

Special Study on INAC's Funding Arrangements

Final Report

22 December 2008

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Final Report

Executive Summary

Background

The Chief Audit and Evaluation Executive in Indian and Northern Affairs Canada (INAC) commissioned the Institute On Governance to conduct a special study of INAC's funding arrangements and accountabilities to inform further research and action. The study focuses primarily on non self-governing First Nations, Tribal Councils and other Aboriginal organizations providing services to First Nations. It was conducted through a documentation and literature review (refer to separate document); discussions with officials, experts; and recipients; and case studies.

With the devolution of the delivery of programs and services from INAC to First Nations and Tribal Councils, new funding arrangements and funding authorities were adopted that were intended to provide increased flexibility to First Nations to respond to their own needs. The architecture of the current funding arrangements is complex and consists of:

- Funding authorities – grants, alternative funding arrangements (AFAs), flexible transfer payments (FTPs), and contributions.
- Funding arrangements – comprehensive funding arrangements (CFAs) comprised of a combination of grants, contributions and FTPs; DIAND First Nation Funding Arrangements (DFNFAs) comprised of grants, contributions, FTPs, and AFAs; Canada First Nation Funding Arrangements similar to DFNFAs except that they consolidate programs and funding from other government departments; and Self Government Financial Transfer Arrangements used exclusively for self-governing First Nations and therefore not part of this study.
- Program authorities defining the terms and conditions for providing funding under that authority. The major programs for a First Nation are social assistance, education, and capital facilities management.

Other Aboriginal organizations are funded through grants, contributions and FTPs and do not have access to AFAs. Single year or multi year comprehensive funding arrangements (CFAs or MCFAs) are primarily used for this group. There is an array of program authorities used.

Our investigations of the status of funding arrangements indicate that there has been no progression in terms of the movement of First Nations and Tribal Councils into block funding arrangements over the past ten years. There is a reluctance to move into more flexible arrangements or multi year agreements because of concerns about annual adjustments, particularly for income assistance and primary and secondary education.

There was no assessment conducted of the capacity of recipients with CFAs in our sample and no capacity building plans developed to guide their progression to more control over their funding. Intervention is focussed primarily on debt reduction and not on sustainable capacity building.

The other Aboriginal organizations in our sample had single year CFAs despite the long term and supportive nature of their relationship with INAC. There were significant delays in concluding agreements resulting in delays in payment and jeopardizing the organizations' ability to implement agreed upon projects or programs.

Appropriateness

Despite the centrality of funding arrangements to the Department and their importance in terms of INAC's relationship with First Nations, Tribal Councils and other Indian-administered organizations, we conclude that they are not appropriate. There is a lack of clarity about the overall objectives of the funding arrangements, a lack of coherence among programs and funding authorities that make up the arrangements, and no clear leadership at INAC Headquarters. There is limited engagement of the recipients. The movement of First Nations, Tribal Councils and other Indian-administered recipients towards increasingly responsive, flexible, innovative and self-sustained policies, programs or services is not being promoted.

Effectiveness

In terms of the effectiveness of funding arrangements in meeting INAC's policy and program objectives, there is very little information about what results are being achieved since most of the reporting relates to inputs, activities or outputs and very little about outcomes or results. Risk management, accountability and flexibility are not well balanced within the funding arrangements in terms of the amount of money involved, the nature of the program, or the capacity of the recipients.

In terms of risk management, there are only two funding arrangements for non self-governing First Nations and Tribal Councils despite the huge diversity of capacity and risks within these groups. Funding authorities are linked to the method of calculating the funding (formula-driven or fixed costs versus proposal-driven or variable costs) and not to the capacity of the recipient. Program authorities vary in terms of their approach to risk management. Often very small programs are monitored very closely whereas very large programs are monitored very loosely.

Similarly, single year CFAs and funding authorities are used with other Aboriginal organizations regardless of the nature of the relationship, the program being funded or the track record of the recipient. Some of these organizations were micro-managed whereas a more strategic approach was taken with others, but the differences seemed to be linked to differences in INAC's staff rather than differences in the capacity of the organizations.

An appropriate accountability framework needs to be in place to support strong accountability relationships based on clear roles and responsibilities, clear performance expectations, balanced expectations and capacities, credible reporting, and reasonable review and adjustment. Effective

accountability is therefore not defined solely by funding arrangements. Our study indicated that accountability is not working well because there is inadequate reporting on performance; no serious informed review of the program information reported; and no appropriate program changes, incentives for good performance, or consequences for poor performance.

The accountability of First Nations to their members is a function of good governance practices. Having their own source of revenue increases the expectations of members and enhances their need to be accountable. Other Aboriginal organizations also had to balance expectations against the amount of funding available, and responsiveness against the terms and conditions of the funding. Both groups thought that INAC should be accountable to them for its performance in managing the funding relationship.

Funding arrangements were seen to be focussed on INAC's policies and programs and not those of the recipient. Flexibility was constrained by the amount of funding. Targeted interventions reduced flexibility further. And intervention eliminated all flexibility. Other Aboriginal organizations were further constrained by delays, holdbacks, stacking limits, and the inability to retain surpluses. For both groups, having access to other sources of revenue increased flexibility.

Efficiency

The administrative burden for some First Nations and Tribal Councils and most of the other Aboriginal organizations was onerous whereas for others it was considered to be manageable. The funding provided for management and administration was considered to be inadequate by all. In general, INAC's resources in the regions were focused more on following up on reports, compliance reviews and audits rather than preventive and proactive measures.

Views on the reporting burden also varied. There is not much difference between the reporting for First Nations and Tribal Councils under CFAs versus DFNFAs. The amount of reporting was not commensurate with the amount of the funding, and there was some duplication across reports. Of more concern to the First Nation and Tribal Council recipients was the value of the reports to INAC since they did not receive feedback. There was a lot of frustration in all three regions about INAC losing or misplacing reports and holding back funding.

There is little coordination of funding arrangements across the federal government, few CFNFAs, and widely varying terms and conditions across departments. We identified a number of constraints to interdepartmental coordination or harmonization.

Recommendations

This special study comes at an opportune time when INAC is undertaking a strategic review and a new transfer payment policy and directive have been issued by Treasury Board in response to the Independent Blue Ribbon Panel on Grant and Contribution Programs. The new Transfer Payment Policy addresses some of the concerns we have raised in terms of risk management, flexibility, longer term funding, a results orientation, and the development of partnerships. An Aboriginal Cluster of federal departments has been created and INAC is expected to take the lead in this Cluster.

We make five recommendations to address the issues that we have raised:

1. Clarify the objective of funding arrangements - to achieve better socio-economic outcomes in partnership with First Nations. This means a focus on results that should lead to enhanced accountability, improved performance and more realistic expectations.
2. Appoint a departmental leader at the ADM level
3. Develop partnerships at the national and regional level with First Nations.
4. Revise the architecture of funding arrangements to increase the diversity, reduce the complexity of programs, utilize multi year arrangements, and set service standards for INAC.
5. Assess recipients and develop and support a capacity building strategy designed to continuously improve their performance.

Further research is suggested related to risk assessment, results based reporting, own source revenue, communities in crisis, and capital funding.

I. Introduction

A. Background

Over the past three decades, Indian and Northern Affairs Canada (INAC) has increasingly devolved program design, administration and delivery directly to First Nations, territorial governments, Inuit communities and organizations, and other Aboriginal organizations - with a corresponding change in funding arrangements. INAC has also promoted self-government for those First Nations that wish to pursue it and the corresponding design of new funding models.

The funding regime is complex and the programming obligations and reporting requirements can become tangled and onerous with the involvement of other departments beyond INAC. A number of observers within and outside of INAC have called for a fundamental change in how the federal government understands, designs, manages and accounts for its funding, particularly to First Nations but also to other organizations.

INAC's Chief Audit and Evaluation Executive commissioned the Institute On Governance (IOG) to conduct a special study of INAC's funding arrangements and accountabilities. This special study will inform further research and action aimed at improving funding arrangement design, instrument choice, accountability provisions and their effectiveness, efficiency and appropriateness in furtherance of broad government policy objectives.

B. Statement of Work

The objectives of the special study are two-fold:

1. To determine to what extent the funding arrangements available to the department in furtherance of its and the government's policy objectives respecting First Nations, Aboriginal peoples and Northerners are:
 - appropriate for the purposes for which they are used;
 - effective in achieving the policy outcomes targeted; and
 - efficient both administratively (vertically) and as government (not just INAC) policy instruments (horizontally).
2. To establish to what extent the accountability provisions in these arrangements are appropriate and effective in achieving the accountability and reporting needs of funding recipients (to local stakeholders) and those of the Minister (to Parliament and Canadians).

The funding arrangements targeted by the study are those currently in use, excluding self-government financial transfer agreements, treaty related payments, payments in relation to comprehensive land claims, and payments to individuals. The arrangements include contribution agreements (CAs)¹, comprehensive funding arrangements (CFAs), DIAND First Nation Funding Arrangements or Canada First Nations Funding Arrangements (DFNFAs/CFNFAs) and grants.

¹ Although contribution agreements are included in this list, INAC's new financial system does not include any arrangements coded as contribution agreements.

Two important issues that arise in discussions around funding arrangements that were not included in the Statement of Work are the amount and adequacy of funding provided, and the allocation of the funding among recipients or across programs. Both of these subjects are questions of policy that exist independently of the means used to deliver funding. They affect funding arrangements themselves however and we therefore cannot avoid referring to them as part of the analysis.

A description of each funding arrangement is provided in the next section of this report. The complete Statement of Work is provided in Annex 1.

C. Note on Recipients

The Statement of Work refers to funding arrangements used with First Nations, Aboriginal peoples and Northerners. These recipient groups differ greatly in the way INAC relates to them differences which are reflected in the funding arrangements used and the evolution to date of these funding arrangements.

- First Nations and Tribal Councils - After the 1980 Penner Report, INAC strove to move Funding Arrangements for First Nations governments along a continuum towards increasing flexibility, block funding, and accountability requirements oriented more towards results than a detailed accounting for inputs and outputs. This evolution was intended to be consistent with the government's policy objectives to prepare First Nations for transition to self government. The same general approach applied to Tribal Councils (groupings of First Nations). For that reason, only FNs and TCs had access to multi-year block funding authorities.
- To non-First Nations on behalf of First Nations - A substantial amount of funding flows directly from INAC to other organizations in order to fund the delivery of programs and services to First Nations. Recipients include providers of child and family services, elementary and secondary education, post-secondary education, cultural programs, economic development programs, and other services to First Nations. Recipients may or may not be Indian-administered and can include provincial ministries or agencies such as school boards. There is also funding that flows to First Nations representative organizations and to national Aboriginal professional, technical and support organizations. Funds are generally provided through Comprehensive Funding Arrangements.
- Northern First Nations - With respect to Northerners, First Nations located in Yukon and Northwest Territories (NWT) have "traditionally" received more of their services through the respective territorial governments than is the case south of 60⁰. However, their funding arrangements with INAC resemble those of southern First Nations, though somewhat less in scope, especially in NWT. It should be noted that 11 of 14 Yukon First Nations are covered by self-government funding arrangements and that one NWT First Nation has a self-government agreement and several others have agreements-in-principle.
- Inuit - With respect to Inuit, the primary funding relationship is different from that applying to First Nations. Programs and services for Inuit have generally been provided

by the provinces or territories that they inhabit. As land claims have been settled, the major Inuit groups (Inuvialuit, Nunavik, Nunavut and Nunatsiavut) have moved to quite different degrees and types of self-government and funding relationships (and funding arrangements), in each case still involving the provincial or territorial governments. Because self-government agreements and comprehensive land claims were excluded from this study, most of these arrangements are also excluded.

- Other Aboriginal groups - INAC's relationships with other Aboriginal groups stems from its recent acquisition of the Office of the Federal Interlocutor (OFI) with its funding relationships with organizations representing Métis, urban Indians, and non-status Indians; and from its acquisition of Aboriginal Business Canada. These relationships and the resulting arrangements are quite program-specific.

In terms of assessing the various funding arrangements, these differences among recipients are critical. With respect to INAC's major "business" of funding non self-governing "Indian Act" First Nations and preparing these for eventual self-government, funding arrangements are significant policy instruments. In fact, the 2008-2009 INAC Report on Plans and Priorities (RPP) acknowledges the importance of funding arrangements:

"A significant amount of the department's mandate is derived from policy decisions and program practices that have developed over the years; it is framed by judicial decisions with direct policy implications for the department; and **it is structured by funding arrangements or formal agreements with First Nations** and/or provincial or territorial governments." (emphasis added)

This is not the case with respect to funding arrangements with INAC's other recipient groups. For that reason, this report focuses primarily on First Nations, Tribal Councils and other Aboriginal organizations (primarily Indian-administered) providing services to First Nations. More information related to Inuit; Métis, urban Indian, and non-status Indian organizations and peoples; and Northerners is contained in the documentation and literature review.

D. Approach and Methodology

General Approach

The study was conducted in three phases:

Phase 1 – Work planning

Phase 2 – Research and data collection

Phase 3 – Analysis and reporting

Four lines of evidence were used:

1. a documentation and literature review;
2. discussions with officials from INAC and other federal departments and with experts;

3. discussions with a randomly selected and broadly representative sample of First Nations, Tribal Councils, and other Aboriginal organizations in the selected regions of British Columbia, Saskatchewan and Quebec; and
4. case studies.

The research was conducted from August to November 2008. Members of the project team traveled to the three regions in September and October in order to review files, conduct interviews, and visit recipients where feasible. Interviews were also conducted in the National Capital Region during that period.

Documentation and Literature Review

The final documentation and literature review is attached as a separate document. It is based on previous research, evaluations, reports and available literature on the subject of fiscal transfers, funding arrangements and accountability. It was used in its draft form to brief the project team and the Project Authority, and to highlight key issues for investigation during the study. Relevant information will be referred to throughout this report.

Discussions with INAC and other federal officials and with experts

We conducted interviews with officials from INAC Headquarter who are involved with funding arrangements, governance, strategic policy, programs, audit and evaluation, regional operations, and Inuit relations. We also conducted interviews with the directors of funding services, funding service officers, and education and social program officials in the three regions.

We held discussions with relevant officials in First Nations and Inuit Health Branch (FNIHB), Human Resources and Social Development Canada (HRSDC) and Public Safety Canada about their funding arrangements and their views of INAC's funding arrangements. We held a meeting with the Treasury Board Secretariat near the end of the data collection phase in order to discuss the new Transfer Payment Policy which came into effect on 1 October 2008 and their views of the implications of that new policy for INAC.

Throughout the data collection and analysis phase, we spoke to five experts with knowledge and experience of INAC's policy, programming, funding and accountability arrangements in order to test out certain findings and conclusions.

Discussions with First Nations, Tribal Councils, and Other Aboriginal Organizations

We randomly selected a sample of 30 First Nations to be interviewed across the three regions. The sample was broadly representative of various factors – amount of funding, size, type of funding arrangement, geographic zone, environmental zone, community index of wellbeing, etc. We also randomly selected a sample of 10 Tribal Councils across the three regions that was broadly representative in terms of amount of funding and type of funding arrangement and balanced with the FN selection in terms of geographic areas within each region.

We also selected a sample of 24 other Aboriginal organizations that were funded through the three regions or by INAC Headquarters. The organizations funded by Headquarters included governance, land management, economic development, culture and northern research organizations. The organizations funded through the three Regional Offices included Indian-

administered child and family service agencies, culture and education centres, economic development corporations, Indian-administered post secondary institutions, self-governing First Nations with CFAs, and sectoral agreement holders. Certain Aboriginal organizations (Aboriginal business financial institutions, Métis, urban Indian and Non-Status Indian organizations, and national and provincial/territorial Aboriginal representative organizations) were excluded from the sample because of previous or current evaluations.

The original number of recipient interviews that were planned and the actual number that were conducted are presented in the following table:

Table 1: Planned and Actual Interviews Conducted

Recipient	Planned Number	Actual Number
First Nations	30	15
• <i>British Columbia</i>	12	6
• <i>Saskatchewan</i>	12	5
• <i>Quebec</i>	6	4
Tribal Councils	10	8
• <i>British Columbia</i>	4	2
• <i>Saskatchewan</i>	4	4
• <i>Quebec</i>	2	2
Other Aboriginal Organizations	24	18
• <i>Headquarters</i>	10	8
• <i>British Columbia</i>	5	3
• <i>Saskatchewan</i>	6	4
• <i>Quebec</i>	3	3
Total	64	41

As the table indicates, we had the most difficulty setting up the interviews with First Nations but we were able to get additional perspectives on the funding of First Nations through our interviews with Tribal Councils and other Aboriginal organizations.

Case studies

A total of 8 case studies were conducted across Canada. The breakdown of the case studies across the different funding authorities or arrangements is as follows:

- Grants to the Government of the North West Territories and the Government of Nunavut for the health care of Indians and Inuit (refer to Annex 2);
- Grants to the Mi'kmaw Kina'matnewey, an institution established by the *Mi'kmaw Education Act* of 1999 (refer to Annex 3).
- CFAs (3) with 1 Tribal Council in Quebec, 1 FN in BC, and 1 FN in Saskatchewan.
- CFNFAs (2) with 1 Tribal Council in Saskatchewan and 1 FN in Quebec.
- 1 CFA with an Aboriginal organization that provides services to First Nations.

The CFA and CFNFA case studies were drawn from the sample of FNs, TCs and other Aboriginal organizations. The case studies involved a more extensive set of interviews and a file review. The results will be used to illustrate certain points in more detail in this report.

E. Purpose and Outline of Report

This report summarizes and analyzes the findings from the four lines of evidence and formulates conclusions and recommendations. It is organized into three main sections:

Section I – Introduction – this section which provides details on the study and this report.

Section II – Overview of Findings – provides an overview of the development of funding arrangements, their components, current status, and trends in the three regions.

Section III – Key Questions and Conclusions – presents the findings and draws conclusions in terms of the key issues of the special study – appropriateness, effectiveness and efficiency.

Section IV – Recommendations – makes five main recommendations for improvements on the basis of the findings and conclusions.

II. Overview of Findings

This section is divided into three parts. In the first part we summarize the history of INAC's funding relationship with First Nations and previous reports on that relationship. In the second part we describe the architecture of funding authorities, funding arrangements and program authorities for First Nations and Tribal Councils and other Aboriginal organizations. And finally, in the third part we provide a status report on current funding arrangements and trends in the past decade.

A. A Brief History

By the 1980s, "devolution" was already well underway as INAC moved from direct delivery of most services on reserve to delivery through First Nations themselves using Contribution Agreements. Contributions were however perceived by First Nations as excessively burdensome and inflexible. Subsequent to the Penner Report on Indian Self-Government (1983), INAC obtained approval for other types of funding authority intended to increase First Nations' flexibility in program delivery and to reduce the administrative burden. Thus Alternative Funding Arrangements were approved in 1983 and Flexible Transfer Payments were approved in 1989. Funding Arrangements were also rationalized so that individual First Nations would have only one Funding Arrangement for all programs funded through INAC rather than a separate arrangement for each program.

As devolution became complete, the ongoing funding relationship as expressed in the Funding Arrangement became a critical feature of the relationship between Canada and individual First Nations. For most non self-governing First Nations, the annual Comprehensive Funding Arrangement (CFA) or multi-year DIAND or Canada First Nations Funding Arrangement (DFNFA/CFNFA) is the only formal signed agreement between Canada and the First Nation.

Coupled with substantial reductions in INAC staff over the period to 1994, INAC's role was very much reduced to that of a funding agency, with the greatest proportion of its funding transferred to First Nations for their program purposes.

Through the 1990s and more recently, the Report of the Royal Commission on Aboriginal Peoples (RCAP), internal audits, evaluations, and Auditor General of Canada reports have continued to focus on the administrative and reporting burden associated with Funding Arrangements with non self-governing First Nations, even under the more modern flexible or alternative types of arrangements. These reports have also cited the problem of the proliferation of new programs or spending initiatives funded outside the flexible portion of a funding arrangement.

The most recent discussion of the subject was the December 2006 Report of the Independent Blue Ribbon Panel on Grant and Contribution Programs. Concerns regarding grants and contributions are widespread across government, although INAC seems to be the most strongly criticized agency. The Treasury Board has responded by revising its Transfer Payment Policy and Directive in favour of a more flexible approach, which INAC will also have to address.

There is therefore a consistent story line from the Penner Report to the most recent report from the Blue Ribbon Panel. In spite of years of criticism on the one hand, and attempts to reform on the other, the major concerns about excessive and misdirected accountability and reporting requirements remain unresolved.

B. Architecture of Funding Arrangements

Funding arrangements are composed of general terms and conditions, funding authorities, and program authorities. This is what we call the architecture of funding arrangements. A description of the architecture for the two main recipient groups is outlined in further detail in the following sections.

First Nations and Tribal Councils

Funding Authorities

There are four types of funding authority used by INAC with decreasing levels of flexibility:²

1. Grant—a transfer payment which is not subject to being accounted for or normally subject to audit by the department, but for which eligibility and entitlement may be verified or for which the recipient may need to meet pre-conditions. The recipient may be required to report on results achieved.

An example is INAC's grant for band support funding (BSF) which assists band councils to meet the costs of local government and administration but which gives First Nation communities the flexibility to allocate funds according to their individual needs and priorities. Band councils submit an application form with data that is used to establish the funding level. Band councils also maintain budgets and accounts for BSF funds that are available to their members. AFA recipients must also include BSF funds in their audited financial statements.³

2. Alternative funding arrangements (AFAs) provide five year funding and the flexibility to transfer funds across programs in addition to the ability to retain surpluses (and the responsibility for deficits).⁴ According to the AFA authority, eligible First Nations and Tribal Councils can design programs and allocate funds to meet community needs and priorities provided that minimum program requirements are met. Budgets are set according to regional formulae and are supposed to be adjusted annually to ensure recipients are neither advantaged nor disadvantaged financially in relation to non-AFA recipients. First Nations and Tribal Councils wishing to enter into an arrangement under the AFA authority must meet various entry requirements as well as the requirements of individual program terms and conditions.

There are numerous programs and services to which AFA block funding applies. This includes contributions for land and estates management, for registration administration,

² *Policy on Transfer Payments*, Treasury Board of Canada Secretariat, 2000. Although a new Transfer Payment Policy took effect on October 1, 2008, INAC's current funding arrangements are based on the previous policy.

³ *Terms and Conditions for the Grant for Band support funding*, Treasury Board Authority 410, 2005-2010.

⁴ *Terms and Conditions Alternative Funding Arrangement (AFA)*, Treasury Board of Canada Secretariat, 2005-2010.

for elementary and secondary education programs and services, for post-secondary education, for income assistance and assisted living, for National Child Benefit Reinvestment, for capital facilities and maintenance, for band support and tribal council funding, and for economic development.

3. Flexible transfer payments are usually applied where funding is based on formulae or fixed costs. According to the FTP authority, FTP funding is distributed on a program basis with “a strong incentive for recipients to more effectively manage programs and services within the fixed budget” since any surpluses can be retained for use at the Council’s discretion provided that minimum program requirements are met.⁵ Under an FTP, reporting requirements are supposed to assess program performance rather than how each dollar is spent.

Where the recipient is a First Nation, the authority requires that an accountability and management assessment be conducted by INAC before entering into a funding arrangement. The assessment is to be based on an accountability or management standard that is common to all levels of government in Canada. Following the assessment, INAC may work with the First Nation to prepare a management development plan to address any gaps identified. This management development plan is to be attached to and form a part of the FN’s funding arrangement and be reviewed on an annual basis. (We did not find any evidence of an assessment having been done in the three regions for our sample of FNs with CFAs.)

FTP funding applies to a similar set of programs and services as AFA block funding, with the major exception of income assistance. The FTP funding authority also covers funding to a number of other Indian-administered and Aboriginal organizations which provide programs and services to First Nations.

4. Contribution - a conditional transfer payment for a specified purpose that is subject to being accounted for and audited. If there is provision for advances to be paid, there is no provision for the retention or carry forward of surpluses at the end of the fiscal year. Contributions are usually used to fund proposals or reimburse variable costs such as income assistance.

Funding Arrangements

INAC has constructed its funding arrangements for First Nations and Tribal Councils using the four funding authorities as building blocks. The principal types of funding arrangements currently used are:

- Comprehensive Funding Arrangements (CFAs) – a combination of grants, contributions and FTPs as applicable to the various programs.
- DIAND First Nation Funding Arrangements (DFNFAs) – a five-year agreement for INAC funding which uses two streams: block funding using the AFA funding authority for those programs and services that are eligible; and targeted funding based on

⁵ *Terms and Conditions Flexible Transfer Payment (FTP)*, Treasury Board of Canada Secretariat, 2005-2010.

contribution or FTP authority for other programs. Canada First Nation Funding Arrangements (CFNFAs) are similar to DFNFAs except that they consolidate programs and funding from other government departments. Both DFNFAs and CFNFAs are also known as Flexible Transfer Arrangements (FTAs).

INAC's current policy⁶ provides for an assessment to be undertaken prior to signing a new or renewed DFNFA/CFNFA. The criteria for entry are:

- experience in administering programs
- sound organization for purposes of program management
- processes and procedures in place for program management and financial control
- mechanisms in place to support accountability
- in a sound financial position or if problems exist, have a plan in place which has been operating effectively over a six month period to remedy the problem
- a sufficiently detailed plan covering the duration of the agreement showing how the agreed-upon level of funding for the initial fiscal year will be administered and projected expenditures for each subsequent fiscal year.

The related guidelines provide further details on the assessment of human resources, financial and program management; and leadership and governance.

- Self Government Financial Transfer Arrangements (SGFTAs) – used exclusively with self-governing First Nations. These are multi-year grants covering all of the programs and services delivered under the relevant self-government agreement. Accountability to Canada is limited to annual audited financial statements and the extent of a First Nation's accountability to its members is specified in the First Nation's constitution. SGFTAs increasingly include provisions for Own Source Revenue and taxation, usually with off-set provisions that are phased in over a number of years.

There are no contribution agreements or multi year comprehensive funding arrangements used for FNs and TCs according to INAC's transfer payment system.

National models of CFAs and DFNFA/CFNFAs are reviewed and updated annually, along with an annual update of the Recipients' Reporting Guide (formerly called the First Nations' Reporting Guide). The models include, where applicable:

- General terms and conditions
- Accountability framework
- Program or service budgets, authorities and monthly expenditure plan
- Program and service delivery and reporting requirements
- Adjustment factors
- Schedule of reporting requirement due dates

⁶ A new policy and guidelines for conducting assessments were put in place in 2007 and a compliance review of entry assessments in the regions is currently underway.

- Management development plan (if available) – we did not see any MDPs attached to the CFAs that we reviewed for our case studies
- Remedial management plan (if applicable)

The accountability framework that is required includes not only financial accountability to INAC but also the development of a system of accountability to First Nation members in the case of a First Nation Council, or to member First Nations and their members in the case of Tribal Councils. This system is to include provisions for transparency, conflict of interest, benefits for elected and unelected senior officials, disclosure and redress.

INAC's funding arrangements with First Nations and Tribal Councils do not have an explicit hold back provision but funding may be withheld for non-receipt of annual audited financial statements or other reports.

The departmental authority for intervention is contained in the terms and conditions of both CFAs and DFNFA/CFNFAs. Instances of default where the Minister may intervene include the following:

- the terms and conditions of the funding arrangements are not being met;
- the auditor gives a denial of opinion or adverse opinion with respect to the financial statements of the recipient;
- the financial statements indicate that the recipient has incurred a cumulative deficit equivalent to eight (8) % or more of its total annual revenues; or
- the health, safety or welfare of FN members is being compromised.

There are three levels of intervention:

- *Remedial Management Plan (RMP)*: when the recipient is willing and has the capacity to address and remedy the problem, a Remedial Management Plan is drawn up and implementation of the RMP is monitored.
- *Co-management*: when the recipient is willing but lacks the capacity to address or remedy the problem, a co-manager is appointed;
- *Third Party*: when the recipient is high risk and/or is unwilling to address or remedy the default, a Third Party Manager (TPM) is appointed by the Minister.

A new audit clause has been introduced into Model Funding Arrangements effective 2008/09. This clause permits the Minister(s), at any time during or up to five years after expiry of an agreement, to carry out audits or evaluations of the effectiveness of any of the programs and services funded under the Arrangement, or of the Council's management practices in relation to the Arrangement. This clause is in line with audit clauses found in the contribution agreements of other government departments.

Program Authorities

According to the Public Accounts 2007/08, the Department of Indian Affairs and Northern Development operated with a total of 54 transfer payment program authorities. Of these, 12 were related primarily to the delivery of services by First Nations and Tribal Councils. The remaining

42 program authorities were related to self-government agreements or negotiations, claims settlements, treaty-related matters, other organizations, or individuals.

The program authorities for First Nations and Tribal Councils cover aspects of the ongoing governance and administration, education, social development, economic development, and capacity building of First Nations and Tribal Councils as well as targeted interventions in certain areas. Each program authority defines terms and conditions for providing funding under that authority and these terms and conditions are incorporated into funding arrangements to a greater or lesser extent. The terms and conditions include the objectives and results of the program, the accountability framework, the audit and evaluation framework, and the management control framework.

Financial reporting requirements are defined in the *Year-end Reporting Handbook* for First Nations, Tribal Councils and First Nation Political Organizations. This handbook covers general as well as program specific financial reporting and the reporting of all federal government funding. Program reporting requirements are defined in the *Recipient Reporting Guide* applicable to recipients funded under CFAs, CFNFAs and DFNFAs. This guide includes 67 separate reports - not all of which would be applicable to any one First Nation or Tribal Council. Many of the reports are applicable to both CFAs and DFNFA/CFNFAs. Most reports can be completed and submitted electronically through the FNITP and 175 First Nations are currently using this facility. There are plans to expand electronic reporting through FNITP to other First Nations over the next few years.

Illustrations

The following table provides an illustration of how the different funding authorities and program authorities come together within a comprehensive funding arrangement with a First Nation. This First Nation receives about \$9.5 million annually from INAC and we have also included a breakdown of the budget under the CFA to illustrate certain points.

Illustration 1 - First Nation CFA

Program or Service⁷	Funding Authority	% Budget	Reports Required	Frequency/Due Date
<i>Governance and Management</i>				
Band support funding	Grant	7.9%		
Band employee benefits - non-statutory - statutory	FTP Contribution	1.3%	- Band Employee Benefits Funding Application - List of Eligible Employees	Annual 30 April Annual 30 April
Registration & membership	FTP	0.1%		
<i>Social Programs</i>				
Income assistance basic needs	Contribution	23.9%	IA Basic Needs Reports	Monthly
Income assistance service delivery	FTP	0.9%		
Income assistance special needs (2)	Contribution	2.9%	Annual Report	Annual, end of April
National Child Benefit Re-Investment	Contribution	6.4%	Annual Report	Annual, 31 May

⁷ Not all of these programs or services would have a separate program authority.

Program or Service⁷	Funding Authority	% Budget	Reports Required	Frequency/Due Date
Assisted Living	Contribution	0.8%	Home Care Summary	Monthly
Family violence	FTP	0.2%	Projects Report	Annual, 31 May
<i>Education Programs</i>				
Band operated schools - enhanced teacher salaries - instructional services - low-cost special education	Contribution FTP FTP	22.9%	- Nominal Roll Consolidated Report - Educ Staff Info.	Annual, Oct. 15 Annual, Oct. 15
Provincial schools - ancillary support - tuition	FTP Contribution	0.7%	- Nominal Roll - Prov. Educ Services Report – invoices and confirmation of payment	Annual, Oct. 15 Thrice – July 31, Jan 31, April 30
Student support services (2)	FTP	3.4%	No report required for transportation.	
Post secondary education	FTP	8.3%	- Register of Attendance - Register Graduates/Total - PSE Administering Org Summary Data Report	Annual, Dec. 31 Annual, Dec. 31 Annual, Dec. 31
Youth employment strategy (3)	Contribution	0.7%	- Evaluation (1) - Program Reports (3)	Annual, 31 March Annual, 31 March (2), 15 Sept. (1)
<i>Economic Development</i>				
Community Economic Opportunities Program	Contribution	N/A	Project Status Report	Annual, 120 days after the end of the FY
Community Economic Development Program	FTP	N/A	Operational Plan Program Report	Annual, Jan 15 Annual, 120 days after the end of the FY
<i>Capital Programs</i>				
Water and wastewater action plan	Contribution	<0.1%		
Education, infrastructure and housing (8) - up to \$1.5 million - over \$1.5 million	FTP Contribution	7.4%	- Annual Update 5 Year Capital Plan - Community Housing Plan - Progress Report on Housing Capital Projects - Certificate of Completion Emergency Renovations - Certificate of Completion Capital Projects	Annual, March 31 Annual, March 31 Annual, March 31 Annual, March 31 Annual, end of June
O & M of infrastructure and education assets and facilities (10)	FTP	12.1%	- Fire Losses Annual Report	Annual, March 31

Program or Service ⁷	Funding Authority	% Budget	Reports Required	Frequency/Due Date
<i>Financial</i>				
Financial Statements			Annual Audited Financial Statements	Annual End of July
Remedial Management Plan			Follow Up Submission	Quarterly

Note: (#) indicates the number of budget line items under that item with the same funding authority – e.g. Income Assistance Special Needs consists of two budget line items, both of which are funded as a contribution.

As the table indicates, the major programs for a First Nation are social assistance, education in schools (either on reserve or off reserve in provincial schools), and capital facilities management. The breakdown of the funding varies somewhat depending on certain factors that are particular to the First Nation or the region.

The table also illustrates the number of components under each program with relatively small amounts of money. There is limited flexibility in terms of these components and separate reporting requirements. In addition, the funding may not be allocated at the beginning of the financial year - in this particular case, the CFA had been amended five times by October in order to add funding for proposal driven projects and capital projects or reallocations.

The table also indicates how different funding authorities are used for different program components. The largest contribution is for income assistance. The largest flexible transfer payment is for instructional services in education. Most of the reporting required is annual, with the exception of income assistance and assisted living.

The next table illustrates how the funding authorities and program authorities come together under a DFNFA with a First Nation. This First Nation receives about \$4.8 million annually. It is more difficult to show the budget breakdown across the components because budgets are negotiated in the initial year and then adjusted annually at the same time as targeted interventions may be added or dropped. The budget figures in *italics* are therefore based on the initial budget, and the budget figures that are not in *italics* are based on the 08/09 budget as of October 2008.

Illustration 2 – FN DFNFA

Program or Service	Funding Authority	% 08/09 Budget	Reporting Requirement	Frequency/Due Date
Block Funding		93.9%		
<i>Governance and Management</i>		<i>% 05/06 Budget</i>		
Maintenance of Band government systems	AFA	<i>12.4%</i>	- Band Employee Benefits Funding Application - List of Eligible Employees	On renewal On renewal
Registration & membership	AFA	<i>0.3%</i>	None specified	
<i>Social Development</i>				
Provision of income assistance	AFA	<i>14.1%</i>	Annual Report	Annual, May 31

Program or Service	Funding Authority	% 08/09 Budget	Reporting Requirement	Frequency/Due Date
Provision of assisted living	AFA	0.8%	Annual Report	Annual, May 31
<i>Education</i>				
Provision of kindergarten, elementary and secondary education	AFA	20.0%	Nominal Roll Education Staff Information	15 Oct. 15 Oct.
Provision of post secondary education	AFA	22.8%	- Register of Attendance - Register Graduates/Total - PSE Administering Org Summary Data Report	Annual, Dec. 31 Annual, Dec. 31 Annual, Dec. 31
<i>Economic Development</i>				
Provision of programs relating to economic development	AFA	0.9%	CEDO Operational Plan CEDO Report	Annual, 15 Jan. Annual, 120 days after end of FY
<i>Capital Programs</i>				
Water & sewer capital and O&M	AFA	17.5%	- Annual Update 5 Year Capital Plan	Annual, 31 Mar
Housing	AFA	4.1%	-- Fire Losses Annual Report - Community Housing Plan - Progress Report on Housing Capital Projects - Certificate of Completion Emergency Renovations - Certificate of Completion Capital Projects	Annual, 31 Mar Annual 31 Mar Region/Project dependant Annual, Mar 31 Project dependant
Targeted Funding		6.1%		
<i>Governance and Management</i>				
Professional & Institutional Development	FTP	0.3%	Final Report	Annual, Mar 27
<i>Education</i>				
Special Education – Band operated Schools	Contribution	1.0%	Annual Report	Annual, May 15
Special Education – Provincial Schools	Contribution	0.3%	Annual Report	Annual, May 15
<i>Social Development</i>				
Special Needs – Early Childhood Intervention Program	Contribution	0.1%	Annual Report	Annual, 30 April
Assisted Living – Institutional Care	Contribution	0.4%	Monthly Report	Monthly
Family Violence	FTP	<0.1%	Self-evaluation report	Annual
Youth Employment Strategy (3)	Contribution	0.9%	- Evaluation (1) - Program Reports (3)	Annual, 31 March Annual, 31 March (2), 15 Sept. (1)
<i>Land Management</i>				
FN Land Management Initiative	FTP	2.2%	None specified	

Program or Service	Funding Authority	% 08/09 Budget	Reporting Requirement	Frequency/Due Date
First Nation's Land Management	FTP	0.5%	Summary report of land management transactions	Annual, 31 December of following year
<i>Capital Programs</i>				
Certified Operator Funding	FTP	0.3%	None specified	
<i>Financial and Funding</i>				
			Financial Statements	Annual, July 31
			Annual Return Management Report	Annual, within 90 day of FY end

There is therefore more consolidation of programs and fewer components under the block funding. The reporting requirements are similar to CFAs with the exception of annual rather than monthly reporting for income assistance and assisted living. The Annual Return Management Report requires that the FN recipient attest to adherence to the minimum program requirements that are detailed in the report format.

There are also a number of targeted interventions that in this case add up to less than 10% of the total funding. This proportion may be understated however as targeted funding can be added over the course of the year. In another FN that we looked at, targeted funding was about one-third of the total funding provided by the year end. These targeted interventions each have their own program terms and conditions including reporting requirements.

It is more difficult to illustrate funding arrangements with Tribal Councils because they can provide a range of services and not all Tribal Councils provide all of the services. For example, some Tribal Councils only provide technical advisory services to FN members whereas other Tribal Councils may take on the administration of programs on behalf of their member First Nations. The following table therefore illustrates the potential programs and services that could be delivered through Tribal Councils and the related funding authorities under a CFA and under a DFNFA, without any budget breakdown.

Illustration 3 – Tribal Councils CFAs and DFNFAs

Program or Service	Funding Authority under a CFA	Funding Authority under a DFNFA	Reporting Requirements	Frequency/Date
<i>Governance and Management</i>				
TC Funding Program – Management & Administration	FTP	AFA	Annual Report	Annual, May 31
TC Funding – Advisory Services	FTP	AFA	Annual Report	Annual, May 31
Band Employee Benefits – statutory - non-statutory	Contribution FTP	AFA AFA	Pension Plan Funding Report Funding Application List of Eligible Employees	Annual (CFAs) or on renewal (DFNFAs), May 31

Program or Service	Funding Authority under a CFA	Funding Authority under a DFNFA	Reporting Requirements	Frequency/Date
Consultation & Policy Development	FTP	FTP	Annual Report	Annual, Set by region
Indian Management Development	FTP	FTP	Annual Report	Annual, Set by region
<i>Education</i>				
Education Second Level Advisory	FTP	AFA	Annual Report	Annual, May 15
Special Education – Indirect	Contribution	Contribution	Annual Report for First Nation Regional Managing Organizations	Annual, July 30
School Evaluations	FTP	FTP	TORs School Evaluation Report	Once every 5 years 30 June
Teacher Upgrading	Contribution	Contribution	Final Activity Report	Annual, May 15
New Paths	Contribution	Contribution	Final Project Report	Annual, May 15
<i>Capital Programs</i>				
Band Asset Management Inventory System	FTP	AFA	Housing and Infrastructure Assets Report	Annual, Oct. 15
Circuit Rider Water Operator Training	FTP	FTP	- Quarterly Progress Report - Annual Activities Report - Plant Operator Water Use Records - Site Trip/Meeting Reports	Quarterly, by 20 th of following month Annual, 90 days after FY end Annual, April 15 As conducted
<i>Economic Development</i>				
CEOP – direct and flow through	FTP	FTP	Project Status Report	Project Dependant
CEDO	FTP	AFA	Operational Plan Program Report	Annual, 15 Jan. Annual, 29 June
<i>Social Development</i>				
Youth Employment Strategy (3)	Contribution	Contribution	- Evaluation (1) - Program Reports (3)	Annual, 31 March Annual, 31 March (2), 15 Sept. (1)
Emergency Shelter	FTP	FTP	Annual Report	Annual, May 31
<i>Self Government Negotiations</i>				
Self Government Negotiations	Contribution	Contribution	Progress Report	Project dependant
<i>Financial and Funding</i>				
			Audited Financial Statements	Annual, 31 July
			Annual Return Management Report (CFNFA/DFNFA only)	Annual, set by region

As the table illustrates, there is still funding under a DFNFA that is provided under an FTP or contribution funding authority rather than an AFA authority for a number of programs or services. In our Tribal Council case studies, this amounted to about 10% of the total funding that the Tribal Council received.

The table also shows that there is little difference in the reporting requirements for DFNFA versus CFA TC recipients. All of the reports are annual except the Circuit Rider Water Training and the Youth Employment Strategy projects. The format for the Annual Return Management Report, attesting to meeting minimum program requirements, is the same as for FNs even though most of the programs are not applicable for TCs.

Other Aboriginal Organizations

Funding Authorities

There are three types of funding authority for recipients other than FNs and TCs – grants, flexible transfer payments and contributions. Alternative funding arrangements are not applicable to this group of recipients.

The FTP authority is the same as that for FNs and TCs except that an accountability and management assessment is not required before entering into the arrangement. FTPs apply to programs and services provided by Cultural Education Centres, Child and Family Service Agencies, post secondary institutions, the Indian Taxation Advisory Board, and the First Nations Land Management Resource Centre, among others. These organizations were included in our interview sample.

Funding Arrangements

The funding arrangements used by INAC for recipients other than First Nations and Tribal Councils are:

- Comprehensive Funding Arrangements (CFAs) - a combination of grants, contributions and flexible transfer payments as applicable to the programs, services or activities that are funded and/or the recipient. The agreement is for a single fiscal year.
- Multi Year Comprehensive Funding Arrangements (MCFAs) – multi year arrangements not to exceed five fiscal years that can include a combination of grants, contributions and flexible transfer payments. There is no provision for the carry forward of funds from one fiscal year to the next under these arrangements although there is provision for revising budgets.
- Grants, treaty related matters, and treaty loans – these arrangements are related to self government, comprehensive claims and other treaty related activities. The grants include our two case studies – the grant for Mi’kmaq education in Nova Scotia and the grants to the Governments of the Northwest Territories and Nunavut for health care of Indians and Inuit. Grants used to be provided to FN political organizations for core funding, but with the renewal of the authority in 2007/08, this funding is now provided as a contribution.

National models of CFAs and MCFAs are reviewed and updated annually and include the same sections as CFAs for FNs and TCs, although the content is different:

- general terms and conditions
- an accountability framework that primarily refers to financial accountability to INAC, conflict of interest, and financial disclosure
- program, service or activity budgets, authorities and monthly expenditure plan

- programs, services and activity delivery requirements and reporting requirements
- adjustment factors
- schedule of reporting requirement due dates

Because there is no requirement for an assessment of the administrative, accountability and management practices of the recipient prior to entering into the arrangement, there is no reference to a Management Development Plan in the national models.

Both CFA and MCFA models include a provision for the holdback of at least 10% of the total funding due to the recipient, including flexible transfer payments, until the submission of the required reports. (There is a holdback of 20% on the core funding of Aboriginal representative organizations.) In the case of MCFAs, this holdback is applicable to each Fiscal Year.

In the event that a recipient is in default under the arrangement, they may be required to develop a Remedial Management Plan, INAC may withhold funds, other action may be required or the arrangement may be terminated.

Program Authorities

According to the Public Accounts 2007/08, there were a total of 15 program authorities applicable to organizations other than FNs or TCs. Some of these program authorities relate to the delivery of services on reserve. Some Aboriginal organizations receive funding under special authorities such as:

- contributions to the First Nations Finance Authority to enhance good governance
- contributions under the Aboriginal Business Canada Program (previously under Industry Canada)
- contributions under the SchoolNet program to six regional organizations (previously under Industry Canada)
- contributions to the National Aboriginal Achievement Foundation
- contributions to implement the First Nations Land Management Act
- the Federal Interlocutor's contribution programs for Métis and non status Indian organizations, the Urban Aboriginal Strategy and the Powley Initiative
- contributions to basic organizational capacity building of representative organizations.

It is not possible within the scope of this study to review all of these program terms and conditions. It is also not possible to provide an illustration of a funding arrangement to other Aboriginal organizations as they differ so greatly.

Having outlined the architecture of funding arrangements, we will now turn to a description of the current status of those funding arrangements nationally and an analysis of the trends in our three regions.

C. Status of Funding Arrangements

According to INAC's First Nations and Inuit Transfer Payment (FNITP) system, there were a total of 2,115 funding agreements with organizations as of November 5, 2008 (refer to Table 2). Forty-one per cent of the agreements were with First Nations and Tribal Councils, and 59% with

non First Nations and non Tribal Councils. First Nations and Tribal Councils however received more than 75% of the total funding provided through the agreements. This reinforces the point made previously that the funding of FNs and TCs is at the core of INAC's mandate.

Table 2: Total Funding Per Type of Recipient
(as of November 5, 2008)

Type of Recipient	No. of Agreements	% Total Number	Total Allocation	% Total Allocation
FN and TC	862	40.8%	\$3,602,321,991.34	75.2%
Non FN and Non TC	1253	59.2%	\$1,191,185,490.38	24.8%
TOTAL Organizations	2115	100.0%	\$4,793,507.481.72	100.0%

First Nations and Tribal Councils

Of the total number of funding agreements with First Nations and Tribal Councils as of 5 November 2008, 19% were DFNFA/CFNFAs; 71% were CFAs; and 10% were other types of arrangements.⁸ Of the total funding to First Nations and Tribal Councils, however, DFNFA/CFNFAs accounted for 36% of the total – indicating that the arrangements tend to be with larger First Nations or Tribal Councils.

Table 3: Total Funding to FNs and TCs Per Type of Agreement
(as of November 5, 2008)

Type of Agreement	No. of Agreements	% Total Number	Total Allocation	% Total Allocation
CFNFA/DFNFA	165	19.1%	\$1,289,177,022.17	35.8%
CFA	610	70.8%	\$1,975,654,341.30	54.8%
Other	87	10.1%	\$337,490,627.87	9.4%
TOTAL FN and TC Agreements	862	100.0%	\$3,602,321,991.34	100.0%

By comparison, the 2005 Evaluation of AFAs and FTPs indicated that there were a total of 181 DFNFA/CFNFAs in 1995/96 and 182 DFNFA/CFNFAs in 2002/03.⁹ There has not therefore been any progression of FNs and TCs nationally to more flexible arrangements over the past ten years – indeed, since 2002/03 there has actually been a decrease of roughly 10%.

Other agreements include 32 grant agreements, primarily to self-governing First Nations and Tribal Councils. One notable exception is the Miawpukek First Nation in Conne River, Newfoundland that is not self-governing but has received funding through a multi-year grant since its recognition as a First Nation in 1985.

⁸ Grants, individual self government agreements, treaty related matters (multi year and single year) and treaty loans.

⁹ *Evaluation of the Alternative Funding Arrangement (AFA) and Flexible Transfer Payment (FTP) Funding Authorities*, INAC Departmental Audit and Evaluation Branch assisted by T.K. Gussman Associates Inc., p. 11.

The breakdown of DFNFA/CFNFAs by Region is presented in the following table. There is considerable variation across the regions but we are not able to explain it because we only dealt with three regions.

Table 4: Summary of DFNFA/CFNFAs by Region
(as of June 18, 2008)¹⁰

Region	Total DFNFA/CFNFAs	FN DFNFA/CFNFAs	Total FNs in Region	% of FNs in Region with DFNFA/CFNFA	TC DFNFA/CFNFAs	Total TCs in Region	% of TCs in Region with DFNFA/CFNFA
Atlantic	31	29	33	88%	2	6	33%
Quebec	17	17	39	44%	0	7	0%
Ontario	40	33	139	24%	7	16	44%
Manitoba	18	15	63	24%	3	7	43%
Sask.	13	12	70	17%	1	9	11%
Alberta	14	8	46	17%	6	8	75%
B.C.	24	22	198	11%	2	27	7%
Total	157	136	588	23%	21	80	26%

Regional officials in our three regions confirmed that after an initial movement of FNs and TCs into DFNFAs ten years ago, there has been little change. Few new FNs or TCs have moved into the block funding arrangements, few FNs or TCs have moved back into CFAs, and very few FNs or TCs have concluded self government agreements. Some FNs and TCs have entered into their “third generation” of a DFNFA – i.e. more than ten years under that type of arrangement.

There was great concern among FNs and TCs with DFNFAs that their annual adjustments did not cover increased costs or population increases, particularly for social assistance and education. There was a perception that they had been disadvantaged in terms of annual increases compared to FNs and TCs with CFAs. Efforts to use the “extenuating circumstances” clause in their FA to renegotiate amounts had not been successful. However, none of the FNs and TCs was considering moving back to a CFA because they appreciated the increased flexibility that the block funding provided. Many of the FNs and TCs with DFNFAs were in self-government negotiations – and had been for years. There was also a concern expressed that SGFTAs will provide less funding than a DFNFA, or that the underfunded DFNFA amounts will be used as the base for the SGA.

None of the FNs and only one of the TCs in our sample had a CFNFA. According to INAC Transfer Payments, there are a total of 26 CFNFAs nationally – almost all with First Nations.

Most FNs with CFAs that we interviewed were not interested in moving into another arrangement. Some would not qualify, others were comfortable with the discipline that their CFA gave them, and others did not understand what was required. Most were concerned about the ability of annual adjustments to accommodate price and volume increases and thought they

¹⁰ Note that the date of the information in this table is different than the date of the information in the preceding table, and therefore the total number of DFNFA/CFNFAs is different.

were better off under a CFA. For the same reason, many were not interested in multi year arrangements. Tribal Councils were even less interested in moving to block funding because they did not perceive that there was any advantage in terms of increased flexibility or reduced reporting requirements.

In terms of the flexible transfer payments in the CFA, none of the FNs and TCs that we interviewed could recall that a management assessment had been done and there were no Management Development Plans in the CFAs that we looked at.

All of the FNs and TCs interviewed indicated that they had funding arrangements in place by the start of the fiscal year for most of their funding. Funding under proposal driven programs or targeted interventions was included at the beginning of the year or added over the course of the year as it became available or as application processes were completed.

Other Aboriginal Organizations

Of the total of 1,253 funding agreements with recipients other than First Nations and Tribal Councils as of November 5, 2008, 43% were CFAs; 51% were MCFAs, and 6% were other types of arrangements (predominantly grants). In terms of funding, however, CFAs accounted for 76% of the total, MCFAs for only 4%, and other arrangements for 20%.

Table 5: Total Funding to Other Than FNs and TCs Per Type of Agreement
(as of November 5, 2008)

Type of Agreement	No. of Agreements	% Total Number	Total Allocation	% Total Allocation
CFA	543	43.3%	\$909,966,171.33	76.4%
MCFA	633	50.5%	\$48,863,819.00	4.1%
Other	77	6.1%	\$232,355,500.05	19.5%
TOTAL Other Than FN & TC Agreements	1253	100.0%	\$1,191,185,490.38	100.0%

We looked at one grant to another Aboriginal organization (refer to Annex 3). The grant to Mi'kmaw Kina'matnewey (MK) is provided in terms of the *Mi'kmaq Education Act* that transferred jurisdiction for education on reserve from the federal government to First Nations in Nova Scotia. Funding for education in the participating communities is channelled through MK and responsibility for capital replacement funding has been centralized under MK's management and control. Annual adjustments to the amount of the grant are based on the Consumer Price Index and increases in the nominal roll. Funding for new education programs is not channelled through the grant, but through a separate CFA so that the grant currently represents approximately 81% of MK's total funding and the balance is CFA funding. The participating communities and MK are required to report annually on their education programs and services and student enrolment, and to provide consolidated audited financial statements for MK and for all participating communities - all of which are publicly available.

There has only been a model for multi year CFAs in INAC in the last two years. Most of the MCFAs are with recipients funded through Aboriginal Business Canada and the Office of the Federal Interlocutor which had their own model arrangements.

All of the organizations in our interview sample had single year CFAs, even though all of them had been receiving funding over a number of years and were supporting the achievement of one of INAC's strategic outcomes. For example, education centres provide 2nd tier education services, cultural centres provide cultural resources, and professional associations support the professionalization of the First Nation public service. Other organizations were created through legislation or by a formal agreement, had developed five year plans and budgets, but received funding on an annual basis and through contributions or FTPs rather than grants.

We were told by INAC officials and recipients that the reluctance to take the risk of negotiating a multi-year agreement was due to:

- not knowing what reference levels would be in future years;
- not wanting to jeopardize the Minister's fiduciary and accountability responsibilities; or
- uncertainty about the future of funding for some of the organizations, e.g. SchoolNet.

In most cases, funding arrangements with other Aboriginal organizations were negotiated several months into the financial year, and payments were also delayed. We noticed a substantial increase nationally in the number of agreements and the amount of funding allocated between July and November 2008 (refer to Table 6). There was a 75% increase in the number of agreements with non FNs and non TCs, and a 57% increase in the amount of funding allocated through those agreements.

Table 6: Total Funding Per Agreement Types – Non FN and Non TC

Agreement Type	Number as of July 9, 2008	Number as of November 5, 2008	% Increase	Amount as of July 9, 2008	Amount as of November 5, 2008	% Increase
CFA	334	543	62.6%	\$554,282,708.34	\$909,966,171.33	64.2%
MCFA	326	633	94.2%	\$24,256,047.00	\$48,863,819.00	101.5%
Other	58	77	32.8%	\$181,967,244.00	\$232,355,500.05	27.7%
Total	718	1253	74.5%	\$760,505,999.34	\$1,191,185,490.38	56.6%

Intervention

According to an assessment of funding arrangements, of the 1,174 agreements in place with First Nations and Tribal Councils as of March 31, 2007, 84% required no intervention and of the remainder, only 18 or less than 2% required third party management.

Table 7: Intervention Status – First Nations & Tribal Councils
(as of March 31, 2007)

	Total	No intervention required	Intervention required			
			Remedial management plan	Co-management	Third party management	New intervention requirement or expired intervention plan
Number	1174	989	55	50	18	62
Percent		84.2%	4.7%	4.3%	1.5%	5.3%

Source: *Funding Arrangements for First Nations Government Assessment and Alternative Models*, Peter Gusen, February 2008, p. 21.

According to regional officials, the overwhelming reason for intervention is debt – there is an automatic trigger if the cumulative operating deficit reaches 8% or more of total operating revenues. Some recipients may progress from third party management to co-management to a remedial management plan and then fall back into debt again once they regain full management control over their expenditures.

In one of our CFA case studies that is currently under a Remedial Management Plan, the deficit was incurred over several years by all programs, particularly band based capital, band government, and education, which all have flexible funding. The social development basic needs program had also incurred a deficit despite being funded through a contribution. The Remedial Management Plan proposed to eliminate the deficit within five years through tighter controls on both INAC and non-INAC programs and monthly financial reporting. For the first three years of the plan, the targets for deficit reduction were exceeded but then the band slipped back because of a large housing project.

According to the regions, First Nations in third party management and co-management have been fairly consistent over the past ten years. A very few have been in third party management for more than a decade. In this case, the level of intervention is more likely to be due to governance problems or the failure to disclose consolidated financial statements. The FN pays for third party management from its band support funding but we were told that the cost never exceeds the amount provided.

Summary

The preceding status report indicates that there has been no progression in terms of the movement of FNs and TCs into block funding arrangements over the past ten years. There is a reluctance to move into more flexible arrangements or multi year agreements largely because of concerns about annual adjustments, particularly for income assistance and education. Assessments were not conducted of recipients with CFAs in our sample and there were no management development plans to guide their progression to more control over their funding. Intervention is focussed primarily on debt reduction and not on sustainable capacity building.

For the other Aboriginal organizations in our sample, there are no multi year funding arrangements despite the long term and supportive nature of their relationship with INAC. There are delays in concluding the single year agreements, delaying payments and potentially affecting the implementation of agreed upon projects and programs. The one exception was the multi year grant to Mi'kmaw Kina'matnewey that is provided under a sectoral self-government agreement. MK also has a CFA, however, that provides about 20% of its total funding.

Having provided an overview of funding arrangements and findings about their current status among the different types of recipients, we will now look at each of the key questions in more detail and draw conclusions. We will focus on the funding relationship with First Nations, Tribal Councils and other Aboriginal organizations providing services to First Nations because of the unique history and nature of the relationship between the federal government and First Nations. The study questions have therefore been re-phrased accordingly.

III. Key Questions and Conclusions

A. Appropriateness

To what extent are the funding arrangements used by INAC fit for the program purposes and policy outcomes for which they are customarily used; and to what extent do they leave coverage “holes” in important departmental funding purposes and policy outcomes?

Funding arrangements are the primary instrument through which INAC implements its policies and programs. In that sense they could be considered to support the implementation of all of INAC’s Strategic Outcomes, its programs, and its statutory and legislative priorities.

Through funding arrangements, provincial-type services such as education, housing, community infrastructure and social support are being delivered by First Nations, Tribal Councils, Indian administered and provincial/territorial and other organizations to Status Indians on reserves. For most non self-governing First Nations and Tribal Councils, the funding arrangement is the only formally signed ongoing agreement with INAC and by default has become the single most important aspect of the relationship between First Nations and the federal government.

Despite the centrality of funding arrangements to the Department, and the importance of funding arrangements in terms of INAC’s relationship with First Nations, Tribal Councils and other Aboriginal organizations, our conclusion is that the leadership, structure and process by which they are managed are not appropriate.

The major criticisms we heard from recipients, INAC officials, other federal departments and experts about the appropriateness of INAC’s funding arrangements were:

1. It is not clear what the overall objective is in terms of funding arrangements, there is a lack of coherence among programs and funding authorities that make up the arrangements, and there is no clear leadership at Headquarters to coordinate the management and implementation of funding arrangements.
2. There is limited engagement of recipients in the funding relationship.
3. Funding arrangements do not promote the movement of First Nations, Tribal Councils, and other First Nation administered recipients towards increasingly responsive, flexible, innovative and self-sustained policies, programs or services.

We discuss each of these major comments in further detail below.

Lack of Clarity, Coherence and Leadership

The policy objective related to funding arrangements is not clear. Is it to progressively move FNs towards self government through the assumption of increased responsibilities? Is it to achieve better outcomes by providing greater flexibility to those that are closest to the provision of services, more knowledgeable about the needs of communities or recipients, and more culturally sensitive?

The role of INAC in relation to First Nation governments and First Nations is also not clear. Is it a funding agency providing support to communities and organizations in the achievement of their objectives? Is it a programming agency delivering its programs through agents acting on its behalf?

Responsibility for the design, negotiation, and monitoring of funding arrangements is split between INAC HQ and the regions, and across Finance, Programs and Regional Operations. There is no centre of expertise on grants and contributions, unlike departments such as HRSDC, and no single point of contact for coordination with other federal departments and the Treasury Board Secretariat.

Policy and program officials are often not familiar with the details of funding arrangements and funding authorities, and program terms and conditions can conflict with broader policy objectives or be inconsistent with each other. There is a tendency to increase the number of program authorities and to favour targeted interventions over an increase in the base funding, without sufficient regard for the impact on the recipients that will have to implement the programs.

Recent evaluations have pointed out the need to clarify and better communicate what is required with respect to program objectives, reporting requirements and the respective roles and responsibilities of First Nations, INAC regions and HQ. Too much is added on to funding arrangements in the absence of any other agreements (e.g. governance, redress), and too much is expected from funding arrangements in the absence of any other formal relationship with First Nations. Different Regional Offices, different divisions within HQ, and different individuals take different approaches that can have a major impact on recipients.

Partnerships

There is no real negotiation of funding arrangements with FNs and TCs. They are drawn up and delivered for approval by Chief and Council or the Tribal Council with very little discussion. FNs and TCs perceive it as a “take it or leave it” proposition. Budgeting, allocations and formulae are not well understood and budgets may be cut without warning. For most recipients, there is little discussion of their plans or outcomes; little guidance on best practices; and little opportunity to network and share experiences with others in the same region or across the country.

Funding Service Officers (FSOs), who are the lynchpin in the relationship with FNs and TCs, vary greatly in terms of their dedication, professionalism, knowledge, and attitude. We heard of some excellent FSOs who were considered as partners with their FNs or TCs, who went out of their way to assist and provide advice, and who were being called on for help even after they were no longer formally responsible for the relationship. We also heard of high staff turnover that left FNs or TCs without an FSO for more than a year or with 10 different ones in the past two years; of FSOs who never visited or couldn't be reached, or FSOs who didn't respond to inquiries.

In our three regions, we heard of mechanisms at the regional level to discuss with Chiefs new programs, budgets, allocations, changes from one year to the next in the funding arrangements,

and so on. Information from these discussions does not seem to have been relayed back to band managers or Tribal Council administrators in every case, and the suggestion was made that there should be more opportunities for networking and information sharing among this group of professionals and with the regional office.

There is more discussion of funding arrangements with Aboriginal organizations, particularly those that operate on a national scale, but there was not much willingness to adjust the agreement itself, the funding authority, or the amount of funding. Positive approaches identified by the recipients were: engaging in dialogue, acting in partnership, and focussing on long-term plans and budgets.

Promotion of Progress

Funding arrangements as currently implemented do not promote the movement of First Nations, Tribal Councils and other Aboriginal recipients towards increasingly responsive, flexible, innovative and self-sustained policies, programs or services. Innovation is occurring, new and creative policies and programs are being delivered, and improvements are being realized – but we would argue not as result of the funding arrangement.

The profile of funding arrangements has been static over the past decade. After an initial movement of First Nations and Tribal Councils into block funding, there has been little further progress. Those FNs and TCs with increased flexibility who are doing well are not able to move to even more flexible arrangements unless they conclude a self government agreement. Some of those FNs and TCs with less flexible arrangements (i.e. CFAs) have the capacity to move into block funding but are not doing so primarily because of concerns about the annual adjustment. A very few FNs and TCs have been in third party or co-management for the past decade.

The key to progression lies in building the governance, management and administration capacity of FNs and TCs and the funding arrangements alone cannot ensure that this happens. Block funding does not provide enough of an incentive given other limitations. Amounts allocated to management and administration at the band and the Tribal Council level are low and attempts to gain additional funding in the past have failed. There is very little funding available for capacity building related to institutions or programs. The cap of 2% on funding to the regions is putting pressure on any discretionary spending in an effort to protect income assistance and education spending.

The assessments that are supposed to be done for entry into block funding or flexible transfer payments could provide the basis for a capacity building strategy. Entry assessments for block funding have only recently been standardized across the regions. We could find no evidence of assessments related to flexible transfer payments nor the related management development plans. Without funding for capacity building, however, there would not be much point in diverting resources to improve assessments and develop plans. There is also not much point if there is no alternative to flexible transfer payments – i.e. everyone qualifies regardless of the assessment.

In terms of other Aboriginal organizations, INAC has supported new institutional arrangements to consolidate the delivery of services (e.g. Child and Family Services), to provide “second tier” services (e.g. Education Councils), to foster the development of a First Nation public service

(e.g. professional associations) or to promote self determination (e.g. national financial management and land management organizations). The same funding instrument – a single year CFA - is used to support all of these organizations, however, regardless of the policy objective, the recipients' capacity or the nature of the relationship.

B. Effectiveness

To what extent are the funding arrangements used by INAC effective in meeting their policy goals while achieving an appropriate balance between risk management, accountability, and flexibility?

There is very little information about what results are being achieved in terms of INAC's policy and program objectives. Recent evaluations of INAC's programs have indicated that reporting requirements need to be better oriented towards long term objectives. Most of the reporting from recipients relates to inputs, activities or outputs, with very little about outcomes. A lot of the reporting is related to financial compliance and very little to program compliance. These limitations are not linked to the funding arrangements per se, but rather to the underlying program authorities.

Risk management, accountability and flexibility are not well balanced within funding arrangements, either in terms of the amount of money involved, the nature of the program, or the capacity of the recipients. Each of these issues is considered in further detail below.

Risk Management

Does risk management reflect the amounts involved, the complexity of the uses to which the funds are to be put, the sensitivity of the program outcomes involved, the management capacity and the track record or credibility of recipients?

First Nations and Tribal Councils

There is no overall risk assessment and management process for FNs and TCs. The assessment for DFNFA/CFNFAs is only done at the request of the FN or TC or on renewal of the funding arrangement, and with the agreement of the regional office. The assessment therefore does not guide or inform ongoing risk assessment for all FNs and TCs. The assessment for flexible transfer payments looks similar to the AFA assessment, but we could find no evidence that it was being applied. Regional officials apply their own informal risk assessment criteria to monitor certain FNs and TCs more closely, but the criteria used are primarily financial and not program-related. Intervention is a reactive mechanism that is used in response to certain triggers, primarily financial, and not proactively to avoid problems.

There are essentially only two funding arrangements being used for non-self governing First Nations and Tribal Councils – CFAs or DFNFA/CFNFAs - despite the huge diversity of capacity within this group. In our investigations, we explored with regional and HQ officials and experts how FNs might be broken down further by capacity and risk. As a result, we would propose the following as a rough breakdown of FNs, acknowledging that the breakdown would vary from region to region:

High capacity, low risk - of which very high capacity	25%	<i>10-15%</i>
Good capacity, low risk	25%	
Moderate capacity, medium risk	25%	
Low capacity, medium risk	10-15%	
Very low capacity, high risk	10-15%	

The high capacity/low risk group would be many of those FNs already receiving block funding. The good capacity/low risk group would be those FNs who could move to block funding from a CFA but have chosen not to, or are not able to at this point in time for reasons not related to their capacity. The moderate capacity/ medium risk group would be those FNs who have or have had a remedial management plan but generally cope well under a CFA. The low capacity/medium risk group would be those FNs in co-management or third party management who struggle a bit in managing under a CFA. And the very low capacity/high risk group would be those FNs who are chronically in third party management and therefore have not developed their own capacity to manage INAC's funding.

We have used the different forms of intervention as a short cut to illustrate which FNs would be in which group, but a more sophisticated assessment of capacity and risk would have to be done if such a typology were to be used. Key success criteria that were mentioned to us by INAC officials, other federal departments, experts and recipients were: stable competent and consistent governance; a strong management team; community involvement; strategies and plans; and access to other sources of funding.

It is more difficult to come up with a similar categorization for Tribal Councils because of the range of services that they can and do provide. They could however be similarly categorized by capacity and risk.

Funding authorities are primarily linked to the method of calculating the funding (formula-driven or fixed cost versus proposal-driven or variable cost) and not to the capacity of the recipient, the nature of the program, or the amount of funding. Thus, outside of block funding, all FNs and TCs are treated the same in terms of the funding authority used. There is also a big step from no block funding to block funding of all programs except targeted interventions – in other words, there is no provision for providing block funding within one sector, for example education, based on sound management in that sector.

Program authorities vary in terms of their approach to risk management, partly in relation to the amounts involved, the risk of abuse, and the impact on First Nations people. Income assistance contributions which are based on the reimbursement of expenditures are therefore monitored very closely whereas contributions for elementary and secondary school that are formula-based less so. The anomaly arises however in terms of new programs or interventions that are relatively small yet are monitored very tightly regardless of the recipient or the nature of the program. As

one DFNFA recipient put it, “more attention is paid to a \$6,000 contribution than a \$6 million one.”

Finally, FNs and TCs are expected to share more of the risks in exchange for more flexible funding arrangements and funding authorities. In other words, they are able to move funds across programs or retain surpluses at the end of the year (provided minimum program requirements are met) but they are also expected to cover any deficits. In the tight budgetary environment that has existed since 1997, FNs and TCs are reluctant to assume this risk.

Other Aboriginal Organizations

There are three arrangements for use with Aboriginal organizations – CFAs, MCFAs and grants – but INAC tends to use CFAs regardless of the nature of the relationship, the program being funded or the track record of the recipient. Only programs transferred from other federal departments – i.e. Aboriginal Business Canada and the Office of the Federal Interlocutor’s programs – have used MCFAs. Grants are seldom used and when they are, a number of conditions may be imposed limiting flexibility and new program funding may not be incorporated into the grant but provided through a separate CFA.

As with FNs and TCs, FTP and contribution funding authorities are based on the method for calculating the funding to be provided, not on the capacity of the recipient or the nature of the program being funded.

We could find no evidence of a standardized approach to risk assessment and risk management. The approaches taken varied across regions and divisions within Headquarters. A range of controls were being applied that seemed arbitrary. On the one hand, a bureaucratic approach might be taken with micro-management of activities; a requirement that any deviations - even if within the budget - be approved; and a focus on projects and expenses rather than outputs and outcomes. On the other hand, a strategic approach might be taken, with a focus on long-term plans and budgets, dialogue on progress, and a partnership in terms of sharing in the results.

Accountability

Do the funding arrangements enhance the accountability of First Nations to their local stakeholders, meet the Minister’s accountability requirements, and reduce the need for departmental control?

The Auditor General has defined the following five principles that are associated with effective accountability:¹¹

1. clear roles and responsibilities – the roles and responsibilities of the parties in the accountability relationship should be well understood and agreed upon.
2. clear performance expectations – the objectives pursued, the accomplishments expected, and the operating constraints to be respected (including the means used) should be explicit, understood, and agreed upon.

¹¹ *Modernizing Accountability in the Public Sector*, Chapter 9, Report of the Auditor General of Canada, December 2002, p. 7.

3. balanced expectations and capacities – performance expectations should be clearly linked to and balanced with each party’s capacity (authorities, skills, and resources) to deliver.
4. credible reporting – credible and timely information should be reported to demonstrate what has been achieved, whether the means used were appropriate, and what has been learned.
5. reasonable review and adjustment – fair and informed review and feedback on performance should be carried out by the parties, achievements and difficulties recognized, appropriate corrections made, and appropriate consequences for individuals carried out.

These principles have been supported by the Assembly of First Nations as part of the Aboriginal Roundtable process.¹²

The Auditor General also indicated that an appropriate accountability framework needs to be in place to support strong accountability relationships. The components of this framework include: a clear definition of roles and responsibilities, expected performance, reporting requirements, and mechanisms for review and adjustment. Those who are responsible are held to account through credible reporting, review and adjustment.

Effective accountability is therefore not defined through funding arrangements but by an appropriate accountability framework that is negotiated and agreed between the parties, that forms the basis of the relationship and the mechanisms used, that is linked to policy and legal frameworks, and that informs budgeting, allocation and reporting. To improve accountability, there are three broad strategies – disentanglement or realignment of responsibilities; improving governance through the creation of more formal collaborative “machinery” to oversee the relationship; and developing better performance indicators.¹³

Indications that accountability is not working well are:

- there is no reporting or inadequate reporting on performance;
- there is no serious, informed review of the information reported; or
- there are no appropriate program changes or consequences for poor performance.

We will look at the nature of the accountability relationship in funding arrangements in terms of these indicators of accountability effectiveness for the two major recipient groups.

First Nations and Tribal Councils

The focus of the accounting relationship in funding arrangements is between FNs and TCs and INAC. The emphasis is more on controlling the use of funds than on improving results. There are few incentives to perform well, and no disincentives for poor performance.

¹² *AFN Background Paper on Accountability*, page 3.

¹³ For further discussion of these aspects, refer to *Accountability in a Federal State: Challenges and Prospects for Canada*, John Graham, IOG, May 2006.

The financial information provided by recipients supports the Minister's financial reporting, but the program reporting is not useful for the Minister's reporting on results. INAC's Reports on Plans and Priorities and Departmental Performance Reports have high level outcomes but the indicators used are at the activity and output level. It is difficult for Parliament to get a complete picture of what is being achieved, where there has been progress, what the gaps are, and what measures are being taken to reduce the gaps.

Ultimately, the absence of performance measures is most critical to individual First Nations. Many of the First Nations we spoke to did not have information about the quality of the services they were providing in comparison to provincial standards or other First Nations.

Defining, collecting and analysing this type of information requires the investment of technical and financial resources, however, and these resources are often not available. For example, we were told of an initiative led by an education council to assess the literacy of Grade 1 pupils in band operated schools compared to provincial schools. In order to test pupils, the teachers in the schools first had to be trained on how to conduct the tests. Once the testing was done, however, the bands and the education council were able to use the results to focus resources and attention and achieved substantial progress over a three year period.

In terms of First Nations' accountability to their members, we heard about exemplary practices including regular community meetings, annual plans and reports, the use of newsletters and websites, advisory committees, published policies and procedures reviewed and amended regularly, referenda on certain issues, etc. In the case of Tribal Councils, member First Nations form the governing body and consider the management of the TC to be accountable to them. This enhanced accountability is due more to the good governance practices of the First Nation or Tribal Council, however, and less to the accountability provisions of the funding arrangements.

For other FNs and TCs, the accountability requirements to INAC formed the basis for the accounting to stakeholders. In other words, the funding arrangement (and the amount of funding to be provided) was used as a tool to explain what could be expected and as the basis for reporting back on what had been achieved. The logic was not always easily understood by members, particularly in terms of access to services by members living off reserve. Some FNs and TCs thought their accountability to their members was compromised by the limitations of their funding arrangements.

We also heard about a very few cases where communities were not kept informed and did not have access to the audited financial statements. It is however difficult for regional officials to monitor the accountability of First Nations to their membership from a distance and there is no punitive action that can be taken. In the event that a First Nation refuses to be audited, INAC puts them under third party management and there is no accountability between the third party manager and the FN members.

INAC really only hears about problems if people complain. Despite the requirement for transparency, redress and dispute resolution within the funding arrangements, we heard of many instances of First Nation members complaining to INAC officials directly about their treatment by the Council, particularly for the weaker bands. One of the FSOs that we spoke to said that she

received about three calls a day from band members appealing a decision of Chief and Council. In most cases, she said, these complaints were unfounded, but it illustrates the view held by many FN members that INAC has a role in protecting individual interests. It also indicates that a weak accountability relationship between band councils and members can increase INAC's workload, even if the appropriate response is to refer the band member to their band office.

The focus on accountability to INAC overlooks the fact that most FNs and some TCs are also receiving other INAC funding from claims settlements, trusts or for self government negotiations; from other federal government departments; from provincial governments; and from their own sources of revenue such as businesses, property taxes, rents, other fees for services, GST, etc. Financial management and accountability for all of these sources cannot be controlled by INAC and yet these other sources contribute to the achievement of the objectives and programs of First Nations and of INAC.

In one of our CFA case studies, other sources of revenue accounted for more than 50% of the band's total revenues. Only 50% of the cost of education was being covered by INAC's funding. Interviewees indicated that having their own sources of revenue increased the expectations of members and enhanced their accountability.

A recent study by the IOG of international and Aboriginal experience indicates that taxation is an essential ingredient to good governance, including accountability.¹⁴ The taxation relationship establishes a crucial tie between governments and their citizens. And yet in many non self-governing First Nations there is a total absence of taxation and the models for funding arrangements contain no mention of taxation.

Some FNs and TCs also raised the issue of increased accountability from INAC to them. Examples of this included:

- reporting from INAC regional offices about their budgets, salaries and travel expenses – as is required from FNs and TCs;
- responding to the results of reviews and evaluations conducted over the past ten years that have recommended changes in the way services are funded and the amount of funding that is provided - for example the review of funding to Tribal Councils, the evaluation of band operated schools, the evaluation of income assistance, and the review of child and family services;
- setting standards for FSOs and regional offices in terms of acknowledging and reviewing reports, responding to inquiries, and releasing funds; and
- making the program authorities publicly available.

There was also a suggestion that an independent and enforceable dispute resolution mechanism between the recipients and the federal government should be created. We heard of several cases where a FN or TC had tried to use the extenuating circumstances clause in their block funding agreement to get an increase in funding, for example for social assistance. None of these appeals had been successful.

¹⁴ *In Praise of Taxes: The Link between Taxation and Good Governance in a First Nations Context*, John Graham and Jodi Bruhn, Institute On Governance, March 2008.

Other Aboriginal Organizations

All of the organizations that we interviewed were accountable to their members as well as to First Nations in some form or another but it is difficult to generalize. The problems they faced were similar to those faced by FNs and TCs:

- balancing expectations against the limitations of funding;
- balancing responsiveness against the terms and conditions of the funding;
- a lack of clarity in terms of roles and responsibilities; and
- a lack of accountability from INAC to the recipient in terms of their performance in negotiating and managing funding arrangements.

Flexibility

Do the funding arrangements enable recipients to design and deliver effective programs in accordance with their own needs and priorities?

First Nations and Tribal Councils

Funding arrangements were seen by recipients and INAC officials to be focussed on INAC's policies and programs and not those of the recipient. To the extent that the FAs were seen as supportive, this was due to the funds provided rather than the arrangements under which the funding was provided. Priorities such as housing, economic development, and social development were not being met.

For some FNs with CFAs, there did not seem to us to be much planning and prioritizing, just the administration of services and programs funded by INAC. The ability to plan was constrained by the amount of funding available, late notification of allocations, political turnover at the band level, and/or a lack of capacity.

For those recipients that had a long-term plan, it was not used for funding purposes with INAC. Additional infrastructure, services and benefits were being provided from other sources of revenue by both CFA and DFNFA/CFNFA FNs. (We even encountered one FN that has not had a funding arrangement with INAC since 2003/04 and is entirely self-sufficient.)

Some of the more recent targeted interventions – e.g. new paths in the education sector, child prevention funding – are linked to plans that promote partnering among FNs, community involvement, and the achievement of results. These interventions were criticized by recipients for being too focussed on federal government priorities; too modest and short term in nature; and too restrictive.

CFAs provide little or no flexibility to FNs, except for band support funding and some surpluses generated on flexible transfer payments. There is no flexibility in terms of major capital investments. More flexibility is provided under block funding, particularly in the social sector. We heard of funds being used for active measures to reduce the number of people on social assistance – something that could not be done under a CFA.

The flexibility under both types of funding arrangements is however limited by the amount of funding and the use of proposal driven programs – what one FN called “transfers under the

influence” because of the strings attached, and another FN called “parasitic programs” because of their tendency not to provide funding to cover overhead.

In the event of intervention, flexibility is further reduced.

Some INAC program officials and sector organizations thought that there should be less flexibility in terms of unexpended funds under FTPs, particularly in terms of elementary/secondary education and post secondary education. Some INAC officials did not like block funding arrangements because it made it difficult to account for the use of program funds.

TCs were generally satisfied with the flexibility of their funding arrangements because most of the payments are FTPs. Their flexibility was also limited by the amount of funding and by proposal drive programs.

Some FNs and TCs and INAC officials were of the view that multi year CFAs would increase flexibility but many did not see any advantage. Most arrangements are in place in February or early March when the regional management committee makes decisions on price increases and allocations. A lot of the programs that are funded are formula driven, amounts change from year to year in any case, and a multi year arrangement would therefore not provide any more stability in terms of funding.

Other Aboriginal Organizations

The situation in terms of other Aboriginal organizations is somewhat similar although difficult to generalize. Flexibility was limited primarily by the amount of funding and restrictions on its use. It was also constrained by holdbacks of 10 to 20% of the funding; stacking limits; and the inability to retain surpluses. A number of organizations - Cultural Education Centres, Child and Family Service Agencies, post secondary institutions, and some financial management and land management organizations - had access to FTPs.

Many of the organizations had long-term plans but these are not being used as the basis for INAC’s funding for most of them. Several organizations were being funded entirely through project funding on an annual basis, with late negotiation of FAs and hence late payment of funds – plus holdbacks and stacking limits. Some of the organizations had access to other funds from other federal government departments, provincial governments or the private sector, and the less dependent they were on INAC for funding, the more they were able to program on the basis of their own priorities.

This group were interested in multi year funding arrangements with increased flexibility and stability of funding. Some – for example organizations created under statute - thought that they should be funded through a grant given the nature of their relationship with the Government of Canada. They also suggested a move to periodic reviews and evaluations every five years on outcomes and results rather than restrictive and ongoing monitoring.

Unintended Consequences

Are there any unintended consequences as a result of the funding arrangements?

First Nations and Tribal Councils

Some of the unintended consequences for FNs and TCs that have been identified in the previous discussion are:

- There are financial disincentives in terms of the way some programs are funded. For example, social assistance funds under CFAs flow on the basis of the number of people on social assistance and there is no financial incentive to reduce that number (although there would be a community incentive) and little funding for active measures;
- Funds are being moved out of sectors because of the ability to retain surpluses for use at the discretion of the Council. For example, in the education sector it was alleged that surpluses are being generated and used for other purposes despite the fact that there are no pencils, books or computers in a school - although we also heard that funding for other sectors or from own source revenues are being diverted into education because the funds provided for education are insufficient.
- Debt recovery has a disproportionate impact on those services that are funded through flexible transfer payments as opposed to contributions or reimbursements.
- There are no rewards for compliance and few disincentives for non compliance, particularly in terms of meeting or exceeding minimum program requirements.
- Increased flexibility, particularly under DFNFA/CFNFAs, may enhance access to credit but also lead to increased debt.
- First Nations who use provincial services more, particularly for schooling, can be disadvantaged under DFNFA/CFNFAs because the annual adjustment does not fully cover the increase in provincial costs and there is no scope to improve efficiencies.
- Recoveries often occur after the year end and therefore go back into the Consolidated Revenue Fund rather than being used to provide additional support to other FNs and TCs. A lot of effort is also dedicated to collecting these monies without any contribution to improved outcomes for FNs and TCs.

Other Aboriginal Organizations

Some of the unintended consequences of funding arrangements for other Aboriginal organizations identified are:

- high executive and staff turnover due to the uncertainty of funding;
- interest charges on overdrafts required to maintain operations until funding comes through, which are not reimbursable by INAC;
- the recovery of interest earned on transfer payments rather than its application to the objectives of the organization; and
- “robbing Peter to pay Paul”- i.e. “illegal” transfers between programs to manage cash flow until late funds are received.

C. Efficiency

Administrative Burden

Do the funding arrangements impose a reasonable administrative burden – both on funders and recipients – in light of the risks involved, accountability requirements and the track records of the recipients?

First Nations and Tribal Councils

For some First Nations and TCs, the burden of receiving and accounting for funds strains their capacity. Added to this is the requirement to prepare proposals and account for contributions. Funding arrangements and guidelines for reporting are confusing to these recipients, the language used is considered too sophisticated for the level of staff – as one FN employee observed, “I can read Husserl (a German philosopher) but I can’t understand the First Nations’ Reporting Guide”, - and it is difficult to get questions answered by FSOs.

Other FNs and TCs are able to handle the administrative burden, but many of their staff is dedicated full time to accounting and reporting for INAC’s funding rather than to the delivery of services to FN members.

The funding received through the band support grant and Tribal Council funding was considered to be inadequate in relation to the management and administration required for INAC’s funds alone. It also did not provide for a full range of corporate services - such as communications, HR management, IT, etc. - that might be required depending on the size of the organization. Often other federal government departments provided little or no funding for the indirect costs of their programs or projects because they assumed that INAC was covering all administration costs.

Other Aboriginal Organizations

Other Aboriginal organizations also thought that the amount provided for management and administration was insufficient given the administrative requirements of the arrangement. The heads of these organizations spoke about the amount of time they had to spend on the management of their funding relationships rather than on the general management of the organization itself. Accounting staff had to set up a number of different accounting codes to satisfy funders while maintaining a parallel set of accounts for the organization as a whole.

INAC

In general, INAC’s resources in the regions were focused on following up on reports, compliance reviews and audits rather than on preventive and proactive measures. The capacity for risk assessment, capacity building and monitoring results was limited.

Reporting Burden

Do the funding arrangements impose a reasonable reporting burden – both on funders and recipients – in light of the risks involved, accountability requirements and the track records of the recipients?

First Nations and Tribal Councils

As already indicated, recent evaluations of INAC's programs have indicated that reporting requirements need to be more results oriented. Too much reporting is based on data and expenditures and too little is based on results. The same reports are required of all recipients regardless of track record. The amount of reporting is not commensurate with the amount of the funding. The details required in some cases seem unnecessary – for example, we were told of a training project that had to report on the names, positions, job descriptions, number of years employed, etc. for the people attending the training.

Some FNs and TCs did not think the reporting was onerous and used the reporting for their own internal management purposes. Other FNs and TCs thought the reporting burden was excessive and unnecessary and had other reporting formats for internal purposes. There were also different views depending on the program that was being reported on. Some duplication was identified across reports.

More importantly, FNs and TCs questioned the value of the reports for INAC. They do not receive any feedback on their reports and they are not being used to increase funding. For example, a lot of effort is required to provide annual reports on capital assets and the condition of assets, but these reports are not used to get additional funding for infrastructure.

FNs and TCs saw INAC's preoccupation as the receipt of reports rather than the content. Their funding can be halted if reports are not received, yet we heard many stories in all three regions about INAC losing or misplacing reports and funding being halted because of INAC's error. This problem seems to have been exacerbated by the introduction of the new electronic transfer payment system, FNITP, but also existed previously. It was generating a lot of frustration among FNs and TCs without any possibility of redress if services were interrupted or additional expenses incurred.

Reporting requirements are continually reviewed by INAC and revised in an attempt to reduce the number of reports required. The Smart Reporting initiative within INAC is carrying out a more fundamental review of the rationale for all of the reports. In our view, however, reporting is driven by formula-based allocations, proposal driven programs, and the number of programs, and unless those factors are changed there is unlikely to be much of a reduction in the number of reports.

Other Aboriginal Organizations

The reporting requirements for other Aboriginal organizations varied greatly. Child and Family Service Agencies are required to submit two reports every month – one on child maintenance and one on operations – and all reports have to be signed off by the board of directors. Other organizations have to report quarterly, semi-annually or annually. The frequency of reporting was increased for one organization without any explanation. Reporting for contributions is considered to be more onerous. As with FNs and TCs, there have also been problems with INAC losing reports and funds being held back.

Other Federal Departments

Are the funding arrangements able to accommodate effectively multiple policy objectives, from multiple departments, under a single fiscal relationship instrument?

First Nations and Tribal Councils

As indicated, there are very few CFNFAs across all of the FNs and TCs. FNs and TCs perceive few advantages in terms of these types of arrangements and some disadvantages. The most, albeit limited, success has been achieved with Health Canada. Health Canada's move to a higher level of transfer with a separate health board and management structure will work against the consolidation of health funding within INAC's funding arrangements, but may promote more flexibility to consolidate at the community level. Aboriginal policing funds used to be included in CFNFAs but are no longer. There is however capability within FNITP to incorporate other federal departments' transfer payments and provide the reports and type of documentation management that they require.

We heard of a couple of initiatives to consolidate similar programs under a single federal department but one of these initiatives has stalled and another has not yet happened. Recent evaluations have pointed out the need to integrate INAC's programs not only with other federal programs, but also with provincial programs and strategic community plans.

One constraint to the integration of federal funding is that different federal departments have different types of funding arrangements, different funding authorities, different program terms and conditions, different categories of eligible recipients, and they may fund at different levels of aggregation. Federal departments also treat the funding of staff differently – INAC's funding includes employee benefits while other federal departments' funding does not. We found little evidence of a move toward the harmonization of terms and conditions, the consolidation of reporting or audits, joint assessments of recipient capacity, or joint intervention.

Other constraints to greater harmonization identified were:

- different risk tolerance levels within departments or across Ministers;
- a silo mentality and resistance to change;
- concerns about accountability if funds are transferred through another department; and
- no lead department – some thought that INAC should take the lead in terms of First Nations and some thought that TBS should take the lead.

Other Aboriginal Organizations

For some Aboriginal organizations, we were told that the stacking limit in their funding arrangements did not allow them to receive funding from other federal government departments.¹⁵ In these cases, although the organization had requested more funding (e.g. \$5 million) than INAC provided (e.g. \$3.5 million), INAC still considered that it was funding 100% of the costs of the organization. If the organization sought additional funding to expand their activities, INAC would reduce its funding by a commensurate amount.

¹⁵ The stacking limit is the maximum level of total Canadian government funding authorized by the terms and conditions for a transfer payment program for any one activity, initiative or project of a recipient.

Different departments have different provisions on holdbacks. Other terms and conditions varied, with some departments providing multi year funding with a provision for the carry forward of funds and others being very restrictive in the use and application of funds. There was also no evidence of attempts to harmonize across federal government departments in relation to this group of recipients.

IV. Suggested Improvements

What improvements can be made in the effectiveness and efficiency of the funding arrangements reviewed, in their accountability provisions and in the instrument choice, and what directions for more focused research and action should be considered?

A. Other Lessons Learned

Our findings and conclusions are consistent with previous evaluations and studies including the 2005 evaluation of AFA and FTP funding authorities, the Independent Blue Ribbon Panel on Grant and Contribution Programs, the Auditor General's reports, and recent evaluations of social, education, economic, housing, administration, band support and Tribal Council funding. Further details on these previous studies and evaluations are provided in the Documentation and Literature Review.

The Documentation and Literature Review also looked at funding arrangements for similar or like purposes and/or policy goals in the federal government and in various jurisdictions in Canada and abroad. Of most interest among other federal departments are the changes in Health Canada's approach to its funding arrangements - which is not surprising given that it is funding essential services and working primarily with First Nations. These changes introduce more flexibility, a broader range of instruments, the consolidation of programs, more attention to capacity building based on plans, and more emphasis on results. Further details are provided in the Documentation and Literature Review.

The context and the relationships between indigenous peoples in Australia and New Zealand and their governments are too different from Canada to make comparisons meaningful. The United States is most comparable, but its experience is not well documented or accessible and does not appear to offer any lessons for INAC or Canada.

Fiscal transfers between the federal government and provincial/territorial governments face similar challenges but are more relevant to self-government agreements where FNs are formally recognized as governments. These other orders of government have well established accountability frameworks and access to considerable own sources of revenue.

Provincial-municipal funding arrangements are not applicable because municipalities are explicitly and constitutionally creatures of the provinces which is not the case in terms of FN governments and the federal government. Further, municipalities have significant own source revenue and rely on provincial transfers for only a small portion of their overall revenue stream.

Other provincial entities such as school boards or regional health authorities are agencies of the province which is also not the case with First Nations or other Aboriginal organizations. But more importantly, many of these authorities have provincially appointed boards and are therefore not governments. The dynamics of the relationships are therefore remarkably different.

For school boards with elected boards of trustees, two further points are noteworthy. First, these boards are far more homogeneous in terms of their size and managerial capacity as compared to the highly diverse set of First Nations, which exhibit a huge range in terms of capacity and

therefore risk. Second, despite their size and capacity, school board funding arrangements are very restrictive, much more so than what now exists for educational funding for First Nations.

B. Recent Developments

This special study on funding arrangements comes at an opportune time. INAC is undertaking one of its periodic strategic reviews - an assessment of all programs in terms of effectiveness and efficiency; meeting the priorities of Canadians; and alignment with federal priorities. INAC is also preparing to respond to the new Treasury Board Policy and Directive on Transfer Payments that came into effect on 1 October 2008. New policy requirements related to risk management, the engagement of applicants and recipients, and the establishment of departmental service standards will have to be applied to all new and continued transfer payment programs approved after March 31, 2010, with earlier adoption encouraged.

The new transfer payment policy addresses some of the concerns that we have raised in terms of risk management, flexibility, longer term funding, a results orientation, and the development of partnerships. The Policy modifies the grant and contribution authorities for all recipients; introduces an additional funding authority and modifies flexible and block funding authorities for not only First Nations and Tribal Councils but all Aboriginal recipients; and outlines the provisions related to the new funding authorities that must be incorporated into funding agreements.

The AFA and FTP funding authorities for INAC will not be renewed after 2010, and all federal departments will have access to the same funding authorities for Aboriginal recipients. An Aboriginal Cluster of federal departments has been created within the Centre of Expertise for Grants and Contributions in Treasury Board and a working group at the ADM level will report to this DM level Committee. Importantly for this study, Treasury Board expects INAC to take the lead in the Aboriginal Cluster, suggesting among other things that the department needs to develop a clear sense of direction vis-à-vis its own funding arrangements before it can hope to provide government-wide leadership.

Our recommendations are consistent with these new requirements. However, the Policy and Directive will not radically change INAC's funding arrangements and funding relationships unless more is done to address the issues that we have raised.

C. Recommendations

Recommendation #1: Clarify Objectives

The objective of funding arrangements with First Nations and their related organizations should be clarified. We would suggest that the funding arrangements should be designed with the overriding objective of achieving better socio-economic outcomes in partnership with First Nations.

This means that the outcomes that are attainable within the resources available will need to be negotiated and agreed and reporting focussed on results. Baseline indicators and comparable benchmarks will also need to be identified or developed.

The advantage of this will be enhanced accountability for results, improved performance, and more realistic expectations. Additional funding will be required through either a reallocation or an increase in funds.

All of the subsequent recommendations are designed to realize this objective. In order of importance, and also the order in which they need to be addressed, these recommendations are:

Recommendation #2: Leadership and Management

Name a departmental leader at Headquarters at the ADM level immediately with a mandate to:

- Confirm the objective of the funding relationship, develop a strategy to achieve it, and monitor implementation.
- Identify and negotiate key results and related indicators in collaboration with recipients, program areas and the regions.
- Coordinate with other stakeholders within and outside of the Department, including the Aboriginal Cluster Committee.
- Lead the review of departmental transfer payments initially and every three years.
- Harmonize the terms and conditions of funding arrangements, funding authorities, and program authorities within INAC.

This leader would be assisted by leaders in the regions at the Associate RDG level.

Recommendation #3: Partnership

Develop partnerships at the national and regional level with First Nations.

These partnerships should be formalized through structures with agreed terms of reference and adequate support. The terms of reference could include a review of policy and programs, funding arrangements, assessment criteria, differentiation among recipients, budgeting, allocations, aggregation and other issues.

A partnership approach should also be taken to individual funding arrangements. Engagement with the First Nation should be at a high level within the regional office. There should be regular discussion and review of priorities and plans; clear and consistent communication; agreed standards of service delivery on both sides; and openness and transparency.

Recommendation #4: Architecture

The architecture of funding arrangements should be revised in five key ways:

- i. For First Nations and Tribal Councils, there should be more diversity of funding arrangements tailored primarily to the capacity of the recipient and an assessment of risk.
 - Multi year grants should be introduced for very high performing and low risk First Nations - modeled on the multi year grants proposed by the former SEPRO and used currently for Miawpukek First Nation in Newfoundland.

- Block funding for individual program areas should be considered as a step towards block funding for all programs.
 - More proactive intervention for First Nations that are struggling should be developed.
 - The full range of the new funding authorities – grants, contributions, fixed, flexible and block funding - should be considered for inclusion within these arrangements, tailored more to the capacity of the recipient and the nature of the overall funding arrangement and less to the requirements of programs.
- ii. There should be less complexity in terms of program authorities in order to increase flexibility and reduce the administrative and reporting burden. This implies a consolidation of programs and a reduction in targeted interventions and contribution programs.
 - iii. Arrangements for medium to low risk First Nations should be multi year to reflect the ongoing relationship between the federal government and First Nations. Disincentives to multi year arrangements should be addressed. Incentives like increased flexibility and reduced reporting burden should be real. Further, the department needs to give serious consideration to providing monetary incentives for high performing First Nations – as has been done with the First Nations Market Housing Fund. Additional money was provided for housing but First Nations have to meet criteria related to financial management, good governance and community commitment before they can access the funding. (The criteria will also be used for the capacity building of other First Nations so that they can access funding in the future.)
 - iv. For Aboriginal organizations that are not First Nations or Tribal Councils, there should also be a greater diversity of funding arrangements to better match the wide range of capacities and risk factors among this diverse group. Funding arrangements could utilize existing flexibilities more (e.g. grants, flexible transfer payments, multi year arrangements) and introduce the new funding authorities (fixed, flexible and block) in the Treasury Board Policy and Directive. Further, the department has to improve the timing required to finalize these arrangements so that funds flow in a timely manner, not mid year or later - a situation which helps to destroy rather than build organizational capacity.
 - v. For all of its funding arrangements, INAC should make clear what its obligations are to recipients in terms of service standards and a code of conduct at a minimum.

The strategy in terms of funding arrangements should be designed with the intention of FNs progressing to more flexible arrangements over time. It should also be recipient or community focussed rather than program driven..

The advantages of this approach would be less time required from INAC to monitor high performing, low risk recipients and an increased focus on First Nation plans and priorities rather than INAC's policies and programs. More effort needs to be devoted at the front end to assessment and at the back end to discuss outcomes and future improvements, with less effort in the middle during implementation, with the exception of high risk and poor performers).

Recommendation #5: Capacity Building

The capacity building of recipients should be based on a rigorous assessment of their ability to plan, manage, monitor, and improve the delivery of programs and services to their communities or members; and a capacity building strategy should be developed in partnership with recipients in order to continuously improve their performance. Implementation of the strategy would be the responsibility of the recipient, supported by INAC and other funders. Discrete capacity building funds would be required, not just capacity building components in a range of programs that are not coordinated or strategic.

INAC will require leadership and management capacity; assessment and performance management capacity; and negotiation and conflict resolution capacity in order to implement these recommendations. There should be a more strategic focus in staffing, a realignment of functions, less time required for monitoring and compliance, and more attention paid to assessment and capacity building on the one hand, and reviewing results on the other hand.

In some cases, it may be better to contract an independent third party – for example, to carry out the assessment and development of the capacity building plan. Various assessment tools have already been developed by the FN Financial Management Board and the Aboriginal Financial Officers Association. Accreditation bodies like ISO or Accreditation Canada are being used by some FNs and accreditation is being considered for child and family services.

In other cases, it may be necessary to develop institutional capacity at the secondary and tertiary level in order to support performance management and capacity building.

In sum, INAC should not underestimate the challenge of assessing risk amongst such a diverse group of funding recipients, which because of the political environment in which they operate, are susceptible to rapid changes in their governance and managerial capacity. No other department or agency in the federal government faces such a difficult task, one calling for significant skill, creativity and new approaches.

D. Further Research

Some areas for further research that are related to our study and recommendations are:

- Risk assessment tools and processes that are applicable to First Nations
- Best practices in results based reporting
- Determining the amount and potential for growth of own source revenue, its significance in terms of the delivery of services, and the implications for funding arrangements
- Communities in crisis and appropriate interventions
- The treatment of capital funding and institutional options such as a separate capital infrastructure investment fund, especially for high performing First Nations.

Annex 1

Statement of Work for the Special Study on Funding Arrangements

Background

Transfer Payments have been the route which INAC has taken to devolve over 85 percent of First Nation programming to First Nations administration. These payments are made through funding arrangements (also referred to as funding mechanisms or instruments). Funding arrangements are documents that spell out the terms and conditions under which transfer payments are made by INAC for the delivery of programs and services. Recipients are subject to a specific set of rules called *funding authorities*, which reflect various financial and accountability conditions that Treasury Board imposes on funding departments. The rules stipulate how programs and services will be funded, the responsibilities of federal and First Nation governments/organizations, how surpluses and deficits will be treated, and the steps to be taken should recipients incur significant debt or should they be unable to continue delivery of programs and services.

Funding arrangements or instruments utilized by INAC are:

- Grants
- Contributions
- Flexible Transfer Payments
- Alternative Funding Arrangements

Combinations of these mechanisms have been put together to develop Comprehensive Funding Arrangements (CFAs), Canada/First Nations Funding Agreements (CFNFAs) and Self-Government Financial Transfers (not to be included as part of this study). Additional background information is available in the Terms of Reference.

Objective

The objective of the study is two-fold:

- To determine to what extent the funding arrangements available to the department in furtherance of its (and the government's) policy objectives respecting First Nations, Aboriginal peoples and Northerners are *appropriate* for the purposes for which they are used, are *effective* in achieving the policy outcomes targeted, and are *efficient* both administratively (vertically) and as government (not just INAC) policy instruments (horizontally); and
- To establish to what extent the accountability provisions in these arrangements are *appropriate* and *effective* in achieving the accountability and reporting needs of funding recipients (to local stakeholders) and those of the Minister (to Parliament and Canadians).

The study will address the following issues in the analysis:

- To what extent are the funding arrangements used by INAC appropriate, i.e., they:

- ✓ Are fit for the program purposes and policy outcomes for which they are customarily used; and
 - ✓ Do not leave coverage “holes” in important departmental funding purposes and policy outcomes.
- To what extent are the funding arrangements used by INAC effective, i.e., able to meet their policy goals while achieving an appropriate balance between:
 - ✓ Risk Management (i.e., reflecting, among other things, the amounts involved, the complexity of the uses to which the funds are to be put, the sensitivity of the program outcomes involved, the management capacity and the track record/credibility of recipients);
 - ✓ Accountability (i.e., enhancing accountability of First Nations, Aboriginal and Northern people to their local stakeholders, meeting Minister’s accountability and decline in the need for departmental control); and
 - ✓ Flexibility (i.e., recipients are able to design and deliver effective programs in accordance with their own needs and priorities).
- To what extent are the funding arrangements used by INAC efficient, i.e., they:
 - ✓ Impose a reasonable administrative and reporting burden – both on funders and recipients – in light of the risks involved, accountability requirements and the track records of the recipients;
 - ✓ Are able to accommodate effectively multiple policy objectives, from multiple departments, under a single fiscal relationship instrument; and
 - ✓ Are built on a sufficiently “open policy platform.”
- • What improvements can be made in the effectiveness and efficiency of the funding arrangements reviewed, in their accountability provisions and in the instrument choice, and what directions for more focused research and action should be considered, as suggested by:
 - ✓ Lessons learned and recommendations from this and previous studies and evaluations of INAC funding arrangements;
 - ✓ Unintended impacts and consequences of INAC funding arrangements detected during this and previous studies and evaluations of INAC funding arrangements;
 - ✓ Use of funding arrangements for similar or like purposes and/or policy goals in the federal government and in various jurisdictions in Canada and abroad, with particular emphasis on multi-stakeholder arrangements involving multiple funders;
 - ✓ Initiatives (e.g., Smart Reporting), discussions and recommendations in previous studies and evaluations dealing with potential strategies and approaches in which departmental controls and reporting requirements could be relaxed and streamlined.

Four lines of evidence will be employed in the conduct of the study:

1. Telephone and in-person discussions with officials from INAC and other federal departments;
2. Telephone and, where appropriate, in-person discussions with a select number of First Nations, Tribal Councils, Aboriginal and Northern peoples in selected regions;
3. Selected case studies on the funding instruments; and

4. A review of literature and documents and discussions with experts, as and where appropriate.

Scope of Work

The Contractor shall perform the following to the satisfaction of the project authority:

- Review of previous research, evaluations, reports and available literature
- Interview INAC staff and staff from other federal departments (e.g. Health Canada, Human Resources and Social Development and Public Safety)
- Interview people from 50 First Nations, 14 Tribal Councils, other Aboriginal and Northern people in the following regions: British Columbia, Saskatchewan and Quebec/Labrador
- 2 case studies on each of the funding instruments (8 in total)
- An outline of the report, including preliminary results
- A draft report
- A final technical report

Deliverables

The Contractor shall submit the following to the project authority:

- A detailed work plan including dates, benchmarks, deliverables and data collection tools
- Document and literature study
- Preliminary findings deck and presentation, including a draft table of contents for the final technical report
- A draft report
- A revised final technical report that will be utilized by Audit and Evaluation Sector (AES) to prepare a report for the Deputy Minister of Indian and Northern Affairs Canada.

It is to be understood that the final technical report will inform and provide the basis for the report to be produced by AES. The recommendations drawn from the final technical report will be from AES, taking into consideration the policy, operational and political reality of the Department.

Departmental Support

An Evaluation Manager from the Audit and Evaluation Sector will be the project authority.

The project authority will:

- Provide departmental documentation, available data, names and coordinates of finance and program staff both at headquarters and in the regions and names and coordinates of program and finance staff in other federal departments; and
- Provide timely feedback on deliverables and draft evaluation reports.

Annex 2

Case Study - Hospital and physician services grant to the governments of Northwest Territories and Nunavut

Background

INAC provides a conditional grant, under annual agreements, to the governments of NWT and Nunavut to reimburse the territories for the provision of certain insured health services up to a capped limit. Yukon is not a recipient of funds under this grant for reasons explained later in this case study.

The conditions associated with the provision of the grant are:

1. There is a real and demonstrated need for the funding required;
2. Funding received is used for the purposes intended; and
3. Funding received actually makes a demonstrable difference to the recipients.

The territories satisfy these conditions through:

1. Tabling of annual expenditure plans with INAC to show the need and intended uses for the funding; and
2. Inclusion of the funds received as an item in the Public Accounts of the territories.

The Funding Instrument

The current funding agreements state that:

“Whereas Parliament annually approves the payment of a grant to the Northwest Territories (*and, separately, Nunavut*) so calculated that Canada reimburses ninety-five percent (95%) of the cost of ‘Hospital Services’ and one hundred percent (100%) of the cost of ‘Physician Services’ provided to the Indian and Inuit Residents of the Northwest Territories, up to a maximum limit.”

As clearly indicated, there is no reference to reimburse total costs. Instead, the Agreements note that funding is up “to a maximum limit” (cap). The dollar amount of maximum funding payable (the “cap”) is specified in the annual agreements (currently some \$20.3 Million for Nunavut and \$26.1 Million for the NWT for the 2008-2009 fiscal year). The grant funds can only be spent by territorial governments for the hospital and physician services provided to Indian and Inuit residents. Funding is subject to an annual escalation factor based on the annual percentage change in the Indian and Inuit Envelope (which has averaged 2% annually).

For reasons that will become clear after reading the history of this funding, there is a clause that the territorial government shall not commence or maintain legal proceedings in respect of the maximum limit of this Agreement.

Administration, Accountability and Reporting

The territorial governments provide INAC with an annual expenditure plan that sets out their planned spending by month in order to justify the need for the grant payments. As a condition of the grant, the territorial governments must report the funds received and spent in their Public Accounts, which may be audited by the Auditor General of Canada.

The funding agreement contains an Audit and Evaluation Clause which states that “Canada may, at any time during the term of this Agreement or within five years of its expiry or termination, carry out one or more audits or evaluations of the effectiveness of any or all of the programs and services funded under this Agreement.”

History

The Early Years

Since they were created, the territorial governments have had jurisdiction to provide hospital and physician services to all their respective territorial residents. Section 16 (q) of the current Northwest Territories Act reads “the establishment, maintenance and management of hospitals in and for the Territories”. This provides the government of NWT (GNWT) jurisdiction to deliver insured health services, which includes hospital and physician services to all residents of the NWT. Similar language is included in the Yukon Act and Nunavut Act.

Prior to the 1950s, health services in the territories were provided by several entities, including territorial governments along with Churches, the Red Cross, mining companies and private sector doctors at their respective facilities.

Further to a 1954 Cabinet Decision, Health Canada began providing funding, more facilities and increased services over time in the territories. Health Canada provided services on the territorial governments’ behalf, while jurisdiction remained with the territorial government. The intent was for Health Canada to provide the services until such time as territorial governments had the funding and capacity to provide services on their own. Health Canada initiatives were provided *in addition* to services and facilities provided by territorial governments.

Under the *Hospital and Insurance Diagnostic Services Act* (HIDS) introduced in 1958, federal contributions were made available for the delivery of health services on the basis that participating provinces/territories finance and deliver health services to all residents in their jurisdiction.

Territorial governments indicated their willingness to accept such responsibility, but also indicated that they were not in a position to raise their required financial participation on the basis that their population was composed of 60% Indians and Inuit in the NWT and 13% in the Yukon (as compared to 2% average for provinces), 95% of whom were considered to be indigent, i.e. not earning income to afford their own hospitalization insurance or contribute to the territorial government’s tax base.

Cabinet decided (in 1959 for NWT and 1960 for Yukon) to pay a special annual grant to each territory, in addition to amounts payable under HIDS, so calculated that the federal government

would continue bearing the total cost of hospital care of Indian and Inuit residents, having due regard for indigence (i.e. 95% of Indians and Inuit). At that time, Canada also agreed to pay a special grant (through DIAND) as otherwise federal health expenditures in Yukon and the NWT would have declined; it was understood that the funding to be provided under the HIDS cost-sharing would be less than the full cost of providing health services to Indians and Inuit.

During the 1960's to mid 1970's, this DIAND grant reimbursed the GNWT for 95% of the total costs to provide hospital services at the three hospitals operated or owned by the GNWT prior to the 1959 Cabinet Decision (which included Stanton Yellowknife, Hay River and Fort Smith). The Yukon was reimbursed for such services provided at the Whitehorse hospital. In 1970 the DIAND grant funding was expanded to included total reimbursement for the costs to provide physician services to Indian and Inuit residents of the territories. The indigence factor of 100 percent has always been applied in DIAND funding for physician services.

Health services were provided through a combination of federally and territorially-owned facilities. During the period from the 1960's to the mid 1980's (for NWT) and mid 1990's (for Yukon), Health Canada continued to establish more hospitals and other health facilities in the territories. Through cost-sharing agreements, the GNWT and Yukon were reimbursing Canada for non-native health services provided in federal establishments, while Canada was reimbursing the GNWT and Yukon for health services provided to Indians and Inuit in GNWT- and Yukon-owned establishments. These complex reimbursement arrangements led to the inclusion (in the late 1970's) of a fixed amount of additional INAC funding for the GNWT for hospital services provided to Indian and Inuit residents of the NWT at Inuvik Hospital and Baffin Hospital.

In 1977, changes to the *Financial Administration Act* led to the changes in the funding instrument, from the special grant arrangements into contribution agreements commencing in 1978-1979, with both the Yukon and GNWT. Under these agreements, the DIAND funding was determined to net out (not double pay) the proportion of the Established Programs Financing transfers to the territories for the Insured Health Services, for the proportion of their populations comprised of the Indian and Inuit residents.

Yukon Health Devolution

INAC provided contribution agreement funding to the Yukon from 1978-79 until 1992-1993. Health Canada programs and funds along with the INAC hospital and physician funds were transferred to Yukon and incorporated into the Yukon Gross Expenditure Base (GEB, a component of the Territorial Formula Financing, or TFF, arrangements with the three territories¹⁶). Consequently, Canada no longer assumes any responsibility for funding hospital and physician services to Indians and Inuit residents of the Yukon. Federally administered health programs and all associated funding were devolved to Yukon through four agreements which included:

¹⁶ Finance Canada manages The Territorial Formula Financing arrangements with all three territories pursuant to the *Federal-Provincial Fiscal Arrangements Act*. This Act was amended after the 2007 Federal Budget and now indicates that the Minister of Finance may determine in respect of a territory for a fiscal year the amount of a gross expenditure base adjustment in order to reflect the transfer of responsibility (jurisdiction) between Canada and the government of a territory or the government of a territory and an Aboriginal government.

1. DIAND funding for Hospital and Physician Services for Indian and Inuit;
2. the Whitehorse Hospital complex itself and programs provided there;
3. First Nations health services at Whitehorse Hospital; and
4. Universal Health program of remaining cost shared services delivered by the First Nations and Inuit Health Branch of Health Canada.

The first three elements above were devolved effective April 1, 1993 while the last took effect April 1, 1997. The DIAND funding was transferred to the Yukon's GEB at virtually existing levels; there was no incremental funding transferred.

NWT Health Devolution

During the mid and late 1980's, Health Canada-administered programs were devolved to the GNWT through 4 separate agreements. This included all remaining Health Canada operated hospitals, nursing stations and other related facilities and programs in the NWT along with associated federal responsibilities and Health Canada funding. Under the devolution agreements with Health Canada, the GNWT accepted to take responsibility to deliver hospital and physician services to all residents in the NWT, and Canada agreed to continue to provide funding for hospital and physician services provided by the GNWT to Indians and Inuit.

As a parallel to Yukon, Health Canada programs and funds were devolved to the GNWT on a more geographical basis between 1985 and 1988. The equivalent of the last three items in the list above for Yukon were also devolved to the GNWT. However, the INAC hospital and physician services funding has not yet been devolved. The Department continues to this date to administer funding for the GNWT and Nunavut under the INAC grant discussed in this case study.

Funding Dispute with GNWT and Court Action

In the late 1980's and early 1990's a dispute emerged between INAC and the GNWT regarding the amounts owed pursuant to the earlier contribution agreements.

In 1992, the GNWT initiated a \$79 million court action against the federal government claiming that Canada was not meeting its obligations under the contribution agreements for hospital services provided to Indian and Inuit residents of the NWT. The primary argument surrounded which items were eligible expenditures to be reimbursed under the contribution agreements. The GNWT claimed that all hospital services provided to Indian and Inuit residents were eligible while Canada claimed that only those "Hospital Services" provided at "Hospitals" as defined in the Canada Health Act were eligible for reimbursement.

In addition, DIAND and GNWT discussed transfer of DIAND funding to the NWT GEB, but discussions did not lead to a transfer of the funding into the TFF for NWT.

The 1995 Out of Court Settlement

In March 1995, Canada and the GNWT agreed to settle the action out of court under the following conditions:

1. \$24 million was provided by Canada as a one-time payment to resolve the dispute in respect of which GNWT health expenses were eligible under the contribution agreements for hospital services provided to Indian and Inuit residents of the NWT;
2. Confirmation that the GNWT is responsible to provide hospital and physician services to all residents of the NWT including the Indian and Inuit residents;
3. DIAND and the GNWT would enter into contribution agreement(s) for three or four years;
4. A funding cap on the DIAND funding was agreed to for the contribution agreement(s) set at \$33.5 million in 1994-1995 as escalated annually by the annual percentage change in the Indian and Inuit Envelope;
5. The historic indigence factors were retained at 95 percent for hospital services; and 100 percent for physician services; and
6. The DIAND contribution funding would be transferred to the GNWT's GEB at the latest prior to the creation of Nunavut.

Incorporation of the DIAND funds for NWT into the GEB was intended to be a parallel to the 1992 transfer of the DIAND funding into the Yukon GEB.

More Recent Developments

Discussions have taken place to roll the DIAND contribution funding (for hospital and physician services for Indian and Inuit) into the GEB of both the Northwest Territories and Nunavut. However, both territories (GNWT in 1998 and GN in 1999) have requested that this not be done and that contribution agreements be continued due to their inability to obtain the concurrence of Aboriginal groups who favour continuing to transfer funds into the GNWT and GN consolidated revenue fund that are specifically assigned for the benefit of Aboriginals.

In the absence of a transfer of the INAC funding into the GEB, Canada has continued to honour the intent of the Out of Court Settlement and has continued to provide capped funding at an escalation rate equivalent to the annual percentage change in the Indian and Inuit Envelope.

In 1999, the capped level of INAC funding was divided between Nunavut and GNWT based on a methodology and result acceptable to both territories.

In 2005, the INAC contribution mechanism was converted back to grants to respect the original 1959 Cabinet decision.

Since early 2007 GNWT has been challenging both the funding mechanism and the level of funding. The GNWT requests that the cap be removed and INAC funding be set at the level of total reimbursement.

Conclusion

1. This funding arrangement reflects the general state of flux in the funding relationship between Canada and the Territories. Such determinants as politics, Aboriginal involvement, lingering contentious issues (e.g., the funding cap), and an unwillingness on the part of the Territories to accept closure on disputed items,

- continue to colour the relationship and affect the conditions underlying the funding arrangements.
2. The very existence of this funding arrangement presents another argument in favour of the consolidation of health-care-related funding arrangements with the Territories. To date, this has proven difficult for the reasons discussed in point 1.
 3. In the event the current grant funding mechanism is maintained within INAC, there is no convincing reason why this funding instrument cannot be converted to a multi-year instrument. This may reduce somewhat (albeit marginally) the recurring annual costs of reissuing the agreement.
 4. More fundamentally, there is no policy barrier that would prevent this funding instrument from being abolished and the amount transferred to be included in the Gross Expenditure Base (GEB) associated with the Territorial Formula Financing (TFF) arrangements with each of the territories. While attempts have been made, the Territories have in the past opposed such a transfer. In addition, Finance Canada is reluctant for legal reasons to roll INAC funds to the GEB, suggesting that pursuant to the *Federal-Provincial Fiscal Arrangements Act*, the GEB can only be adjusted with a transfer of responsibility (meaning jurisdiction) among the federal and territorial governments.

Documentation reviewed

Key documentation reviewed for this study included:

1. Grant Agreement for [Territory] Hospital and Physician Services for the Fiscal Year 2008-2009; and
2. Other background material pertaining to the history of the funding instrument provided by the Devolution and Major Programs, Strategic Policy and Devolution Branch, INAC.

In order to better understand the context for these grants – and the overall tenor of the federal government’s approach to funding the territories – we have also reviewed the following documents related to health-related grants administered by Health Canada:

1. Funding Agreement, Territorial Health Access Fund, March 10th, 2006;
2. Background documentation, including Terms of Reference for the T/F ADM Working Group overseeing the administration of the Funding Agreement;
3. Departmental Performance Report, Health Canada, 2006-07.

Officials from Health Canada (First Nations and Inuit Health Branch and the Northern Region) and INAC (Strategic Policy and Devolution Branch) were interviewed for this case study.

Annex 3

Case Study – Grant to Mi'kmaw Kina'matnewey

Background

Mi'kmaw Kina'matnewey (MK)

Mi'kmaw Kina'matnewey mission statement reads “Representing ten Mi'kmaw communities in Nova Scotia, Mi'kmaw Kina'matnewey serves as their collective voice for education. Its mission is to facilitate the development of innovative alternatives and to actively promote excellence in Mi'kmaq education, interests and rights, for member communities.”

In the Mi'kmaw language Mi'kmaw Kina'matnewey means “the whole process of learning”, a name intended to convey a holistic focus on all aspects of learning and administration of education. It provides to the Mi'kmaq the capacity to:

- Research and design effective and appropriate learning programs.
- Create a resource headquarters for Mi'kmaq language and cultural education.
- Respond directly to education priorities established by member Bands in Nova Scotia.

The MK organization represents an example of successful aggregation at work. Its objectives are:

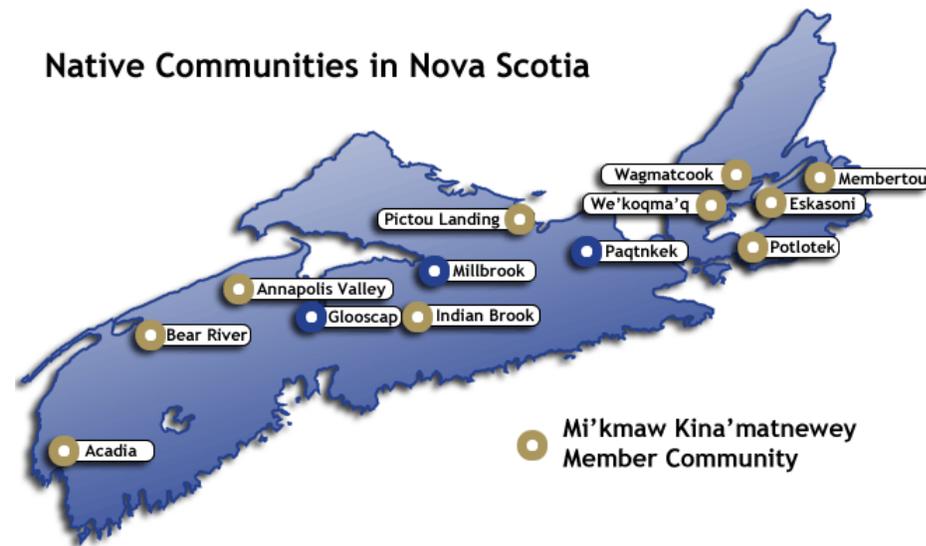
- To assist and provide services to individual Bands in the exercise of their jurisdiction over education.
- To assist individual Bands in the administration and management of education for the Mi'kmaq Nation in Nova Scotia.
- To provide the Mi'kmaq Nation in Nova Scotia a facility to research, develop and implement initiatives and new directions in the education of Mi'kmaq people.
- To coordinate and facilitate the development of short and long-term education policies and objectives for each Mi'kmaq community in Nova Scotia, in consultation with the Mi'kmaq communities.

In pursuit of these objectives, the MK organization is structured to:

- Provide education funding (by distributing the grant money received) and educational advice to Mi'kmaqs as well as help to establish standards for Mi'kmaq education.
- Include professional staff that report to a Board of Directors made up of the 13 Mi'kmaq Chiefs.
- Act on education developments and improvements that originate at the Band level by facilitating and supporting individual Bands to achieve their local education objectives and priorities as well as collective First Nation education issues.

Mi'kmaw Kina'matnewey (MK) Stakeholders

As the map below indicates, there are 13 Mi'kmaq communities in Nova Scotia, ranging in size from about 4000 people to only 300. Ten of these communities have now signed the Mi'kmaq Education Agreement and gained jurisdiction over the education of their students. These ten communities now control primary, elementary, secondary and post-secondary education



programs with the support and guidance of the Mi'kmaw Kina'matnewey (MK) organization.

As can be expected, these First Nation communities have diverse needs and capabilities in the area of education. As such, while some communities have on-reserve primary, elementary and

secondary schools, others send students off-reserve into the public school system.

The Legislative and Policy Framework

In April 1999, the *Mi'kmaq Education Act* became federal and provincial (Nova Scotia) laws. These were the final steps of a process underway since 1992 to transfer jurisdiction for education on reserve from the federal government to First Nations in Nova Scotia. The laws gave force to the tripartite *Mi'kmaq Education Agreement* signed by nine (subsequently ten) Nova Scotia First Nations, Canada and the Province of Nova Scotia in February 1997.

The objectives of this Agreement were to:

1. Specify the procedures and instruments through which the jurisdiction of the participating communities with respect to education will be realized; and
2. Determine the specific governance and administrative structures through which the participating communities would exercise jurisdiction with respect to education.

These objectives are realized through the:

1. Enactment of legislation to enable the participating communities through delegated authority to exercise jurisdiction with respect to education;
2. Exercise of jurisdiction with respect to education by the band councils of participating communities (band councils in the participating communities have exclusive power to enact laws for primary, elementary and secondary education at the community level.

However, in the event that a participating community changes its status to that of a non-participating community, Canada will have responsibility for education with respect to that non-participating community on the same basis as if it had not entered the Agreement)

3. Establishment of a body corporate (MK), which has the capacity to support the delivery of education programs and services by participating communities (MK has no power to enact education laws);
4. Provision of federal funding for education for the Mi'kmaq Bands in Nova Scotia as set out in the Funding Agreement; and
5. Adoption of implementation measures as set out in the Implementation Plan associated with the Mi'kmaq Education Agreement.

The Funding Instrument

A five-year program-funded Funding Agreement (2005-06 – 2009-10) is currently in place through which INAC transfers annual grants to MK for itself and for the participating communities in each of the fiscal years covered by the agreement. Under this agreement, Canada pays an annual grant, adjusted annually for price and volume in accordance with a formula set out and subject to annual Parliamentary appropriations, to MK on behalf of itself and the participating communities. Funding is disbursed on a quarterly basis. The base amount of the agreement (2005-06) was a shade over \$29 million and the average annual increase has been 6% for volume and price.

The service population targeted by the funding agreement includes:

1. Primary, elementary and secondary education for all members resident on reserves in the participating communities;
2. Post-secondary education for all members whether or not resident on reserves; and
3. Primary, elementary and secondary education for all non-members resident on reserves in the participating communities.

The funding transferred to MK each year covers the following MK and participating communities' expenditures:

1. Primary, elementary and secondary education, post-secondary support, Indian Studies Program, education facilities, education-related band support and tribal council support and band employees benefits;
2. Capital funding for major repairs and replacement of existing education facilities;
3. Operations and maintenance funding and classroom equipment for education facilities; and
4. Governance funding for MK and the participating communities.

History

The Early Years

In January 1991 the Assembly on Nova Scotia Chiefs approached INAC with a proposal for INAC to devolve completely Mi'kmaq education jurisdiction and program control to the First

Nations in Nova Scotia through the establishment of a *Mi'kmaq Education Authority*. As a result, a Framework Agreement to negotiate the devolution of authority and programming was signed in April 1992.

In 1993 the 13 Mi'kmaq Chiefs changed their initial request from complete devolution of INAC jurisdiction and programming to a “transfer” of Canada’s jurisdiction over First Nations education. As a result, a Political Accord was signed in 1994 between Canada and the 13 Chiefs as a framework for negotiating the transfer.

Consultations were then held with Nova Scotia, which resulted in the 1996 signing of a tripartite (Canada, Nova Scotia and the 13 Chiefs) Agreement-in-Principle to negotiate a *Final Agreement* for the transfer of jurisdiction for education to the Mi'kmaq of Nova Scotia. Negotiations over the Final Agreement and the funding arrangements were completed in December 1996.

In December 1995 the name of the *Mi'kmaq Education Authority* was changed to Mi'kmaw Kina'matnewey.

On February 14, 1997, nine of the 13 Chiefs, Canada and Nova Scotia signed the tripartite *Final Agreement*, subsequently enacted into federal and provincial law on April 22, 1999. On April 1, 1997 the first funding arrangement (1997-8 – 2001-2) became operational.

More Recent Developments

The 1997 Funding Arrangement provided funding to the communities and MK for:

1. Operations and maintenance for education support, facilities and personnel;
2. Capital funding for major maintenance, replacement and construction; and
3. Governance funding.

The Funding Agreement also provided options to the participating communities in respect of the methodology used in the distribution of annual funding to the communities. As such, each community could opt for either:

1. Direct payments by Canada to the communities; or
2. Payments to be received through Mi'kmaw Kina'matnewey as a redistributing agent; or
3. Other funding methodology to be agreed between Canada and the community.

All communities opted to receive their funding directly from Canada. However, the funding arrangement designated that MK would be responsible for providing aggregated accounting of how the funds received were used by itself and the participating communities. This presented a number of problems:

- MK had no effective control over how the funds received directly by the communities were allocated and used at the community level;
- MK depended on the participating communities for relevant authoritative information needed to satisfy reporting and accountability requirements. Furthermore, it emerged that different communities account for incomes and expenditures (such as capital versus

O&M) differently and at different levels of detail. This created delays and difficulty in the preparation and tabling of financial statements and other statistical information required as a condition of the annual grants, for which the funding arrangement had set precise deadlines;

- MK could not account for how funds were used at the community level, or even for whether funds were used for the purposes for which they were earmarked. Capital funding was particularly susceptible, a fact later confirmed by three audits and given further credence when MK was asked to provide justification for requesting additional capital funding on behalf of the participating communities. Was the capital funding provided already spent? Was it spent in accordance with authorized capital projects? No clear answers to these questions could be provided.

When negotiations began in 2001 for the renewal of the first funding arrangement, MK and the participating communities indicated that any arrangements must provide additional capital replacement funding for the construction of two new schools, and that this funding should also be provided as part of the grant. Unable to reach an agreement, the 1997 funding arrangement was extended three times to cover the years 2002-03, 2003-04 and 2004-05. At the same time, MK and the participating communities agreed in 2003 to centralize all capital replacement funding and to place it under MK's control. Subsequently, a separate \$7.5M Contribution Agreement under a five-year CFA was put into place for capital funding related to the construction of the two schools.

MK reports significant success in the outcomes targeted by the separate contribution agreement. To wit:

- Planning and allocations are controlled through capital project committees representing stakeholders;
- All disbursements are controlled, reconciled and paid centrally;
- All capital replacement funds spent can be accounted for;
- Construction at the two schools has been successfully completed.

The current funding arrangement took effect in 2005-06, and extends until 2009-10. The base grant including regular capital is approximately \$36 million for 2009/2010, and the 2008/2009 contribution was just over \$2 million (not including the additional capital that was put in through a contribution agreement.) Key changes included:

- There is no option for participating communities in respect of the method of distribution. MK acts as the redistribution agent, with funding received being redistributed quarterly to the community according to a schedule established between MK and communities.
- A shift in the volume component of the escalation factor from year-over-year changes in the nominal enrolment roll to 5-year rolling averages. This provides some welcome padding in the event of sudden changes in enrolment figures.
- The price component of the escalation factor would now be calculated based on the Consumer Price Index adjustment (versus "as announced annually by INAC"). The average annual increase to the grant has been 6% - compared to the annual increase to INAC's Atlantic region of less than 2% in the past couple of years.

In the event of new and enhanced policy approvals resulting in supplementary funding for education, MK is eligible to receive additional funding through a CFA. If this new funding becomes part of the regular ongoing education programming, then an adjustment will be made to the annual grant. The grant currently represents approximately 81% of MK's total funding and the balance is CFA funding.

MK has recently signed an Education Agreement with Nova Scotia (also referred to as the *Tuition Agreement*). The agreement sets uniform tuition levels and ensures that Mi'kmaw students enrolled in the provincial education system succeed, while also benefiting from Mi'kmaw language education. The agreement sets the foundation for a formal reporting structure between regional school boards and MK on student achievement, attendance, discipline and a range of other educational measures. It also creates an accountability framework so that bands and families can hold schools accountable for the money spent on educating their children.

The education agreement also establishes a formula for the calculation of tuition that will be paid to school boards educating on-reserve Mi'kmaw students attending public schools (some 1,000 students.) In the first three years of the agreement, boards will be funded at \$6,100 per student, which will be indexed to the Consumer Price Index. The remaining two years will be determined by a formula based on the provincial cost per student.

Administration, Accountability and Reporting

Management

MK's head office is in Sydney, Nova Scotia and is led by an Executive Director who manages the education programming, finance, and administration staff. Education programming services for communities include special education, language education, school improvement, and sports and recreation. MK works with communities to develop annual strategic and operational plans.

Capacity

There are a number of challenges affecting capacity at the community level:

- Difficulty in recruiting and retaining qualified personnel, particularly accountants;
- Significant staff turnover at the community level, partly as a result of election-related changes every two years (new Chiefs and Councils);
- Dearth of available professional services within the communities and nearby;
- Some of the communities are currently in voluntary or involuntary co-management.

Nevertheless and despite its own challenges, MK has been able to maintain a good level of stability within its workforce.

Reporting

The participating communities and MK are required to report annually on their education programs and services and student enrolment. The reports are presented by the communities at MK's yearly strategic planning symposium and copies are sent to all of the communities once approved by MK's Board of Directors. A student information system has been implemented that

captures demographic and statistical information for students at the elementary, secondary and post-secondary level and is used to track performance and to support any volume adjustment calculation.

MK indicates that perhaps there is room for ‘more realistic’ reporting requirements (respecting formats and deadlines) that account for the diversity at the community levels and challenges in recruiting accountants and other specialized personnel. They suggested that a single consolidated and publicly-available Annual Report could be retained as the only reporting vehicle, setting the reporting relationship closer to a government-to-government rapport.

Accountability

In addition, MK must make publicly available to community members and Canada annual consolidated financial statements in respect of the funding received. As well, MK, on behalf of the participating communities, must provide annual combined audited financial statements detailing the revenues and expenditures of the participating communities in regards to the funding received from Canada through MK.

Planning and Programming

Programming is done in the communities, led by the Directors of Education in each community. MK works closely with Directors to assist them in the planning process, strengthen capacity at the community level, harmonize approaches and practices and improve educational outcomes.

Each year MK organizes facilitated strategic planning symposia with community teams focusing on setting the plans and priorities for the upcoming year. As well, meetings with Directors of Education, school Principals and others are held periodically.

A review of the current strategic goals for MK working with the communities reveals a busy picture: no less than nine priority programming areas, each with an average of six or seven specific projects and initiatives. The large number of priorities and volume of underlying initiatives could be a sign of a wandering focus, if not an attempt to be all things to all people. MK, however, indicates that many of the priorities and underlying projects are not new, but ongoing multi-year initiatives.

Mi’kmaw language and culture preservation

A key area of priority for MK is the preservation of Mi’kmaw language and culture. A Mi’kmaw language college is being considered, as well as a centralized electronic resource for Mi’kmaw language materials, an immersion program at the high school level and a Mi’kmaq web-based dictionary.

Key Issues

Revenue Diversification

MK is aware that future agreements may require recipients to generate own-source revenue as a means of complementing – and ultimately reducing dependence on – INAC funding. While that is a consideration for the communities, it is not something MK will be in a position to do for itself.

However, MK has over the years attempted to diversify its sources of funding. Aside from School Net funding received from Industry Canada, it has also sought and received funding from the Provincial government, Canadian Heritage and Health Canada. MK indicates that it has been recently approached by Health Canada to play a major role in leveraging the use of its robust electronic infrastructure in support of a variety of health-related applications (e.g., videoconferencing) targeting FN communities.

Flexibility

There appears to be sufficient flexibility in the funding arrangement to permit adjustments and reallocations to serve community and common needs. This flexibility will be necessary to achieve increased aggregation and more economies of scale by strengthening MK's role as a regional management organization, able to provide an increased range of shared services to communities, particularly in areas where economies of scale and scope can be achieved, or where individual communities, owing to small size and remoteness, are unable to recruit and retain qualified professionals (e.g., accountants, IT people, etc.).

Governance

At the umbrella level, a Mi'kmaw - Canada - Nova Scotia Tripartite forum, which recently celebrated 10 years of existence, is in place. Chaired by the Regional Chief (appointed by all three levels of government), the forum has seven working committees that deal with issues such as health, education and economic and social development.

A Board of Directors for MK made up of the Chiefs of the participating communities oversees the activities of the organization. A number of governance mechanisms – including committees, symposia and conferences bringing together specific segments of the education programming and administration areas – are in place to bridge between the MK and community-level governance.

The governance in place is mature and appears effective at stewarding the interests of Mi'kmaw education for participating communities. The structures and mechanisms in place appear to form a continuum of governance with no significant gaps or discontinuities.

Appropriateness of the Funding Arrangement

There is agreement among those interviewed that the funding instrument currently in place is generally appropriate and creates reasonable conditions for effective and flexible programming and administration. At the same time, a number of observations were made by those interviewed:

- The funding arrangement has a number of conditions attached to it even though it is a grant. It may be appropriate to seek to recalibrate future agreements to something more akin to a government-to-government transfer, with no conditions other than the rendering public of a comprehensive, consolidated Annual Report.
- Additional funding that MK and the participating communities receive is provided under a CFA and not through an amendment to the grant agreement. The existence of a mature, ongoing, and trusted relationship is therefore not recognized by new programs or initiatives that tend to come with their own terms and conditions. MK suggests that if

there is a pre-existing instrument (e.g. a grant) is in place, any new funding should be placed under the ambit of that same agreement. In other words, the characteristics of the relationship should drive the funding terms and conditions, and not the other way around. Therefore any TB submission that INAC develops should contain a more tailored set of terms and conditions that reflect the diversity of funding relationships and their levels of robustness and maturity in terms of governance, control frameworks and risks.

Conclusion

1. There are significant challenges in establishing success conditions for aggregation. The right balance between centralization (of funding or services) at the level of the umbrella organization and maintenance of control and flexibility at the community level, is difficult to achieve and hard to maintain. At the same time, the prize seems to be worth the effort. MK's history shows that results can be achieved in such areas as increased collective leverage, economies of scale, coordination and harmonization, shared services and better planning, programming and management of capital projects.
2. There are equally significant challenges in building and maintaining capacity at the umbrella and community levels. The umbrella organization can be a more stable repository of capacity because there are no biennial elections there (which often cause staff turnover in the community) and they are usually better able to attract and retain staff. As such, more use of shared services arrangements – with the umbrella organization acting as a shared services provider – can be a hedge against capacity fluctuations at the community level.
3. There are also significant challenges in maintaining tight strategic focus on a relatively small set of overriding priorities – often a key success condition for umbrella organizations involved in aggregation initiatives. While this is often very difficult with such a large diversity of stakeholders, it may be appropriate for the umbrella organization to separate “umbrella” strategic issues (which enhance the common good) from community-based strategic issues, which help individual communities and can be handled at the community level.
4. MK reports that there is diminished appetite for increased aggregation within First Nations. They indicate that in the aftermath of the Kelowna accord there was a lot of interest from other jurisdictions, particularly the Ontario Chiefs, but that interest has now subsided.
5. It may be appropriate to review the conditions attached to a grant. As more conditions are added, the dividing line between grants and contributions becomes blurred. It may be appropriate to restore the two along a firmer dividing line.
6. The relationship between funder and recipient should be the key driver in establishing the nature, terms and conditions of the funding instruments used. Furthermore, the “high-water mark” established should, in most cases, be the baseline for future funding instruments (unless risk assessments, audits or other information suggest otherwise.) As such, if a grant is already in place, additional funding for outcomes that fall within the

same risk and control parameters should, ideally, also be made available through the grant. Reverting to a more onerous instrument (such as a contribution agreement) may be justified only when the confidence is markedly lower that the recipient can achieve success and be accountable for the new outcomes.

Documentation reviewed

Key documentation reviewed for this study included:

3. Mi'kmaw Kina'matnewey: A Case Study in Aggregation. Institute on Governance, June 2001;
4. Fact Sheet: Return of Education Jurisdiction to the Mi'kmaq (Mi'kmaw Kina'matnewey Web site).
5. An Agreement with respect to Mi'kmaq Education in Nova Scotia (*Mi'kmaq Education Agreement*). 14 February 1997.
6. Implementation Plan for the Agreement with respect to Mi'kmaq Education in Nova Scotia. Sept 1997.
7. Mi'kmaq Education Act. December 3, 1998.
8. Mi'kmaw Kina'matnewey Constitution Resolution. November 4, 1998.
9. Funding Agreement (Annual Grant) to the participating communities and the Mi'kmaw Kina'matnewey (1997-98 – 2001-02).
10. Amendment to the Funding Agreement extending the term of the agreement to 2004-05.
11. Funding Agreement (Annual Grant) to Mi'kmaw Kina'matnewey on behalf of the participating communities and the Mi'kmaw Kina'matnewey (2005-06 – 2009-10).
12. Mi'kmaw Kina'matnewey Annual Report 2007-08
13. Assembly of First Nations Annual Report 2007-2008
14. A variety of other documents provided by INAC Atlantic Regional Office.

Interviews were held with INAC Atlantic Region and MK officials.