver Olympics. BC AFN Regional Chief Shane Gottfriedson has highlighted the importance of creating protocol agreements with neighbouring nations to govern how engagement with third parties will take place. Rather than allowing industry to play one community off against another, his home community, the Tk'emlups Band, created protocol agreements with its neighbours to reflect shared interests within their territories.[59]

Getting a Seat at the Table

Indigenous nations and communities will prosper more if they are able to effectively get themselves a seat at key decision-making tables. Indigenous people have identified the need to build machinery of government to manage day-to-day relationships between federal, provincial and Indigenous Governments. A seat at the table with provincial and federal governments presents opportunities to discuss the priorities of the nation with respect to development, particularly education, health, training, environmental protection and remediation.

This is illustrated in Chief Jim Boucher's description of the transformation of the Fort McKay First Nation into one of the most affluent First Nations in the country. When oil sands development began, Fort McKay had little to no participation in the process and was uncertain as to how to move forward. At the beginning, Fort McKay felt the only option was to blockade industry. By drawing massive media and public attention to their nation, they also gained the chance to have direct conversations with decision makers, including the Attorney General of Alberta. From this initial confrontation, a mutually beneficial relationship with industry and governments has emerged and participation in resource development has provided OSR streams, which Fort McKay has reinvested in jobs for their people and in infrastructure and social services to support community needs. Chief Boucher also noted that Fort McKay took a slow and deliberate approach to business development, building companies on a gradual basis so as to provide stability and build resilience. Today, the Fort McKay First Nation has gown to operate over $70 million in businesses that provide them with resources to offer infrastructure and social services to their population.[60]

[58] IOG. RCAP Symposium Report. 2014. Pg. 15.
[59] IOG. Building Relationships Symposium Report. 2013. Pg. 11.
[60] IOG. RCAP Symposium Report. 2014. Pg. 16.

Equity Beyond IBAs

More Indigenous peoples are pursuing equity partnership or rent-accruing agreements with resource developers who look to develop resources on or transport them through their territories. Given the confirmation of Aboriginal title rights in the Tsilhqot'in decision, industry should be prepared to negotiate and/or offer such agreements with Indigenous governments. Chief Hardisty described how the Moose Cree First Nation, as partners with Ontario Power Generation in the Lower Mattagami Project, would have up to a 25% equity stake in the project. Beyond gaining equity stakes in resource development, the Moose Cree group of companies has developed into a mature community of supply chain contractors, operating diverse businesses that support the resource projects.[61] In addition equity partnerships not only serve as a good financial investment, they can also provide as important leverage in business decisions that can affect First Nations interests in their land.

Steve Morse, CEO of the Métis Voyageur Development, has highlighted the need for resource companies to build capital into the cost of a project for a nation's Indigenous people, in forms that can be leveraged or securitized by indigenous nations. Ultimately, the private sector must be ready to invest in partnerships with indigenous nations to ensure their project proceeds, while nations must be able to demonstrate effective decision-making processes to demonstrate their capacity for managing wealth.[62] Today, it is no longer enough to simply invite representatives to have a conversation; instead, industry needs to learn the culture and values of the community to understand where its priorities lie, and develop a shared path to development.

Investing in Business, Investing in Community

To further support their economic development, Indigenous peoples can reinvest surplus revenues generated or accrued from other sources into infrastructure and social programs for community members. In the Yukon, many different models for wealth creation and self-governance exist, exemplified by the experience of the Carcross Tagish First Nation. While not located near major resources, as "triple bottom line" investors, Carcross Tagish has developed unique businesses that position them as tourism leaders, balancing the desire for ecological preservation with the need for wealth creation. Justin Ferbey, President of the Yukon Development Corporation and former CEO of Carcross Tagish Management Corporation, urges Indigenous governments and entrepreneurs to flip "capacity" issues on their head by focusing determinedly on the two or three things that their nation or community does really well.[63]

Moving Forward

Upon the 20th anniversary of RCAP, the 150th anniversary of Confederation, and the renewed commitment of the federal government to a nation-to-nation relationship with Indigenous peoples, we have before us the opportunity to revisit the recommendations of RCAP and assess how we can bring forward and implement many of the unfulfilled recommendations so essential to closing the gap between Indigenous peoples and non-Indigenous Canadians. If reconciliation was the overarching theme of the RCAP report, nation building, with self-government as the ultimate expression of nationhood, was the most important activity the Commissioners saw to achieving this end. A new nation-to-nation relationship is a fundamental component of fostering reconciliation and restoring resilience to Indigenous Nations.

[61] Ibid. Pg. 15.
[62] Ibid. Pg. 17.
[63] Ibid. Pg. 17.

Previous IOG symposia, panel discussions and interviews helped identify a number of core areas for focus and reform and a number of core questions the upcoming dialogues can address to provide greater insight and clarity to support moving to a nation-to-nation relationship.[64]

Involve Indigenous Peoples in Federal Government Priority Setting

In working to implement the massive agenda the Prime Minister has laid out for the government in committing to a nation-to-nation relationship, the public service will be challenged in thinking through and planning how to carry out this commitment in the course of their regular and evolving departmental mandates. Some guidance in how this agenda is to be carried out is provided in the Mandate Letter the Prime Minister has written to the Minister of INAC, Carolyn Bennett, which outlines several core responsibilities, including:

- Support the work of reconciliation, including truth telling and healing, including implementing the recommendations of the TRC, starting with implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Review laws, policies and operational practices to ensure the Crown fully executes its duties to consult and accommodate.
- Establish a new fiscal relationship lifting the 2% cap on annual funding increases.
- Work on a nation-to-nation basis with the Métis Nation.
- Work with NRCan, ECCC and DFO to ensure environmental assessment (EA) legislation is amended to improve Indigenous engagement in EA and monitoring.
- Work with Minister of Health to expand Nutrition North, in consultation with northern communities.
- Work with Minister of Infrastructure and Communities, in consultation with Indigenous peoples, to improve essential infrastructure for Indigenous people, including housing.[65]

Implementing an agenda of this size will require framework and priority setting, which should be done in conjunction with Indigenous peoples and then implemented in a very disciplined way, to ensure that 20 years from now we are not returning to the same issues and same recommendations still largely unaddressed and unchanged. Actively involving Indigenous peoples in framework and priority setting, in an explicitly cooperative manner, will serve to build much needed trust. Structured meetings between the Minister and Indigenous leaders will ensure ongoing strategic dialogues, rather than maintaining the existing adhoc mechanisms for discussion. Under the new federal government, there appears to already be some shift in this direction, with INAC opening close to 20 "exploratory tables" with Indigenous leaders on the issues of self-government and land agreements. These tables are non-binding discussion groups meant to build consensus ahead traditional negotiations over powers and jurisdiction and are intended to factor in the diversity of different nations and communities, recognizing that a one-size fits all approach is not consistent with a nation-to-nation relationship.[66]

[64] While recognizing and supporting Indigenous self-government and establishing an equitable fiscal relationship are core to a nation-to-nation relationship, detailed discussion these themes are left for the second and third major sections of this paper, respectively: Jurisdiction and New Intergovernmental Fiscal Relationships.
[65] Right Honourable Justin Trudeau, P.C., M.P. Mandate Letter-Minister Carolyn Bennett, Indigenous and Northern Affairs.
[66] James Munson. Nation-to-nation relationship taking shape: INAC says indigenous groups will have power to reorganize, propose new treaties, even leave the Indian Act. iPolitics. June 4, 2016.

Moving Beyond the Indian Act and Reserve System

A conclusion of the *Closing the Gap* Symposium was that, while there may be a place for Canada to support nation rebuilding under *Section 91(24)* of the *Constitution Act, 1867*, this should not be attempted through the *Indian Act* system, which, in the eyes of several participants, positions Chiefs and Councils as little more than mechanisms for delivering federal programs.[67] Moreover, *Delgamuukw* recognized that Aboriginal rights and title rests with nations, not bands.[68] At that forum, current Justice Minister Jody Wilson-Raybould argued that continued involvement with *Indian Act* system diminishes First Nations capacity. She called on Indigenous leaders to consider how they should develop their nations' and communities' governance capacity as the federal government moves closer to recognizing the inherent right of self-government. Others noted that the reluctance of Canada to move beyond the reserve and *Indian Act* system leaves many Indigenous people feeling a lack of trust that government intends to honour its commitments under *Section 35* and UNDRIP. [69]

RCAP recommended restructuring the 633 Indian Act bands to approximately 50 nations. The question of how to make this transition is one that should be discussed in any forum on a nation-to-nation relationship between Canada and Indigenous peoples. Currently, one challenge is that the federal government continues to require action or approval by *Indian Act* bands to move toward aggregation. There is wide appreciation, however, for the fact that any aggregation must happen organically and rest upon a common vision amongst Indigenous peoples involved.

Moreover, as noted above, RCAP recognized that Indigenous peoples have lost at least two thirds of their land base since Confederation and clearly stated that for socio-economic gaps to be closed, land transfers will need to occur. With high rates of poverty, unemployment and other social issues on many reserves, it is clear that the reserve model cannot deliver the quality of life Indigenous peoples deserve as a matter of basic human rights under international law, as a matter of their specific rights under *Section 35* and as a matter of Canada's fiduciary duty under *Section 91(24)*. Some progress has been made as a result of the few treaties and comprehensive land claims that have been negotiated in contemporary times as well as the creation of the Specific Claims Tribunal in 2007, to reform the specific claims process.

If the *Indian Act* is a colonizing instrument of legislation, which broke nations apart into individual bands representing communities, a decolonizing nation-to-nation relationship would support the nation rebuilding process that facilitates them coming back together. This process must start by recognizing the diversity amongst and within Indigenous nations and communities across the country. While a more unified approach would provide greater administrative ease to Canada, this is not the reality of the Indigenous nations that existed prior to contact, nor those that continue to exist today.

Rebuilding nations means supporting their transition to self-governance, with adequate fiscal support for stable governance capacity, support for healing and other vital social programs and opportunities to benefit from economic development, including revenue sharing. It also means upholding the Honour of the Crown by implementing existing treaties, particularly in light of oral and other evidence Indigenous peoples provide for their interpretation of the original intent and commitments of those treaties, and negotiating new ones in good faith where they do not currently exist. [70]

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[67] IOG. Closing the Gap Symposium. 2013. Pg. 16.
[68] Delgamuukw *v.* British Columbia, [1997] 3 S.C.R. 1010.
[69] IOG. Closing the Gap Symposium Report. 2013. Pg. 16.
[70] RCAP. People to People, Nation to Nation. Looking Forward, Looking Back. Rebuilding Aboriginal Nations.

INAC has recently noted it is open to taking a new approach to the numbered treaties that cover Ontario and the Prairies, where the *Indian Act* has come to play a greater role than in nations and communities with post-1975 agreements on land and government.[71] INAC dialogue tables with Indigenous leadership provide an opportunity to clarify and incorporate Indigenous interpretations of what the numbered treaties meant to Indigenous peoples at the time of negotiation. AFN National Chief Perry Bellegarde notes: "For us in the numbered treaties, there have never been processes to move beyond the *Indian Act*."[72] Canada has not implemented the numbered treaties in a manner consistent with *Section 35* case law. These tables provide the opportunity for that to be corrected. There are approximately 70 pre-1975 treaties, 26 modern comprehensive land claim agreements and over 100 self-government and land claim tables still in process, many of which have been going on for decades, across the country. Not including Inuit and Métis, the majority of First Nations people, 59%, or 364 out of 617 communities, live under pre-1975 treaties.[73]

These tables are also opportunity for exploratory discussions in places where treaties have not been signed, like much of BC, where many First Nations have decided not to participate in the treaty process.

Fair and Equitable Negotiations

In the *Beyond Section 35 Symposium* hosted by the IOG in late 2012, Grand Chief Stewart Phillip compared the current relationship between Canada and Indigenous peoples as a very, very bad marriage in which Indigenous people have to drag Canada into the room, kicking and screaming, just to have basic discussions on the unfair socioeconomic disparities experienced by Indigenous peoples and unmet Aboriginal rights.[74] The current treaty negotiation system is not working equitably. First Nations are incurring far too much debt during the negotiation process, while key jurisdictions and substantive issues are not being addressed (eg. some report Canada has said it will not even discuss fisheries in treaty negotiations).[75]

Moreover, federal and provincial governments have not acknowledged Aboriginal title at the treaty-negotiating table and continue to pursue the goal of extinguishment or 'modification.' At the *Closing the Gap* Symposium hosted by the IOG in early 2013, Jim Aldridge noted his surprise at how federal and provincial governments have found in Delgamuukw something of a silver lining: the opportunity to justify infringement, which has unfolded as an available policy option for governments wanting to violate *Section 35* rights. He noted federal and provincial governments have interpreted infringements to be almost as good as extinguishment and to believe that infringement is always available as a tool, so long as provided justification can be provided. After a certain point, it becomes difficult to distinguish between multiple infringements and extinguishment in effect.[76]

Others are calling for a treaty implementation oversight mechanism. The *Nisga'a Final Agreement* has been in place for more than a decade, but the Nisga'a note they still constantly have to deal with Canadian authorities who know nothing about the treaty.[77] Many Indigenous leaders have noted that Canada shows no real sense or appreciation of urgency in negotiating treaties or in moving forward to address the disparities Indigenous peoples face relative to non-Indigenous Canadians.

[71] In 1975, two years after the *Calder* decision, the first modern land claim was signed in Quebec.
[72] James Munson. Nation-to-nation relationship taking shape: INAC says indigenous groups will have power to reorganize, propose new treaties, even leave the Indian Act. iPolitics. June 4, 2016.
[73] Ibid.
[74] IOG. Closing the Gap Symposium Report. 2013. Pg. 25-26.
[75] Ibid. Pg. 29.
[76] Ibid. 8-9.
[77] Ibid.

Invest in Public Education

> "What actions are non-Aboriginal Canadians prepared to support to develop more positive relations with Aboriginal peoples? First and foremost, it starts with education; there is a broad public consensus on the importance of learning about the historical abuses and discrimination that Aboriginal peoples have faced in Canada. Solid majorities also give strong backing to education-related recommendations of the Truth and Reconciliation Commission to include mandatory curriculum in all schools to teach about Aboriginal history and culture, and to ensure that funding for Aboriginal schools matches funding for other schools in the same province or territory. There is also strong public support for actions to mitigate the loss of Aboriginal culture through funding to ensure the preservation of Aboriginal languages, and to improve the living conditions on reserves. Smaller majorities endorse steps to cede full control of land and resources to Aboriginal peoples, and to settle outstanding land claims at whatever the cost."[78]

One of the most important and consistent themes that has emerged in IOG symposia, forums and interviews – not to mention within the TRC's Calls to Action - is the need for federal, provincial and even municipal governments, and other civil society organizations such as universities, think tanks and non-governmental organizations to invest in concerted efforts to educate the public about the history of this country, Indigenous realities, Indigenous cultures and Aboriginal rights and title. During the negotiations to include Aboriginal rights in the Constitution, media attention brought unprecedented public awareness to Indigenous peoples; however public attention usually stems from some sort of tragedy, such as the suicide crisis in Attawapiskat and other communities, the shooting death of Colten Boushie, or the Missing and Murdered Indigenous Women Inquiry. Media and public attention to Indigenous realities is infrequent and unsustained. Moreover, as a country of immigrants, with hundreds of thousands of newcomers each year, lack of public understanding presents a serious challenge for reconciliation.

This lack of public understanding affects the actions of Canadian government, contributing to the adversarial approach much of the relationship has taken. The public at large shows a strong lack of knowledge and understanding of the history and current issues facing Indigenous people in Canada. This ignorance serves as a barrier to finding common ground. Public education about Indigenous culture, rights and responsibilities is critical for a holistic reconciliation process in which Canadians expect and pressure their governments to deal honourably with Indigenous peoples.

This education and awareness raising process is needed within federal, provincial and municipal bureaucracies, to facilitate the implementation of a nation-to-nation relationship and to help ensure public service providers deliver culturally appropriate and safe services to Indigenous peoples, particularly important in light of the ongoing legacy of trauma and persistent racism Indigenous peoples are dealing with. In addition, the education system, particularly the public grade-school system needs significant reform to institutionalize knowledge of Indigenous history and rights so we do not longer have to continue to deal with wide ignorance and lack of understanding generation after generation, decade after decade.

The Truth and Reconciliation Commission (TRC) gatherings have played an important role in public education in recent years, bringing the stories of residential school survivors to the forefront of public dialogue. Dr. Marie Wilson, Commissioner of the TRC estimated that early gatherings of the TRC consisted of a close to 90% Indigenous audience, while by the end of its hearings nearly 50% of the audience was non-Indigenous participants. With regard to ongoing public education efforts, Dr. Wilson highlights that the process of healing is a Canadian journey – all of Canada needs to understand and heal from this historical tragedy.[79]

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[78] Environics Institute for Survey Research: *Canadian Public Opinion on Governance*, June 2016. p6
[79] IOG. Closing the Gap Symposium Report. 2013. 26-27.

Dedicated Entity within Federal Government to Manage the Relationship

Whether this entity is a newly created Department of Aboriginal Relations (as RCAP explicitly called for), or a permanent Indigenous Peoples' Review Commission to regularly monitor progress by government to honour and implement existing treaties, negotiate new treaties, and improve socio-economic conditions for Aboriginal people in Canada (as prominent former civil servants have called for), an empowered stand-alone entity should be created with the mandate of focusing on the relationship between Canada and Indigenous peoples.

A number of commentators have expressed that the status quo wherein INAC attempts to manage Indigenous people, rather than manage the relationship, is not in the spirit of respect consistent with a nation-to-nation relationship.[80] RCAP envisioned that a department such as INAC could continue to provide services non-self-governing nations will continue to rely on as they transition toward self-governance; but a stand-alone entity dedicated to managing the relationship is needed for a commitment to a nation-to-nation relationship to be realized, potentially located in the Prime Minster's Office (PMO) or the Privy Council Office (PCO) to be reflective of a nation-to-nation relationship. The concept to establish an entity to manage relationships is also iterated in the TRC call to action for a National Council Of Reconciliation.

The Isaac report also calls for Canada to establish a national office for all Métis matters in the country, to create a framework for negotiating and addressing Métis rights, to establishment of a Métis-specific claims process, a review of existing laws and policies that deal with Métis people, and to provide sufficient and ongoing funding for Métis governments.

Recent Developments

In December 2016 Prime Minister Justin Trudeau and Indigenous Affairs Minister Carolyn Bennett met (separately) with leaders of National Indigenous Organizations in Ottawa, including the Congress of Aboriginal Peoples, the Assembly of First Nations, the Metis National Council and Inuit Tapiriit Kanatami. On December 15, 2016 the Prime Ministered issued the following statement on advancing reconciliation with Inuit, First Nations, and the Métis Nation:

> "First, we will create permanent bilateral mechanisms with the Assembly of First Nations (AFN) and First Nations, the Inuit Tapiriit Kanatami and the four Inuit Nunangat Regions, and the Métis National Council and its governing members. In this Kelowna-like process, every year, we will meet to develop policy on shared priorities, and monitor our progress going forward. Similar meetings with key Cabinet Ministers will take place at least twice each year.
>
> "Second, we will establish an Interim Board of Directors to make recommendations on the creation of a National Council for Reconciliation. The Interim Board will begin an engagement process to develop recommendations on the scope and mandate of the National Council.
>
> "Third, we will provide $10 million to support the important work of the National Centre for Truth and Reconciliation located at the University of Manitoba, as recommended in Call to Action 78. This contribution will help to ensure that the history and legacy of Canada's residential school system is remembered.

[80] IOG. Closing the Gap Symposium. 2013.

"These announcements build on progress we have made together over the past year. Work is underway on 41 of the Calls to Action outlined in the Final Report of the Truth and Reconciliation Commission that fall under federal or shared purview.

"While much more remains to be done, I believe that we are making real progress towards renewing our relationship with Indigenous Peoples."[81]

Key Questions for Dialogue

Nation Building & Rebuilding

Governments and Indigenous peoples will need to come together to shape, evolve, build and grow in respectful partnership. Indigenous nations will need to be defined and legitimized by communities so that they can engage with government and institutions. Nations may also form an aggregate, or collective consciousness, whereby services, programs and fiscal arrangements can be delivered to the individual jurisdictions transparently and effectively. Most importantly, this will involve a change in approach that breaks down the existing foundations and rebuilds a new framework with ongoing mechanisms for relationship and institutional development.

- What form of recognition within the Canadian federation would work best for Indigenous nations? What is the appropriate Indigenous entity or entities for the federal government to engage with for the relationship to be Nation-to-Nation? What is the role of national organization elected representation? Under which terms and conditions would Indigenous nations want to be part of the Canadian federation? What's the responsibility of Canada in validating the selection of the collective identity?

- How can Canada support Indigenous nation rebuilding today? What are the features of nation building? Will there be different orders of government within a nation? What does Indigenous citizenship constitute?

- How can restrictions of the *Indian Act* be deconstructed and vacated to allow progress? Given that Aboriginal title rests with nations and not bands, to what extent can Band Councils represent a nation in the interim? How can Canada support the transition, recommended by RCAP from 633 Indian Act bands to approximately 50 or so nations?

- What collective institutions are required to bring efficiencies of scales? In which cases will transitional institutions (e.g., a health institution under a delegated authority) be necessary or helpful in moving to greater self-governance of a particular area of governance mandate?

- Which relationships do Indigenous communities need to cultivate to advance self-governance aspirations? How can these relationships form the basis of meaningful partnerships?

Jurisdiction

Canada's legal and constitutional framework has been a fundamental element in defining and shaping the relationship between Canada and Indigenous peoples. As the legal framework has evolved, from the Royal Proclamation to *Section 35*, so to have the nature and expression of modern jurisdictional relationships. This can be seen in the judicial assertion of rights as the primary option, which often leads to lengthy litigation resulting in a legal relationship built on reaction and conflict. While the Constitution and

[81] Statement by the Prime Minister of Canada on advancing reconciliation with Indigenous Peoples, December 15, 2016,

legislation have provided opportunities for advancement, there remain impediments related to the achievement of self-government, cooperation, imagination and political will. Further foundational changes are required to develop new conceptions of jurisdiction under a renewed nation-to-nation relationship built on trust and respect.

- What are the obstacles to nation re-building and re-constituting (in efforts to address overlapping claims, for example)? What are the practical considerations, such as the amalgamation of communities or aggregation of services, impact the scope of authority? What lessons can we take from modern assertions of jurisdiction?

- How can the federal government help make meaningful progress in including Indigenous governments as full participants in F/P/T negotiations? How do you find way to bring Indigenous voices into other government and decision making processes?

- What types of mechanisms will enable greater control over decision-making, and eventually lead to the full realization of Aboriginal self-governance? Which components of self-government should we prioritize for nations lacking adequate control over decision-making?

- What are the implications of a nation-to-nation relationship for the regulatory approval process? How much power are non-Indigenous people and governments prepared to share with Indigenous peoples?

- What does governance look like if jurisdiction is not land based?

New Intergovernmental Fiscal Relationships

Sustainable revenue is essential for any government to create and deliver equitable and fair services that serve to promote the well being of its citizens. Jurisdiction is hollow without the capacity to exercise it. Comparable services across territorial jurisdictions through transfers and shared revenue has been the cornerstone of Canadian federalism, yet the same cannot be said for the fiscal relationship between Indigenous governments and the federal government, which has been based on stagnate transfers and unpredictable arrangements. There remains a clear socio-economic gap between Indigenous peoples and Canadians, resulting from the barriers created by the current construct of the fiscal relationship. Efforts have been taken to attempt to address this gap, ranging from policy frameworks to legislative regimes. A new system is needed that is feasible within the political and institutional environment, and leads to increased sustainability.

- What are the principles that distinguish between the current fiscal arrangements and a new form of relationships?

- What would be included in a new legislative fiscal framework?

- What capacity, capability and institution building are required to financially sustain the transfer of jurisdiction? What are the capacity-building activities needed to advance self-government? What has been effective?

- How can reciprocal accountability be articulated and practiced between the parties?

- Are Indigenous nations empowered with the full resources they need to achieve self-government? What resources, land or otherwise, do communities need to achieve their governance aspirations?

- What is required to support an increased contribution to the Canadian economy by Indigenous people, and how should Canada be supporting this?

- Is the nation-to-nation relationship going to be dependent on single source transfers financial model, or does a nation to nation relationship require a transfer of fiscal powers?

Wealth Creation

It is becoming clear that sound governance is a prerequisite for rapid improvement in the well being of communities and nations. Moreover, it is our view that sound governance is a prerequisite for improving opportunities for wealth creation among Indigenous communities and organizations, and that wealth creation is both a key support to self-determination and a facilitator of economic success for all parties. Many Indigenous groups have already, or are currently, engaged in strengthening and maintaining their own governance structures to facilitate wealth generation.

- Can governments support the creation of mutually enhancing relationships between Indigenous communities and the private sector?

- How can the private sector form relationships with indigenous communities in a manner that supports reconciliation efforts, while providing opportunities to advance the self-governance aspirations of communities?

- What framework and principles work best for jurisdictions to provide programs, services and capacity training to their people? What are the critical foundations/elements of successful and sustainable wealth creation? What are some frameworks that have been successful, and where can they evolve?

- How can wealth creation be used to support reinvestment in capacity? Where has this worked?

- What frameworks are required to give authority to exercise power over generated revenues?

- How do we incent participation and engagement on optional policies? (eg. investment capacity, additions to reserve, expedited land claims)

- Where there are multiple jurisdictions, who benefits from resource extraction and how will nations determine these arrangements?

Appendix A: TRC Calls to Action

After the TRC hearings concluded, the TRC released 94 Calls to Action for government and other civil society actors and organizations to redress the legacy of residential schools. Key actions pertaining to the nation-to-nation relationship include:

- (#44) Develop a national action plan to achieve the goals of UNDRIP.

- (#45) Jointly develop, with Indigenous peoples, a Royal Proclamation of Reconciliation to build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation nature of the relationship. This commitment would involve
    - Repudiating the Doctrine of Discovery and terra nullius.
    - Using UNDRIP as the framework for reconciliation.
    - Base new and old treaty relationships on mutual recognition and respect.
    - Reconcile Indigenous Aboriginal and Crown constitutional and legal orders as part of bringing Indigenous peoples on as full partners in Confederation.

- (#50) In collaboration with Indigenous organizations, fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Indigenous peoples in Canada.

- (#51) Publish legal opinions developed by the Government of Canada with regard to the scope and extent of Aboriginal and Treaty rights.

- (#52) Recognize the following legal principles about Aboriginal title:
    - Claims are accepted once the claimant has established occupation over a particular territory at a particular point in time.
    - Once Aboriginal title has been established, the burden of proving any limitation on any title rights shifts to the party asserting such a limitation.

- (#53) Enact legislation to establish a National Council for Reconciliation, an independent oversight body jointly appointed by the Government of Canada and national Indigenous organizations to:
    - Report annually to Parliament on progress reconciling the relationship between Indigenous peoples and the Crown.
    - Report to Parliament on progress on reconciliation within Canadian society and civil society, including the implementation of the 94 Calls to Action.
    - Create and implement a multi-year National Action Plan for Reconciliation, including research and policy development, public education and other resources.
    - Promote public dialogue, partnerships, and public initiatives on reconciliation.[82]

[82] Truth and Reconciliation Commission of Canada. Calls to Action. 2015.

Appendix B: Standing Senate Committee Aboriginal Peoples (2000)

Forging New Relationships: Aboriginal Governance in Canada
Standing Senate Committee Aboriginal Peoples
Chairperson :The Honourable Charlie Watt
Deputy Chairperson : The Honourable Janis Johnson
February 2000

Recommendations
The Committee is strongly convinced that the development of new and renewed relationships, based on partnership with Aboriginal peoples, requires legislative and institutional reforms. We believe that the measures recommended in the report will better serve governments and Aboriginal peoples as they work to build these relationships. The Committee hopes that its recommendations will also help to create a climate that facilitates diverse approaches to Aboriginal governance. Finally, we note again that the single most important ingredient is the political will of the government. The Government of Canada must take action -- both to implement the recommendations made by this Committee and others like it, and to truly live up to its commitments to forge new relationships based on principles of partnership and respect.

Recommendation 1
The Committee recommends that flowing from *Section 35* of the *Constitution Act, 1982*, federal approaches to engaging Aboriginal peoples in self-government negotiations be flexible, inclusive and demonstrate sensitivity to the diverse historical and contemporary circumstances of Aboriginal peoples and their aspirations for self-government. The Committee stipulates that Aboriginal self-government is an entitlement of First Nations, Inuit and Metis peoples and recommends that negotiation and implementation processes be made available on a basis which takes their respective interests and claims into account.

Recommendation 2
The Committee recommends that a new Office of Aboriginal Relations be established through legislation by the federal government to assume responsibilities for negotiating and implementing relationships with all Aboriginal peoples. This office should be located outside the Department of Indian Affairs and Northern Development. The Committee further recommends this Office be organized with two distinct and separate units: a Treaty and Agreements Negotiations Division and a Treaty and Agreements Implementation Secretariat.

Recommendation 3
The Committee recommends that new legislation be introduced by the federal government for the purposes of providing a broad statutory framework to guide the Government of Canada in the negotiation and implementation of relationships by way of treaties and other agreements with Aboriginal peoples. The Minister responsible for the new Office of Aboriginal Relations should have responsibility for administering this legislation.

Recommendation 4
The Committee recommends that, with the agreement of Aboriginal peoples and their representative organizations, the Government of Canada establish through legislation a Treaty and Aboriginal Rights Implementation Review Commission. The Commission should serve as an independent oversight body for relationships involving Aboriginal peoples and the Government of Canada and should report to Parliament.

The Committee further recommends that the mandate of the Treaty and Aboriginal Rights Implementation Review Commission comprise three primary roles:

i. A public reporting and education role;
ii. An investigative role, encompassing ombudsman and compliance monitoring functions; and
iii. A facilitation role.

Recommendation 5

The Committee recommends that judges, senior officials and lawyers working at all levels of the judiciary in Canada be given opportunities for cross-cultural training and education to enhance their awareness of Aboriginal and treaty rights, developments in Aboriginal and treaty law, as well as Aboriginal perspectives, cultures and traditions, and legal issues facing Aboriginal peoples.

Appendix C: RCAP: The Relationship Restructured

The following is archived on the Indian Affairs website and is a high level summary of the major steps needed to transform the relationship between Aboriginal people and other Canadians.[83]

1. A new Royal Proclamation.
A new Royal Proclamation, stating Canada's commitment to principles of mutual recognition, respect, responsibility and sharing in the relationship between original peoples and those who came later.

2. Parliament should enact companion legislation to give these intentions form and meaning and provide the legal instruments needed to implement them.
RCAP identified three pieces of legislation to reset the relationship within Canadian law:

- Aboriginal Treaties Implementation Act: to set forth a process for clarifying and modernizing existing treaties, creating new treaties, and establishing regional treaty commissions to facilitate negotiations.
- Aboriginal Lands and Treaties Tribunal Act: to create a body to "clear the backlog of specific claims and act as ombudsman for the new comprehensive treaty-making processes."
- Aboriginal Nations Recognition and Government Act: to set forth criteria and a process for recognizing Aboriginal nations, and acknowledging their jurisdictions over core issues (on an interim basis, until treaty negotiations are complete), and financing.

3. The federal government should provide a forum for negotiating a Canada-wide framework agreement to lay the ground rules for processes to establish the new relationship.
Convened under the authority of the first ministers of federal, provincial and territorial governments and leaders of national Aboriginal organizations, the forum is meant to address these issues:

- treaty renewal and new treaty making
- redistribution of lands and resources
- clarification of areas of independent and shared jurisdiction
- redesign of short-term and long-term fiscal arrangements

4. Aboriginal nations should begin their rebuilding processes.
Aboriginal nations will need time and resources to undertake the nation building that must be completed before they seek formal recognition from Canada. In particular, they must clarify membership issues and develop institutions and human resources for self-government and all it entails.

5. All governments should prepare to enter into the new treaty process.
Each Aboriginal nation will need to seek a mandate from its citizens to enter into a treaty renewal or negotiation process for the settlement of land, resource, governance and financing issues. The federal government and provinces governments will need parallel legislation around treaty processes.

6. Governments should take interim steps to redistribute lands and resources.
Commitment to Aboriginal self-government will be hollow unless Aboriginal nations have access to an adequate land base, with resources to match.

7. Aboriginal and non-Aboriginal governments co-operating to stimulate economic development.
Creating meaningful work for the citizens of Aboriginal nations will require long-term strategies to promote a mix of economic activity. The strategies we propose will require co-operation among governments, both before and after the broader processes of change are under way.

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[83] Indigenous & Northern Affairs Canada. *Highlights from the Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation*. 1996.

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