



Enhancing Aboriginal Financial Readiness for Major Resource Development Opportunities

National Aboriginal Economic Development Board
January 2015

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NATIONAL ABORIGINAL ECONOMIC DEVELOPMENT BOARD

Established in 1990, the National Aboriginal Economic Development Board is an Order-in-Council appointed board mandated to provide policy and program advice to the federal government on Aboriginal economic development. Comprised of First Nations, Inuit, and Métis business and community leaders from across Canada, the Board plays an important role in helping the federal government develop policies and programs that respond to the unique needs and circumstances of Aboriginal people in Canada. The Board also provides a vital link between policy-makers, federal departments, and Aboriginal and non-Aboriginal business and community leaders.

The National Aboriginal Economic Development Board can be found online at:

<http://www.naedb-cndea.com>

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Introduction

The federal government forecasts that, in the coming decade, investments of more than \$650 billion will be made in natural resource projects, a majority of which will occur on or near Aboriginal traditional lands. Whether these projects proceed, and under what conditions, increasingly depends on the level and quality of Aboriginal participation.

– Library of Parliament, 2014

Natural resource development is a cornerstone of the Canadian economy. It accounts for 13 percent of gross domestic product (GDP) and 50 percent of exports. When spinoff industries are added, the contribution of natural resources to GDP jumps to nearly 20 percent. About 950,000 Canadians currently work in natural resource sectors, and another 850,000 workers, spread across every province and territory, provide supporting goods and services to the sector. Combined, this amounts to 1 in 10 jobs in Canada. In addition, the energy, mining, and forestry industries provide over \$30 billion a year in revenue to provincial and federal governments.¹

The National Aboriginal Economic Development Board (NAEDB) has long asserted that Aboriginal peoples' involvement in resource opportunities – as participants, partners, and proponents – is critical to unlocking the economic wealth of the resource sector in an environmentally responsible way for the benefit of all Canadians, Aboriginal and non-Aboriginal alike. Currently, there are an estimated 489 major resource projects that have either been announced, proposed, or are underway in Canada, totaling \$497.9 billion. Of these projects, approximately two-thirds are situated on Aboriginal treaty lands. In fact, all projects located in Alberta, Saskatchewan, Manitoba, Nunavut, and Prince Edward Island are situated on treaty lands. Furthermore, nearly 84 percent of all projects are located within 100km of a First Nations reserve.² These resource projects can further enable Aboriginal people to take advantage of, and benefit directly from these projects and also from the full value chain of resource development.

In June 2014, the Supreme Court of Canada issued a unanimous decision in favour of the Tsilhqot'in Nation, in *Roger William et al v. Her Majesty the Queen*. This was the first Court declaration of Aboriginal title in Canada and a landmark ruling. It affirmed that the Tsilhqot'in have title over their traditional lands and that as title holders, the Tsilhqot'in have the benefits associated with the land – to use it, to enjoy it, and profit from its development. This decision has clear and direct implications for Aboriginal financial participation in major resource development, as well as economic development more broadly.

The willing agreement of Aboriginal communities is becoming a necessary ingredient in natural resource projects moving forward. As of April 2014, there are more than 260 active agreements between mining exploration and development companies and Aboriginal governments or organizations, many of which provide the Aboriginal partner(s) with a share of revenues or profits.³ As well, governments at all levels in Canada have negotiated arrangements with Aboriginal groups to share taxes and royalties generated from resource development.

Benefit-sharing arrangements have the potential to expose Aboriginal communities to large-scale business and industrial development opportunities and sudden – and cyclical – influxes of wealth that

¹ Government of Canada, *Responsible Resource Development and Jobs*, <http://actionplan.gc.ca/en/backgrounder/r2d-dr2/responsible-resource-development-and-jobs>

² Using a project list provided by the Major Projects Management Office, data and statistics were compiled based off of the Aboriginal Treaty Rights Information System's findings <http://www2.mpmo-bggp.gc.ca/MPTracker/search-chercher.aspx?lang=en>

³ The Mining Association of Canada, *Facts and Figures 2013*, <http://mining.ca/documents/facts-figures-2013>



require strong governance and prudent management. In light of this reality, the Minister of Aboriginal Affairs and Northern Development Canada requested that the Board provide him with advice on the type of institutional arrangements and capacity that may be required to ensure that Aboriginal communities are best positioned to participate in the financial benefits of major resource opportunities. This report responds to that request.

In developing our recommendations, we recognize that not all Aboriginal groups agree with the existence, nature, direction, or pace of current and proposed natural resource development projects. The Board respects these positions and this report should in no way be interpreted as questioning the validity of these concerns.

Over the past 18 months, the Board has met with a range of Aboriginal and non-Aboriginal organizations from both the private and public sectors to discuss the challenges associated with managing revenue streams from energy and mining opportunities (Annex B). One central theme emerged from discussions with these groups: even with revenues flowing to communities, agreements between Aboriginal groups and the private sector or other levels of government are no guarantee that a community will reach economic prosperity and self-sufficiency. There are many reasons for this, including: resource opportunities creating dependence on a single, and often volatile, revenue stream; management systems being overwhelmed by a large influx of revenues; and chronic underfunding of many services and programs placing pressure on Aboriginal governments and their decision-making processes.

The Board has therefore chosen to focus its recommendations in two key areas: (1) Institutional arrangements supporting community financial management; and, (2) Strengthened capacity to support sound financial management. A final section outlines additional issues that the Board believes merit strong consideration by the federal government.



I. Institutional arrangements supporting community financial management

If we want to make the best of our economic development opportunities, we need to swing the door open to environmentally sound industries and rethink administration, politics, business, accountability, and transparency. We need to implement a new plan to use our revenues, build our capacity and map our economic future.

– Haisla Nation Chief Councillor Ellis Ross, 2013

The importance of governance to economic development is notable, specifically to Aboriginal communities accessing financial benefits from resource development. Having in place effective and accountable governance systems ensures that the benefits of resource development have a net positive impact for a community.

A number of landmark studies have noted the importance of governance to economic development including the Harvard Project on American Indian Economic Development, which identified governance as the most significant factor leading to success in Aboriginal communities in the United States.⁴ The Royal Commission on Aboriginal Peoples⁵ similarly identified governance as being of central importance, as did the more recent study “Creating the Conditions for Economic Success on Reserve Lands”, published by Aboriginal Affairs and Northern Development Canada in 2013.⁶

These reports note that sustained governance improvements depend on three factors: political leadership, community support, and managerial and technical capacity. Improvements to the first two factors are beyond the scope of the Board’s current examination of this topic. However, in the view of the Board, managerial and technical capacity can be improved through a variety of actions, one of which is developing the skills, capacity, and operating standards that lead to greater accountability.

Accreditation and certification offer benefits in that they help generate skills and capacity, and develop operating standards to assist a community in improving or strengthening its operations. The certification process increases investor certainty and confidence in the community or organization by making public the attainment of a certain level of expertise and accountability.

Community accreditation initiatives respond to a lack of consistent standards in specific areas of practice that weaken business efforts by reducing investor and consumer confidence, allowing inefficiencies in business practices, and resulting in inconsistent product or service delivery. In Canada, standards and accreditation are becoming increasingly common instruments in many fields of public administration, including Aboriginal governments.

At least two First Nations in Canada – the Community of Membertou in Nova Scotia and Sagamok Anishnawbek First Nation in Ontario – have obtained ISO 9001:2000 accreditations. This has resulted in a number of business development opportunities for both communities. Accreditation Canada, an independent, not-for-profit organization that works with health care organizations to help them improve

⁴ The Harvard Project on American Indian Economic Development, 2003, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, http://nni.arizona.edu/resources/inpp/2003_CORNELL.kalt_JOPNA_sovereignty.nation-building.pdf

⁵ Highlights from the Report of the Royal Commission on Aboriginal Peoples, 1996, http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html

⁶ Government of Canada, AANDC, 2013, *Creating the Conditions for Economic Success on Reserve Lands*, <https://www.aadnc-aandc.gc.ca/eng/1372346462220/1372346568198>



their quality, safety, and efficiency, has also established an accreditation program for several First Nations health organizations.

The benefits of standards and accreditation include both improved services for citizens and increased accountability and transparency for governments and investors. Working toward accreditation can help to focus a community's capacity-building efforts and can provide an incentive for the sustainability of reforms because of the need to be frequently reaccredited. Accreditation also supports the creation of an investment-ready climate as it reduces risk and uncertainty for investors.

Anaia Global Renewable Energies

Membertou First Nation is an early adopter of financial accreditation as a core business practice. Membertou attained ISO 9001 in January 2002, which established Membertou as the very first Aboriginal government in Canada and the world to be ISO 9001 certified. Since that time, Membertou has also gone on to attain certification through the First Nations Financial Management Board. Once attaining Financial Management Board certification, Membertou was eligible to access borrowing under the First Nations Finance Authority (FNFA).

"As a borrowing member of FNFA, Membertou anticipates [that our] debt service costs will be cut by an estimated \$140,000 monthly. Certification by First Nations Financial Management Board validated our financial management practices and stewardship. This responds to the interests of many stakeholders and allowed us access to FNFA financing."

– Chief Terry Paul

Anaia Global Renewable Energies is a joint venture company of the Membertou First Nation, through its Membertou Corporate Division, and GrupoGuascor from the Basque Region of Spain. It is one of the many projects that benefit from the financial credibility that Membertou has developed through accreditation and strong financial practices. This union was devised in response to the growing concern about the world's carbon footprint. Anaia Global Renewable Energies offers "customers turnkey energy solutions including design, engineering, construction, operations and maintenance services." Financing for customers is "arranged in accordance with long-term (20 to 25 year) power purchase agreements." Membertou First Nation was interested in this partnership with GrupoGuascor because of its demonstrated global leadership in renewable energy technologies and its work in rural and indigenous communities of the Amazonia. It is projected that GrupoGuasco's expertise in renewable energy and Membertou's success in economic development will create sustainable economic growth and produce positive environmental results.

i. Extending the benefits of financial management certification

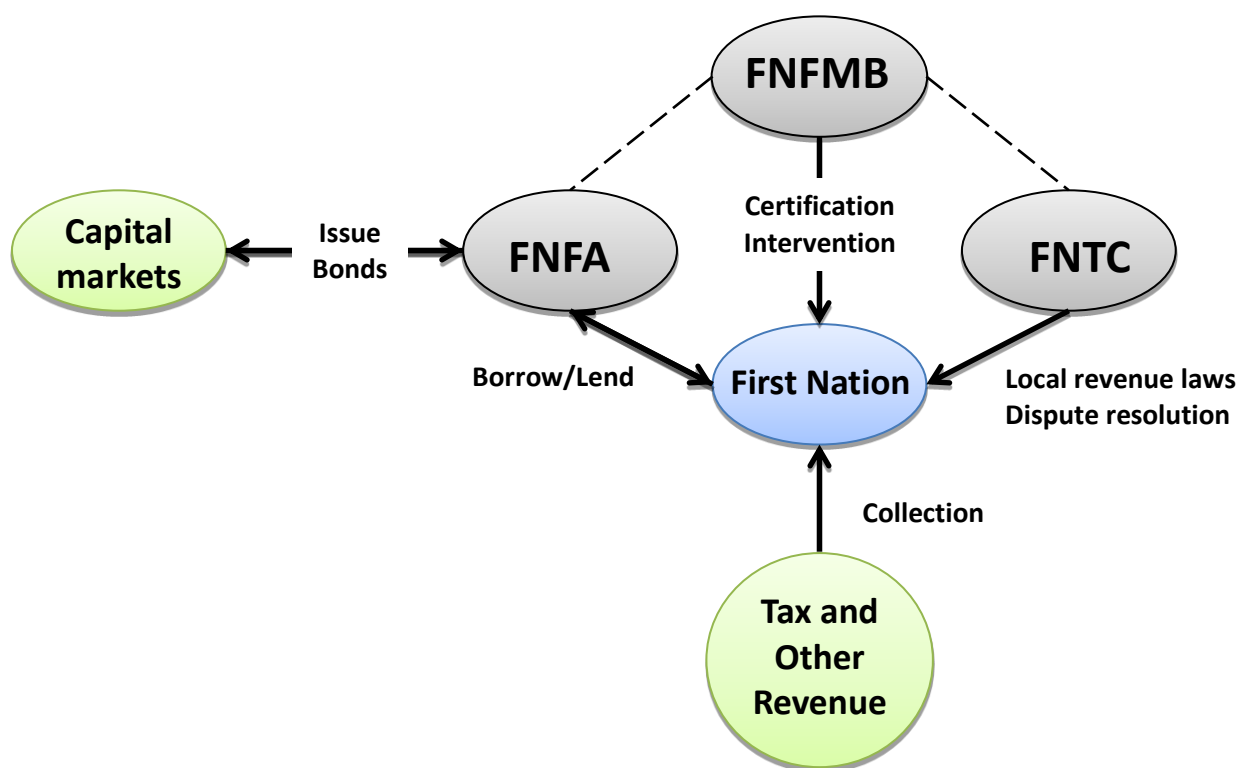
The *First Nations Fiscal Management Act*, which came into force on April 1, 2006, is an optional piece of legislation designed to promote the continued economic development of participating First Nations. The Act requires that interested First Nations be added to the Schedule of the legislation ('scheduled') before they can begin to access the full array of tools and services offered by three First-Nation-led institutions: the First Nations Financial Management Board (FNFM), the First Nations Tax Commission (FNTC), and the First Nations Finance Authority (FNFA) (See Figure 1).

The FNFM's mission is to assist First Nation governments in establishing effective financial management systems through the development of national standards and policies, financial management certification, capacity development, and, if necessary, effective and appropriate remediation. A pre-condition to



accessing capital markets financing through the *First Nations Fiscal Management Act* regime is to obtain certification from the FNFMB that attests to the soundness of a community's financial management systems and/or financial performance.

Figure 1: An Overview of the First Nations Financial Management Act Regulatory Regime⁷



In operation since 2007, the FNFMB's certification standards have been acclaimed by a major accounting firm, two national investment banks, and an international rating agency. These organizations have stated that the FNFMB framework for assessing financial performance is appropriate and the metrics used are credible.

The FNFMB is perhaps the best example in Canada of a dedicated body administering a successful accreditation system for Aboriginal communities. However, the Board notes that the reach of the FNFMB is limited by the legislation under which it operates; its full range of services are currently only available to *Indian Act* bands that have chosen to become scheduled to the *First Nations Fiscal Management Act*.

As of September 2014, 138 First Nations communities have opted to participate in the *Fiscal Management Act* regime,⁸ of which 40 have had their financial management systems certified by the First Nations Financial Management Board.⁹ Generally, communities that are 'scheduled' under the *First Nations Fiscal Management Act* tend to be more economically successful, with existing revenue streams

⁷ First Nations Financial Management Board, March 2014, *Corporate Plan 2014–2015*, http://www.fnfmb.com/wp-content/uploads/2011/11/2014-2015Revised_FMB_CorporatePlan_March32014clean.pdf

⁸ Government of Canada, April 2014, *Order Amending the Schedule to the First Nations Fiscal Management Act*, <http://gazette.gc.ca/rp-pr/p2/2014/2014-04-23/html/sor-dors77-eng.php>

⁹ First Nations Financial Management Board, <http://www.fnfmb.com/home/>



and some degree of financial control and oversight. However, the Board notes that, increasingly, emerging large-scale resource opportunities such as the Ring of Fire in Northern Ontario and the Labrador Trough in Labrador and Quebec are located in remote areas where Aboriginal communities make up the majority of permanent residents (Figure 2). Many, but not all, of these communities are among the most socio-economically challenged in Canada, as measured by Community Well-Being Index scores.

Figure 2 – Select Resource Opportunities Involving Aboriginal Groups



Not all Aboriginal communities are able to benefit from the services of the FNFMB and the other institutions under the *First Nations Fiscal Management Act*. Self-governing First Nations, First Nations with comprehensive land claim agreements – such as those across the territories – and Métis and Inuit communities cannot, at present, easily access the regime without significant legislative or regulatory amendments. These Aboriginal groups own, control, or have interests in land with some of the most extensive mineral and hydrocarbon deposits in Canada (Figure 3).

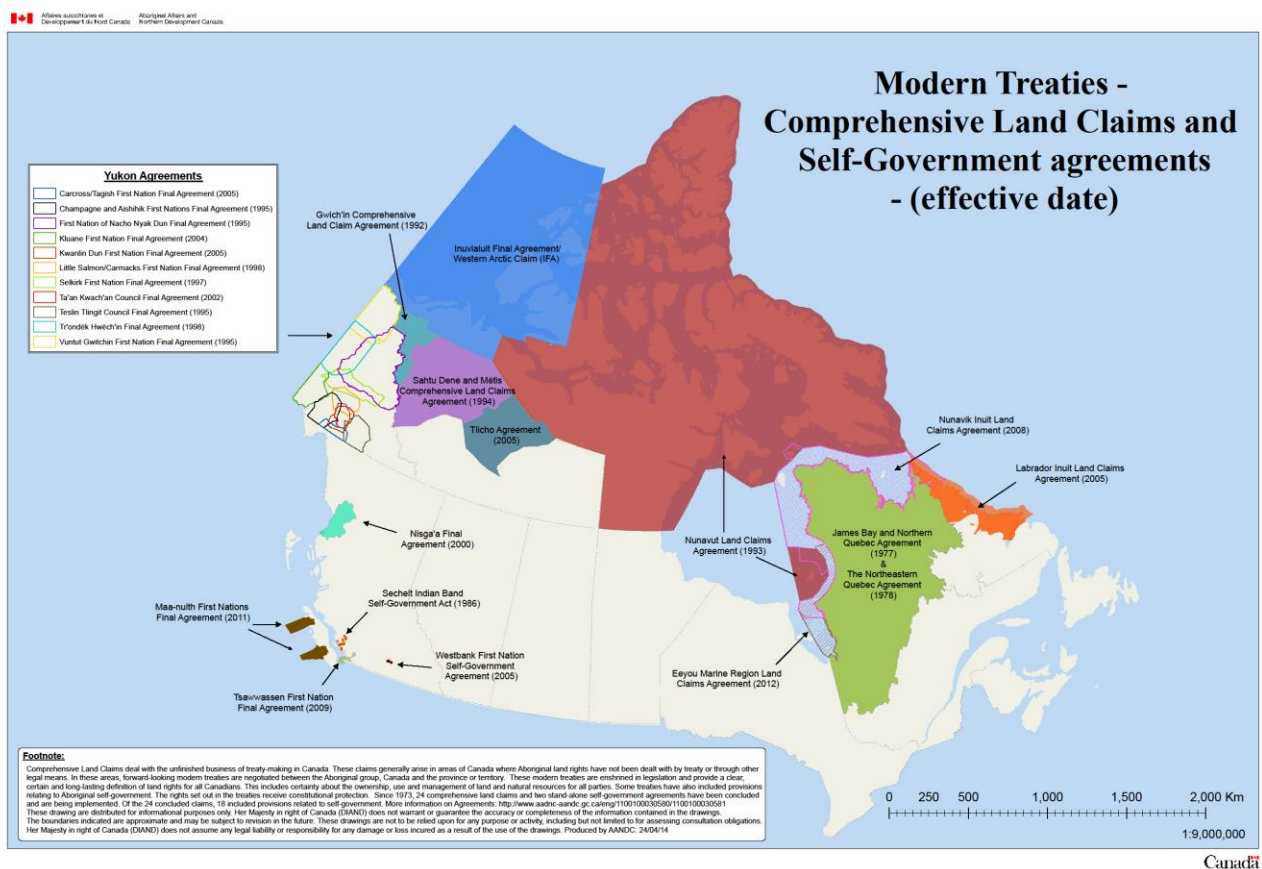
The First Nations Market Housing Fund also helps First Nation communities build financial capacity through a variety of initiatives provided to strengthen the governance structure and the people working within it, both at the leadership and staff levels. Codes, policies, and by-laws, as well as professional



accreditation in various sectors, ensure the community is stronger and better equipped to attract and manage investments and businesses. The Fund also provides financial literacy training at the personal level and provides housing options to reduce barriers to and enable home ownership and rental housing on reserve. The Fund helps qualified individuals living on reserve obtain loans by providing partial financial backing for the lender. From the Board's perspective, this Fund represents an innovative approach to ensuring that First Nation members on reserve have the opportunity to obtain loans from financial institutions and can build, buy, or renovate a house on reserve or settlement lands.

The Board also notes that the Aboriginal Financial Officers Association, AFOA Canada, is another long-standing organization committed to helping Aboriginal communities improve their finance and management practices and skills through capacity development. Through the Certified Aboriginal Professional Administrator (CAPA) Program and the Certified Aboriginal Financial Manager (CAFM) program, AFOA Canada builds professional development in all areas of finance, management, band administration, leadership and program management, and promotes excellence in Aboriginal communities and organizations.

Figure 3 – Comprehensive Land Claims and Self-Government Agreements in Canada¹⁰



¹⁰ Government of Canada, AANDC, *Map of Modern Treaties – Comprehensive Land Claims and Self Government agreements*, http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/mprm_pdf_modrn-treaty_1383144351646_eng.pdf



Recommendation 1

To improve the ability of Aboriginal communities to take advantage of major resource opportunities, it is recommended that the Government of Canada support existing institutions such as the First Nation Financial Management Board, the First Nation Market Housing Fund and the Aboriginal Finance Officers Association to build the necessary financial capacity. These groups should be encouraged to work together to align their services and to establish best practices for community financial policies and processes.

In this respect, it is further recommended that the First Nations Financial Management Board be provided with additional funding to work with First Nations that: a) are not scheduled under the *First Nations Fiscal Management Act* as a separate stream to assist those groups in developing their financial management capacity and attaining Financial Management Board certification; and b) ensure that other Aboriginal groups and community organizations can, if they qualify, access the services and programs of the First Nations Financial Management Board.

ii. Accreditation of key government institutions

In our April 2013 report entitled “Addressing Barriers to Economic Development on Reserve,” the Board examined similar standards for governance and noted:

The Board believes that to resolve the many conflicts inherent in the Crown–First Nation relationship ... the federal government needs to enter into mature and modern arrangements with First Nations governments. These relationships should be characterized by stable and long-term funding arrangements, with decision-making and control exercised at the community level.

In 2011, Former Auditor General of Canada, Sheila Fraser, came to a similar conclusion:

... our audits have shown that there are a number of issues affecting programs and services that hamper progress, and negate the efforts of many dedicated public servants... Funding is insecure and often not timely because it is provided through short-term contribution agreements which are subject to the availability of funding—there are no statutory funding requirements or service standards.¹¹

A governance accreditation system administered by an independent body would provide the federal government (and other levels of government) with a valid risk assessment on which to base long-term funding arrangements with fewer conditions and reporting burdens and would be in line with existing federal policy on risk-based fiscal transfers. Importantly, the assessment of risk would be taken out of the hands of the federal government, as would ongoing monitoring responsibilities. Periodic reaccreditation would provide assurances of continuing sound governance. Another set of tangible benefits might come from the private sector through, for example, easier access to credit at lower interest rates from private sector financial institutions.

¹¹ Office of the Auditor General of Canada, Sheila Fraser, Address to the Canadian Club of Ottawa, May 25, 2011, http://www.oag-bvg.gc.ca/internet/English/sp_20110525_e_35353.html.



For an accreditation system to be a positive influence in promoting sound governance within Aboriginal communities, it would need to: be designed by Aboriginal communities in collaboration with the federal government and the engagement of all stakeholders; plus be sensitive to large variations in Aboriginal communities such as size and location; be managed by an independent Aboriginal organization; have a dedicated funding source for Aboriginal communities to access to achieve accreditation (following the example of the First Nations Market Housing Fund); have tangible and immediate benefits including access to new funding arrangements, programs, and financial benefits; build on existing systems such as those of the FNFMB, First Nations Market Housing Fund and ISO certification; and be voluntary.

It goes without saying that an Aboriginal community that has recognized management systems and processes along with a financial risk rating would be in a much-improved position to optimize its participation in resource development projects. By achieving recognized community-based assessments, an Aboriginal community could demonstrate sound management and governance to its own members, other governments, potential partners, and funders.

Recommendation 2

It is recommended that the Government of Canada provide flexible, long-term, multi-year fiscal transfer arrangements as an incentive to communities to adopt and implement best practices for financial management in follow-up to Recommendation 1. The fiscal transfer arrangements would be based on an assessment of a community's management of financial risk.

iii. Loan guarantee instruments

Loan guarantees and other financing measures can help Aboriginal communities obtain equity positions in major projects. Equity ownership provides important benefits that other forms of financial participation do not. Most notable among the benefits is a decision-making role for the Aboriginal community in the project. However, given the scale of natural resource projects many communities do not have the financial means to acquire the equity directly.

Since 2009, the Ontario Financing Authority has administered the Aboriginal Loan Guarantee Program to help overcome access to capital barriers that limit Aboriginal equity ownership of renewable green energy projects. This program guarantees up to 75 percent of an Aboriginal corporation's equity, with a maximum of up to \$50 million per project. To date, the Aboriginal Loan Guarantee Program has leveraged significant investments with \$130 million in approved loan guarantees supporting the investments of eight communities including Mother Earth Renewable Energy Project (M'Chigeeng First Nation) and the Lower Mattagami Project (Moose Cree First Nation). In July 2014, the Ontario Financing Authority announced an increase of \$250 million to the program for a total of \$650 million available for loan guarantees, including investments in transmission, wind, solar and hydroelectric projects.

Loan guarantees reduce the risk for private sector partners and help facilitate an Aboriginal community obtaining an equity stake in a project. The absence of a loan guarantee program or similar mechanism continues to act as a barrier to Aboriginal communities pursuing resource development opportunities. A properly structured loan guarantee program would need to be designed in cooperation with Aboriginal stakeholders.



Recommendation 3

It is recommended that the Government of Canada, in collaboration with Aboriginal organizations, provincial and territorial governments and industry stakeholders, enhance and make more accessible a targeted loan guarantee instrument, or other appropriate financing measure, for the specific purpose of facilitating meaningful equity participation of Aboriginal communities in major resource development projects.

II. Strengthened capacity to support sound financial management

The lack of capacity has become perhaps the most substantial barrier preventing First Nation, Métis, and Inuit communities from realizing the economic benefits possible...

– Chris Henderson, Lumos Energy, 2013

To secure Aboriginal participation in resource development, projects need to translate into the creation of life-long skills, good jobs, successful businesses, and financial benefits for communities. Aboriginal communities require the financial management tools, business acumen, and necessary resources to make informed decisions to be equal players alongside industry partners. Indeed, the ability to manage the potentially significant and cyclical revenue streams is imperative to ensuring economic prosperity for Aboriginal people.

Given that most resource development projects occur in remote parts of the country, the economic development pressures on communities in these regions are significant. The Board heard that many communities are starting from scratch with limited capacity to lead, manage, and finance projects, or participate in joint ventures. Community leaders at times feel the heavy burden of making a wrong decision that will have a negative impact on future generations, such as not protecting their traditional lands or not negotiating sufficient or appropriate financial benefits for their people.

With increasing levels of industry engagement resulting from successful legal challenges, Aboriginal communities require additional support for early financial readiness to participate in negotiations and regulatory processes. Access to financial, legal and technical expertise helps communities understand the impact of development and helps inform citizens as partnership arrangements and benefit agreements are finalized. Building independent capacity is required to ensure that communities are not faced with a loss of opportunity for investment and that they turn projects into viable, long-term enterprises offering beneficial financial returns.

i. Requirements for increasing community capacity

The Board spoke to a number of Aboriginal community and business leaders who identified key ingredients that are essential to sustain a resource development project. As outlined in the following table, there are four main pillars in building community capacity: (1) establishing strong governance capacity so that community and business decisions are sound, transparent, and accountable; (2) having available long-term, independent financial, legal and technical advisors that can help the community understand potential impacts and multiple regulatory processes; (3) having the financial expertise to measure and sustain a project's long-term viability; and (4) developing regional and local strategies to maximize job creation and economic development opportunities.



Figure 4: Aboriginal Community Capacity Requirements

Governance Capacity	<ul style="list-style-type: none"> ✓ Ensuring strong community leadership and involving community members in a project ✓ Ensuring decisions are sound, transparent, and accountable ✓ Creating and sustaining strong business management ✓ Implementing appropriate governance mechanisms and systems
Technical and Legal Advisors	<ul style="list-style-type: none"> ✓ Hiring advisors who have business and negotiating expertise to advance a community's interests ✓ Understanding and managing multiple regulatory processes
Financial Expertise and Capital Sourcing	<ul style="list-style-type: none"> ✓ Building a solid business case for a project ✓ Identifying and attracting sources of capital and equity investment ✓ Managing project earnings over the long term
Economic Development Strategies and Human Resources	<ul style="list-style-type: none"> ✓ Implementing strategies to ensure that job creation, procurement, and business development are maximized

ii. Two projects, two different scenarios

The opportunities provided by the proposed resource development agenda play directly into the ability of First Nations to finance the future of on-reserve infrastructure.

-Harold Calla, First Nations Financial Management Board, 2014

Attawapiskat First Nation, a Northern Ontario community on the shores of James Bay, had opportunities to benefit from significant resource revenue through agreements made with De Beers' Victor Diamond Mine. De Beers signed impact and benefit agreements with four of the First Nations of the regional Mushkegowuk Council. De Beers provides financial payments to Attawapiskat First Nation including approximately \$2 million annually as a royalty, \$3.5 million in wages to the community through 2008, and contributes to employment training programs, infrastructure development and procurement contracts for First Nations businesses.¹² A De Beers report states that 180 Aboriginal people were employed at the Victor Mine, roughly a quarter of its workforce, and that out of \$101 million spent on goods and services by the mine, \$57 million was provided by Aboriginal businesses.¹³

However, despite the influx of revenue streams into the community, the benefits to Attawapiskat from the neighbouring diamond mine have been limited, and the community continues to struggle economically. Had Attawapiskat received the support and advice needed to create a properly structured trust, the overall economic benefit to the community could have been even greater. According to a May 2013 study by the Macdonald-Laurier Institute, the situation of this First Nation community shows that "resource development, even with attending benefits, is not a panacea for communities at risk and in difficulty."¹⁴ In the absence of sufficient professional and institutional capacity, and the support to

¹² Natural Resources Canada, *Final Report: Aboriginal Consultation and Regulatory Process Case Study: Victor Diamond Mine*, March 31, 2011.

¹³ De Beers Group of Companies, *Victor Mine Extension Project*, https://www.canada.debeersgroup.com/pdf/tango_extension_brochure_lowres2.pdf; Ontario Mining Association, *De Beers Canada Victor Mine continues to add sparkle to Ontario's economy*, <http://www.oma.on.ca/en/News/index.aspx?newsId=d67198fd-61e3-498b-9341-9bc244238a9a>

¹⁴ Coates, Ken and Crowley, Brian Lee. *New Beginnings: How Canada's Natural Resource Wealth Could Re-shape Relations with Aboriginal People*, Macdonald-Laurier Institute, May 2013.

properly structure and manage a trust, revenue agreements with mining developments alone do not generate community prosperity.

The Attawapiskat situation stands in sharp contrast to that of the James Bay Cree. In the early 1970s, faced with the proposed development of the James Bay Project - a series of major hydroelectric generating facilities in Northern Quebec that would have significant impacts on the environment and the local Aboriginal communities - the Cree challenged the Quebec government in court. The negotiations that followed led to the first Comprehensive Land Claim Agreement in Canada – the *James Bay and Northern Quebec Agreement* in 1975.

The Cree beneficiaries of the *James Bay and Northern Quebec Agreement* used the agreement to set up regional governance structures that support economic development and autonomy with significant results; the region is now characterized by good quality housing, solid infrastructure, and well-functioning local institutions. The Cree are building on their vision of regional autonomy and use the approximately \$70 million of revenue that flows annually from the hydro developments in their region – the result of revenue-sharing agreements – to fund economic development and work towards self-government.¹⁵ The region is currently governed by the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority. In 2013, the Cree announced that they would be moving towards the development of a Cree Development Corporation that would merge all the Cree business interests into one entity to strengthen business development in the region.

The success of this model demonstrates that resource projects can also contribute to the development of economic infrastructure, from the construction of access roads to the ability to connect to the electricity grid. Access to reliable, low-cost electricity is a requirement for most commercial industry, and hydroelectric plants can provide spinoff opportunities for business development not linked to the hydroelectric project itself. Additionally, having one regional entity with pooled resources – rather than dealing with many groups and communities – greatly facilitated negotiations with industry and produced more favourable outcomes.

iii. Regional tables to build capacity

The impact of multiple, and often simultaneous, developments on Aboriginal communities further strains the ability to build consensus within and across communities. Community leadership is required to develop long-term community land use and economic development plans, including the creation of and participation in regional economic development tables.

In his 2013 report, Mr. Douglas Eyford, Canada's Special Federal Representative to the Prime Minister on West Coast Energy Infrastructure, identified a number of gaps and recommendations that highlight the need for the Government to coordinate regional strategic planning along treaty areas and tribal affiliations with Aboriginal groups, industry, educational institutions, training providers, and other levels of government.¹⁶ This is needed to ensure that legal, financial and technical resources are pooled and that skills and employment training is coordinated, flexible, and targeted to meet the needs of Aboriginal people and Aboriginal businesses and employers in regions most directly involved in resource

¹⁵ Milewski, T., CBC News, May 2013, *How Quebec Cree avoided the fate of Attawapiskat*, <http://www.cbc.ca/news/politics/how-quebec-cree-avoided-the-fate-of-attawapiskat-1.1301117>

¹⁶ Eyford, D., 2013, *Forging Partnerships Building Relationships: Aboriginal Canadians and Energy Development*, <https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www/pdf/publications/ForPart-Online-e.pdf>



development. A recent example is the Ring of Fire Infrastructure Development Corporation established by the government of Ontario in July 2014 to directly respond to the resource opportunity in Northern Ontario. The Ring of Fire (ROF) Infrastructure Development Corporation works to formalize First Nations and public and private sectors partnerships, and facilitate and provide advice regarding infrastructure investment decisions. The corporation represents a vital step toward building the infrastructure that is critical to realizing the full potential of the Ring of Fire.

In addition to broad Aboriginal concerns about the regional environmental impacts of energy infrastructure development, there are many circumstances where local Aboriginal groups are uneasy about development as they do not have the capacity to undertake work that would allow them to understand the environmental impacts of proposed projects within their traditional territories.

It is clear that internal engagement within an Aboriginal community is taking on more importance as a first step in community readiness. Communities that better understand the full scope of proposed developments, including the impacts on land use, and financial risks and benefits, are better able to develop and execute plans that prepare community members for economic development, employment opportunities, and an influx of wealth into their communities.

Recommendation 4

Where there is a significant major resource development opportunity, it is recommended that the Government of Canada support the creation of formal regional economic development tables, comprised of Aboriginal groups, industry, and provincial governments, to provide direction and drive action which will benefit communities impacted by projects, such as the recently-developed Ring of Fire Development Corporation. These tables, led by the federal government through Regional Development Agencies in particular, is one mechanism that would ensure Aboriginal communities can make strong, well-informed decisions on behalf of their communities.

iv. Access to information and expertise

Many of the communities facing opportunities for development are remote and sparsely populated, while their industry counterparts are large multi-nationals. Engagement requires local capacity to allow communities to negotiate with industry in an effective way. The provision of independent expertise and advice and the sharing of best practices between Aboriginal communities and businesses is an important way to ensure negotiation and other business skills are transferred from one community to another.

– Building Authentic Partnerships, Public Policy Forum Summary Report, 2012

Aboriginal communities need access to information and expertise to determine both the size and potential impact of a resource development project, as well as the scope of benefits or compensation to which they might be entitled. Community capacity in Aboriginal communities is often challenged, especially in small communities which are pre-occupied with delivering a wide variety of programming ranging from health to education to public works to economic development.

Many Aboriginal communities facing resource development opportunities are doing so for the first time. Without the ability to deal effectively with the decisions that need to be made, our communities may not realize the full potential of these opportunities. Aboriginal communities need to be able to engage early,



set conditions that are favourable for their communities, and navigate the complexities of the negotiation and regulatory process in a timely fashion. To do this successfully, they require access to information, expertise, and appropriate human resource capacity.

Small, under-resourced communities do not have the time or in-house expertise to conduct a comprehensive search for needed information; to evaluate whether material is relevant, up-to-date and accurate; and to translate this information into actionable steps. While there are some good information sources available, there is currently no comprehensive source of information to support Aboriginal communities in resource development activities.

In addition, there are gaps in the provision of sophisticated support for Aboriginal communities with regards to large and complex resource development opportunities. The variables associated with different regulatory and jurisdictional contexts often require communities to hire external experts to assist. However, the one-off costs of hiring consultants may not be the best way to use resources. Often funds are spent to educate consultants on complex issues on a community by community basis and can result in a questionable return on investment.

In the Board's October 2012 report, "Increasing Aboriginal Participation in Major Resource Projects," we identified the need for Centres of Excellence on Aboriginal Resource Development to help address gaps in information. The Board has identified that this need still exists and further recommends that the Centres of Excellence incorporate 'live support' from resource staff, focussing on communities that need process guidance and those that need support to engage in large and complex resource projects. In many instances, the lack of human resource capacity to engage with the private sector is still the most significant issue restricting Aboriginal communities from fully benefitting from resource development opportunities. While regional Centres of Excellence would address gaps in information, this is not the whole picture. Live access to resource staff and subject-area experts who can provide guidance in locating information, make connections with other communities, and provide information through workshops and other venues will be a critical element of any solution.

The Board also notes that industry stands to benefit from proposed Centres of Excellence as they provide access to critical information regarding capacity building, lands, and regional expertise. Industry does not always know which community to speak with, who represents that community, and whose territory would be impacted by a project. A Centre of Excellence would provide the necessary baseline for all.



Figure 5 - Key Elements of Centres of Excellence on Aboriginal Resource Development

<p>Databases</p> <ul style="list-style-type: none"> • Information database – database of general information on IBAs, regulatory processes, etc. • A referral mechanism to connect communities with needed experts (legal, engineers, etc.) 	<p>Staff</p> <ul style="list-style-type: none"> • Resource staff who provide Aboriginal communities with direct support – locating needed information, providing referrals to experts, giving workshops in communities, conducting training, and traveling to communities to provide direct support for planning and scoping on resource development projects.
<p>Partnerships</p> <ul style="list-style-type: none"> • Partnership with an academic institution – to drive a forward research agenda on best practices that support Aboriginal communities • Partnerships with other Centres of Excellence or agencies to achieve delivery efficiencies and leverage existing expertise 	<p>Information networks</p> <ul style="list-style-type: none"> • Information sharing networks among Aboriginal communities on resource development

Recommendation 5

It is recommended that the Government of Canada establish “Centres of Excellence on Aboriginal Resource Development” that would be financially supported by industry and government to assist Aboriginal communities and industry to engage in resource development opportunities. It is further recommended that the Centres of Excellence contain up-to-date and authoritative information on legal, financial, technical and regulatory contexts related to this sector. Features of the Centre of Excellence would include:

- Information database and referral service to connect communities with experts
- Partnership with an accredited academic institution to lend expertise in database and information management, research and cataloguing of case studies and best practices
- Staff who would act as resource teams to provide guidance, workshops and on-site assistance to help a community scope their planned involvement in a resource development opportunity.



III. Areas that merit further consideration

We must look outside the status quo for the solutions needed to address challenges with not only on reserve infrastructure and housing, but to foster economies that are vitally needed to advance the standing of First Nations communities in the long term.

-Harold Calla, First Nations Financial Management Board, 2014

As the Board examined potential options to help enhance financial management in Aboriginal communities, we noted other areas that require consideration by the federal government, Aboriginal communities, and their partners.

i. Resource revenue trusts

While Aboriginal communities need the right systems and capacities in place to manage the financial benefits generated by resource development opportunities, once revenues flow into a community Aboriginal governments face a new set of challenges related to fiscal management and prioritization. Successfully managing project earnings from resource opportunities is a challenge common to communities across Canada, Aboriginal and non-Aboriginal alike. At the heart of the issue is the need to strike a balance between sharing the benefits in the present and providing for the needs of future generations.

Using trusts to manage funds from non-renewable resources offers an option to manage benefits for the long term. A trust provides a mechanism for holding capital moneys and using interest generated from this capital to fund current activities. Properly structured and managed, this can allow communities to use a lump sum of money initially put into trust to generate ongoing revenues to fund community activities in perpetuity, thus providing a mechanism to support the needs of future generations.

Métis Nation of Ontario's Solar Energy Partnership

In developing a partnership with a for-profit solar energy firm, the Métis Nation of Ontario (MNO) has relied on expert legal advice to create a trust vehicle. This legal entity has allowed the MNO to accomplish three objectives: first, to protect the MNO government from any liabilities, should they occur, from the partnership; second, to isolate the MNO government from any charges that it is carrying on "for-profit" businesses under the cover of a not for profit entity; and third, to minimize the payment of taxes in a manner that is both legal and ethical. As equally important as the creation of this corporate legal structure, was the MNO citizens' adoption at a recent Annual General Assembly – the legislative arm of the MNO government – of a bylaw for how profits flowing from this partnership through a trust vehicle will be used. Only a subsequent general meeting of members can modify this by-law.

Setting up a well-structured trust requires a variety of criteria to be put into place, and will vary from community to community. Meeting these challenges involves employing expertise in both corporate and tax law. In addition, for any arrangement to prove stable and immune from changes in political leadership, broad community support is required.

However, the decision as to whether a trust is the most suitable or desirable option for an individual community should rest with the band's Chief and Council. Managing moneys through a trust may be a suitable financial vehicle under certain circumstances – for example, if a First Nation's community vision



is to manage their moneys for their long-term benefit, reserving the capital and using only the interest it generates. However, when trusts are not properly structured, they become an impediment to meeting community needs. There are many examples of poorly structured trusts and often administrative costs can be exorbitant.

ii. Own-source revenues policy

According to the Government of Canada, its own-source revenue position is "to take into account the ability of self-governing groups to contribute to the costs of their own government activities when determining the level of federal transfers."¹⁷ This policy stands in stark contrast to the approach taken with First Nations operating under the *Indian Act*, where Canada generally provides 100 percent of base funding, which First Nations supplement, using their own financial resources. It is important to note here that every other non-Aboriginal government of Canada receives financial support from a higher order of government.

As a result, not only does Canada's own-source revenues position create a strong financial disincentive to Aboriginal groups seeking to enter into self-government arrangements, it also penalizes communities for their success; as communities subject to the own-source revenue policy generate more revenues from resource development activities, the level of financial support from the federal government decreases. In effect, there would appear to be no net financial benefit for communities to proceed with a resource opportunity. The Board believes this policy should be removed.

iii. Resource revenue sharing

Jurisdiction over natural resource rights and management is shared between the provincial and territorial governments, and the federal government. However, the Board notes that the vast majority of royalty revenues and responsibilities rest with provincial governments: for example, pursuant to the *Constitution Act, 1867*, provinces are owners of their subsurface energy resources, with some exceptions made for those held in Aboriginal and federal Crown lands. However, Aboriginal communities are not benefitting from resource-revenue sharing arrangements from their lands or traditional territories.

The largest share of federal, provincial, and territorial government revenues is collected from the upstream oil and gas industry, which averaged approximately \$22 billion per year from 2007 to 2011, inclusive.¹⁸ Canadian oil and gas producers paid royalties of \$161 billion to the governments of the provinces and territories between 2000 and 2011. These are meaningful revenues that help pay the costs of government, run social programs, and promote additional economic activity.

In 2003, in an effort to reinvigorate the British Columbia treaty negotiations process, the Government of Canada agreed to share the cost of future resource revenue-sharing arrangements in final treaty settlements on a 50/50 basis with British Columbia. The 2006 Maa-nulth First Nations Final Agreement, for example, provides signatory First Nations with a share of resource revenues derived from their

¹⁷ Government of Canada, AANDC, November 2012, *Fact Sheet – Own-Source Revenue – At a Glance*, <https://www.aadnc-aandc.gc.ca/eng/1354117773784/1354117819765>, accessed September 9, 2014

¹⁸ Government of Canada, Natural Resources Canada, *Energy Markets Fact Book 2013-2014*, http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/files/pdf/2013/EnergyMarket_e.pdf



traditional territories for 25 years. Canada and British Columbia share the cost of these payments, estimated at \$1.2 million annually. Similar to the northern land claims agreements, resource revenue-sharing payments are capped.

In 2002, the Government of Quebec and the Cree Nation concluded the *Paix des Braves Agreement*, putting an end to litigation surrounding implementation of the *James Bay and Northern Quebec Agreement*. The 2002 agreement provides for revenue sharing and joint management of forestry, mining, and hydroelectric resources on Cree lands. With more than \$3.5 billion in resource payments over 50 years (up to \$70 million annually in royalty payments), this agreement represents the largest revenue-sharing package related to Aboriginal treaties in Canada.

The Board notes that positions and approaches taken by provincial and territorial governments to resource revenue sharing vary greatly. Some provinces or territories actively partner with Aboriginal communities, such as in British Columbia, while others do not support any form of resource revenue sharing.

Recommendation 6

In light of the recent Supreme Court of Canada decision in *Roger William et al v. Her Majesty the Queen* where the court declared the Tsilhqot'in have title over their traditional lands and as title holders have benefits over these lands:

It is recommended that the Government of Canada support, promote and take a leadership role in affirming, supporting and promoting Aboriginal rights with respect to the negotiation and establishment of resource revenue-sharing agreements for the purpose of benefitting Aboriginal communities in all provinces and territories throughout Canada. It is further recommended that the Government support Aboriginal involvement in the full value chain of development where Aboriginal communities and businesses so desire.



Conclusion

Natural resource development is a cornerstone of the Canadian economy and should therefore benefit all Canadians. The involvement of Aboriginal communities in natural resource development is both a necessity and a best practice. With the vast majority of major projects under federal review located on reserve lands, within treaty areas, or in settled or unsettled claims areas¹⁹, ensuring that Aboriginal communities are well positioned to take advantage of the economic opportunities presented by resource development in their traditional territories is critical.

Strong institutional arrangements are a necessary precursor to sound and effective community financial management. Community accreditation and certification offer benefits in generating skills and capacity as well as developing operating standards for community operations; they also serve to increase investor confidence and the credit-worthiness of a community or organization. The Board believes that the strong models in place for financial management certification should be made available to a broader group of communities. In addition, the Board believes that the benefits of accreditation and certification could be extended by exploring options for governance certification which would similarly provide standardized metrics for building capacity and developing operating standards for community governance. Governance certification and accreditation would likely include fewer requirements and reporting conditions for risk-based fiscal transfers as well as increased investor certainty and confidence.

Strengthened community capacity to support sound financial management is a similarly important consideration. Assessing both the size and potential impact of a resource development project, as well as the scope of benefits or compensation to which they might be entitled, can be prohibitive for small Aboriginal communities where community capacity is already challenged. Many Aboriginal communities facing resource development opportunities are doing so for the first time. Without the ability to deal effectively with the decisions that need to be made, Aboriginal communities may not realize the full potential of these opportunities.

The development of regional economic development tables in areas where major resource development is being pursued would provide a venue for coordinated regional strategic planning. Aboriginal communities could engage with industry and governments in the development of regional strategic plans related to the pursuit of resource development opportunities. Access to information and expertise to guide and support community decision-making is also crucial. The Board recommends the development of an information resource centre that would provide comprehensive and up-to-date information, facilitate Aboriginal communities accessing needed experts and advisors, and have live access to support staff who could provide direct support in locating needed information, offering process guidance and expertise, and providing training opportunities.

Major resource development offers Aboriginal communities significant opportunity for pursuing economic development, but strong institutions and community capacity are needed to ensure that Aboriginal communities are able to seize these opportunities and mitigate any risks associated with them. The National Aboriginal Economic Development Board (NAEDB) believes that Aboriginal peoples' involvement in resource opportunities is critical to unlocking the economic wealth of the resource sector and perhaps influence land stewardship practices over the long term. The chance for Aboriginal

¹⁹ Data compiled using Major Project Management Office's Tracking and Monitoring System, Natural Resources Canada, <http://www2.mpmo-bggp.gc.ca/MPTracker/search-chercher.aspx?lang=en>



communities to leverage major resource development opportunities into broader economic development for their communities should not be missed.

Ensuring that financial benefits from major resource development flow to Aboriginal communities, and that institutions and capacity exist to leverage these for the greater good, is a critical first step.



Annex A: List of Recommendations

Recommendation 1

To improve the ability of Aboriginal communities to take advantage of major resource opportunities, it is recommended that the Government of Canada support existing institutions such as the First Nation Financial Management Board, the First Nation Market Housing Fund and the Aboriginal Finance Officers Association to build the necessary financial capacity. These groups should be encouraged to work together to align their services and to establish best practices for community financial policies and processes.

In this respect, it is further recommended that the First Nations Financial Management Board be provided with additional funding to work with First Nations that: a) are not scheduled under the *First Nations Fiscal Management Act* as a separate stream to assist those groups in developing their financial management capacity and attaining Financial Management Board certification; and b) ensure that other Aboriginal groups and community organizations can, if they qualify, access the services and programs of the First Nations Financial Management Board.

Recommendation 2

It is recommended that the Government of Canada provide flexible, long-term, multi-year fiscal transfer arrangements as an incentive to communities to adopt and implement best practices for financial management in follow-up to Recommendation 1. The fiscal transfer arrangements would be based on an assessment of a community's management of financial risk.

Recommendation 3

It is recommended that the Government of Canada, in collaboration with Aboriginal organizations, provincial and territorial governments and industry stakeholders, enhance and make more accessible a targeted loan guarantee instrument, or other appropriate financing measure, for the specific purpose of facilitating meaningful equity participation of Aboriginal communities in major resource development projects.

Recommendation 4

Where there is a significant major resource development opportunity, it is recommended that the Government of Canada support the creation of formal regional economic development tables, comprised of Aboriginal groups, industry, and provincial governments, to provide direction and drive action which will benefit communities impacted by projects, such as the recently-developed Ring of Fire Development Corporation. These tables, facilitated by the federal government through Regional Development Agencies in particular, is one mechanism that would ensure Aboriginal communities can make strong, well-informed decisions on behalf of their communities.

Recommendation 5

It is recommended that the Government of Canada establish "Centres of Excellence on Aboriginal Resource Development" that would be financially supported by industry and government to assist Aboriginal communities to engage in resource development opportunities.



It is further recommended that the Centres of Excellence contain up-to-date and authoritative information on legal, financial, technical and regulatory contexts related to this sector. Features of the Centre of Excellence would include:

- Information database and referral service to connect communities with experts
- Partnership with an accredited academic institution to lend expertise in database and information management, research and cataloguing of case studies and best practices
- Staff who would act as resource teams to provide guidance, workshops and on-site assistance to help a community scope their planned involvement in a resource development opportunity.

Recommendation 6

In light of the recent Supreme Court of Canada decision in *Roger William et al v. Her Majesty the Queen* where the court declared the Tsilhqot'in have title over their traditional lands and as title holders have benefits over these lands:

It is recommended that the Government of Canada support, promote and take a leadership role in affirming, supporting and promoting Aboriginal rights with respect to the negotiation and establishment of resource revenue-sharing agreements for the purpose of benefitting Aboriginal communities in all provinces and territories throughout Canada. It is further recommended that the Government support Aboriginal involvement in the full value chain of development where Aboriginal communities and businesses so desire.



Annex B: List of Organizations

To help inform the recommendations found in this report, the NAEDB met with numerous Aboriginal groups, private sector proponents and departments and agencies from various levels of government.

Aboriginal Communities and Organizations

AFOA Canada
Corporation de développement économique montagnaise
Council for the Advancement of Native Development Officers (Cando)
First Nations Finance Authority
First Nations Financial Management Board
First Nations Market Housing Fund
First Nations Power Authority of Saskatchewan
Indian Resource Council
Meadow Lake Tribal Council Resource Development Inc.
Moose Cree First Nation
Muskowekwan First Nation
Pic River First Nation
Saskatoon Tribal Council

Federal Government

Aboriginal Affairs and Northern Development Canada
Indian Oil and Gas Canada
Natural Resources Canada

Provincial and Territorial Governments

Ontario Financing Authority
Nunavut Business Credit Corporation

Private Industry

Advanced Explorations Inc.
L'Institut national des mines
K+S Potash Canada
Lumos Energy
MPower North
SaskPower
Westcap Mgt. Ltd.

