Affaires autochtones et
Développement du Nord Canada

Aboriginal Affairs and
Northern Development Canada

Special Study: Evolving Funding Arrangements with First Nations

Abstract: This document provides the final report outlining possible directions and approaches available to evolve the current funding arrangements with non-self-governing First Nations toward a possible increased use of grants where appropriate and desirable.

Final Report

November 2011

Prepared by Donna Cona, Inc.
For the Evaluation, Performance Measurement, and Review Branch
Audit and Evaluation Sector
Aboriginal Affairs and Northern Development Canada (AANDC)

Canada

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Special Study: Evolving Funding Arrangements with First Nations – Final Report

> *"The best approach may be not to look for a single model that could be applied, but to take elements from each that seem to work well and that could be adapted to the unique requirements of Aboriginal government funding."-Funding Arrangements for First Nations Governments: Assessment and Alternative Model. Report prepared for AANDC. Peter Gusen, February 2008[1].*

1.   Executive Summary

1.1   Background

The Chief Audit and Evaluation Executive at Aboriginal Affairs and Northern Development Canada (AANDC) commissioned Donna Cona to conduct a special study of AANDC's shift to increasing the use of grants in its funding arrangements with non-self-governed First Nations (FNs).   In initiating this shift, the department is determined to address key shortcomings identified by a number of past reports by the Auditor General and by various commissions and studies and to take advantage of opportunities available – some of which were already identified in previous studies and reports, others which would become available through further research, analysis and consultation.

The objectives of this Special Study were two-fold:

1. To determine to what extent, under what circumstances and through use of what conditions (if any) the use of grants to fund services provided by FNs may be appropriate for the department in furtherance of its and the government's policy objectives respecting First Nations, Aboriginal peoples and Northerners; and

2. To establish what mechanisms, techniques and approaches can be used within or in conjunction with funding arrangements (like grants) that provide additional flexibility to FNs in respect of the use of federal funding, while at the same time:

    a. Reducing the risk of non-performance or default to both the department and the FN community;

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[1] Gusen, Peter (2008), Funding Arrangements for First Nations Governments: Assessment and Alternative Models, February 2008.

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b. Enhancing accountability of FNs in a way that effectively "pushes" accountability closer to the community while achieving effective accountability between recipients and their stakeholders and between the Minister and Parliament, and ultimately to Canadians;

c. Reducing the administrative and reporting burden on FNs recipients;

d. Ensuring that adequate planning, performance and other program-related data is made available to the department in a timely and effective manner in order to ensure that the department can effectively "measure what matters", discharge ministerial accountability obligations to Parliament and plan ahead for evolving a more effective funding and accountability regime in its relationships with FNs.

The study focused primarily on non-self-governing First Nations; moreover, as departmental officials and various reports and discussion papers estimate, only some 10-15% of all FNs (or some 60 to 100 high-performing FNs) are likely to qualify for a shift to a grant-based funding arrangement. Many of these FNs are already in fairly flexible, block contributions.

The study was conducted through a documentation and literature review; discussions with officials and experts; and extensive analysis.

1.2 The study framework and its key underlying principles
The diagram attached captures the key elements and the focus of this study.

The following are the "global" assumptions and key principles behind this study framework:

1. The department wishes to explore the increased use of grants in funding program services delivered by First Nations (FNs) to their members in the belief that this may be beneficial to both department and FN recipients and may represent a step toward delivering positive responses to long-standing recommendations in the RCAP Report, the Auditor General's various reports on funding to FNs and calls by the Assembly of First Nations (AFN) and other Aboriginal organizations for deep change in the fiscal relationship between the Federal Government and FNs.

2. AANDC will favour the use of grants whenever appropriate and desirable, taking into account the differences that exist in the risk profiles, capacities and other circumstances characterizing FNs. "Appropriate" and "desirable" refer to those FNs whose risk profiles, capacities and other circumstances established through such instrumentalities as the General Assessment or certifications by agreed-upon third parties recommend and warrant the use of grants. It may be realistic to expect that only 10-15% of the over 600 FNs currently funded through contributions may qualify, at least in the first "wave". A departmental strategy to bring new FNs for consideration in subsequent waves (e.g., through capacity development work and "closing the gap" funding) will need to accompany this shift.

3. The use of grants will not replace, but will continue to complement, the other types of funding agreements (e.g., contributions for project-based funding), whose use will continue as circumstances warrant.

4. The Miawpukek Grant Agreement provides an appropriate departure point ("baseline") in the evolution to increased use of grants. As such, Miawpukek serves as a starting point on a journey toward a new Model Grant Agreement (MGA) that can be tailored to accommodate differences in the risk profiles, capacities and other circumstances characterizing FN. A description of the Miawpukek Grant Agreement and a rationale for its use as a baseline/ departure point is provided in Annex B.

5. The new Model Grant Agreement should provide a fiscal transfer vehicle for both a single department and multiple departments as funders, based on the principle of "one community, one agreement" whenever that is possible and desirable from both a funders' and FN's perspective.

6. To ensure streamlined administration, where multiple funders are involved, the MGA should be administered through a "single window", with AANDC acting as the point department and coordinator.

7. Finally, the MGA should establish an accountability relationship between funders and FN that provides more balance and symmetry through an increased "two-way" flow between funders and FN. As such, a desirable end-state would be to establish a "reciprocal" or "mutual" accountability relationship, with flows in both directions.

The search for, analysis and presentation of these additional provisions is organized into four categories; these categories are actually the four thematic quadrants shown in the Conceptual Study Framework diagram shown. They are:

1. Accountability relationship (recasting the accountability relationship with FN);
2. Flexibility and Equity (providing added recipient flexibility when appropriate
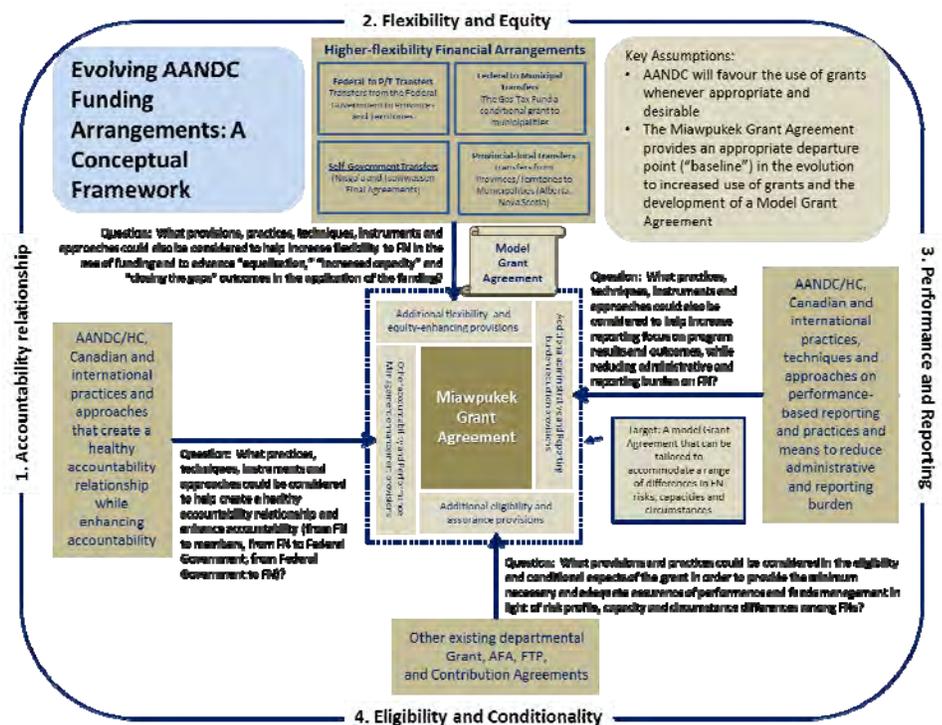
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while ensuring that adequate funding flows to those areas that need it most, through for instance, "equalization", "capacity-building, "closing the gaps" and other targeting approaches);

3. <u>Performance and Reporting</u> (shifting and strengthening the focus of reporting to performance-based reporting while reducing the administrative and reporting burden in accordance with recipient capacity and risk involved); and

4. <u>Eligibility and Conditionality</u> (ensuring, through rigorous up-front assessments, that adequate eligibility provisions and controls and assurance are in place, commensurate with recipient capabilities, capacity and risk, to manage the funding agreement with appropriate probity, openness and transparency).

1.3 Key Findings and conclusions

1.3.1 Policy trendlines

It is difficult to escape the perception that there is a general convergence in the current policy discourse around a sense (if not yet a fully-formed consensus) that the ultimate state of the fiscal relationship with First Nations may involve a departure from the increasingly challenging domain of policy- and administrative-procedures-driven grants and contributions, and toward something more akin to statutory, formula-driven funding that characterize F/P/T transfer payments.

This tenor of the policy conversations goes back to Penner, the Royal Commission on Aboriginal Peoples (RCAP) and more recently the Blue Ribbon Commission report. While no federal policy statement or intent could be found that clearly articulates the need to move to more formula-based transfer payment regimes and to increase the use of grants with non-self-governed FNs, this approach represents an unmistakable evolution in that direction.
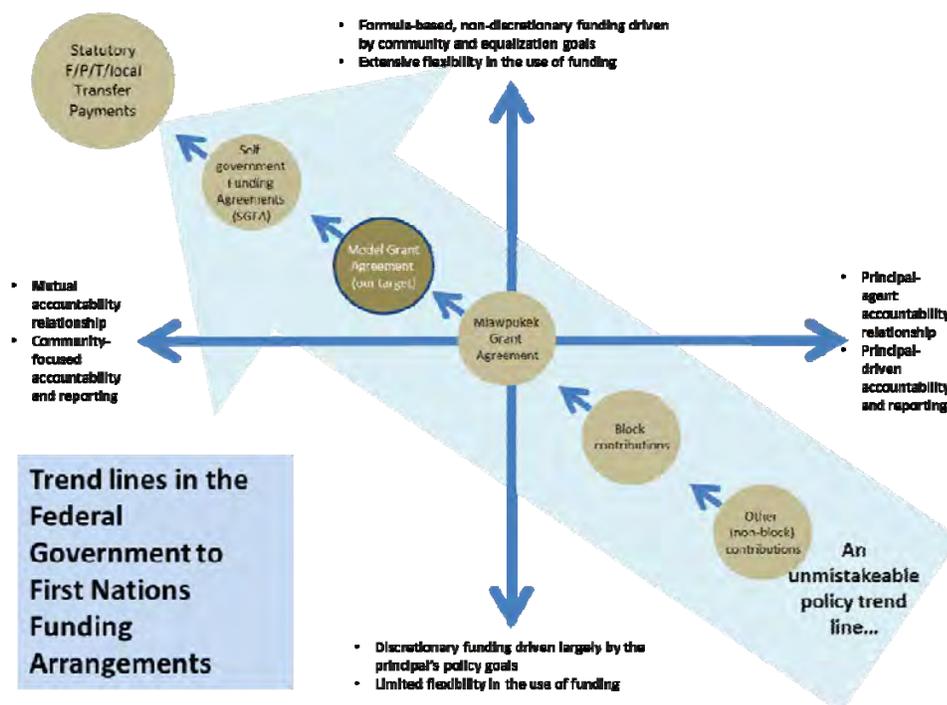
A move to increased use of grants would be a positive response to findings, conclusions and recommendations put forth in many of the reports and studies reviewed and would be consistent with the general policy trend toward a fiscal relationship that deals with the Aboriginal communities as a level of government in the Canadian polity.

1.3.2   Provisions to be considered in the new Model Grant Agreement (MGA)

The additional provisions we offer for consideration for inclusion in the structuring of the MGA and, implicitly, in the fiscal relationship with grant-qualifying FNs, are outlined in the diagram below. They are organized based on the Conceptual Study Framework outlined earlier.
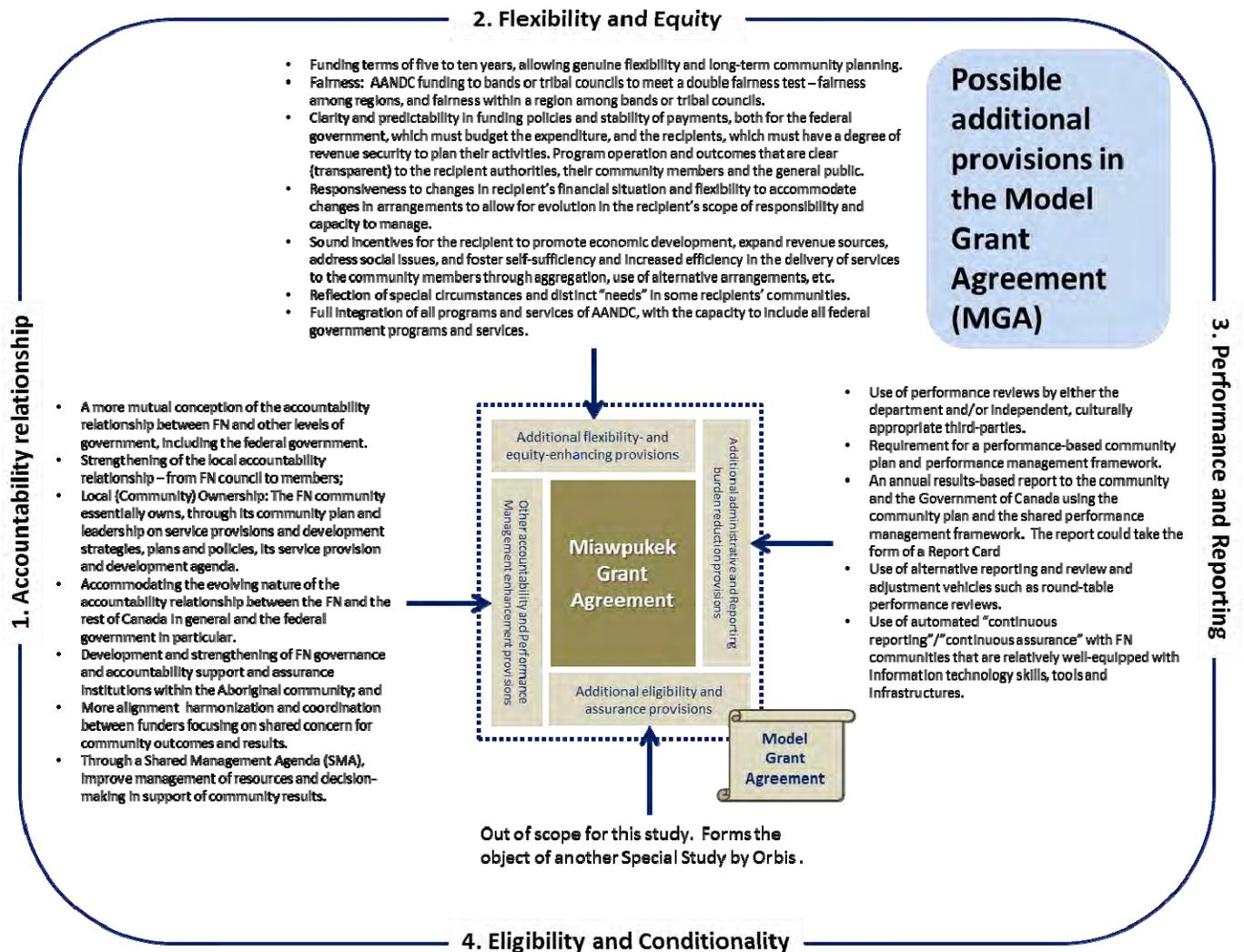
1.3.3   A Possible Accountability, Performance and Reporting Model

Applying the provisions offered above, the diagram below captures some of the possible functional components, processes and mechanics associated with the implementation of an Accountability, Performance Management and Reporting Model in relation to the Model Grant Agreement.

1.3.4   How would qualifying FNs benefit from the granting regime provided by the MGA?

It is expected that qualifying FNs (most of which are already in relatively flexible contributions agreements) would perceive the following features provided by the MGA as particularly attractive:

Grant Agreement Management: Planning, Performance Management and Reporting Model

Key Principles:

- A Comprehensive Community Plan (CCP) sets the local planning and operating framework for service delivery, financial sustainability and various developmental initiatives (economic, capacity, financial management, etc.);
- The CCP establishes performance measurements that guides the way performance is managed; it embraces both community and funders' outcomes;
- "One community, one agreement, one report" (directed both at the community and federal funders);
- The CCP also establishes how reporting to the community and the funders is carried out.
- An Annual Report, summarizing the results and outcomes achieved during the year, will anchor the reporting.

1. <u>Shift from contribution (paternalistic, conditional) to grant (collaborative, trust)</u>: This is likely to have significant moral and psychological benefits for the community. It would likely be seen as recognition of a good record of community leadership and performance and an expression of trust in the capacity of the community to manage its own affairs. This may also translate in a better reception by capital markets and other investors.

2. <u>No audit by the Minister</u>: This translates in less administrative hassle for the FN community.

3. <u>Significantly lighter reporting regime</u>: This also translates into less administrative hassle.

4. <u>Better accountability from the federal government to the FN community (mutual accountability relationship)</u>: This would create a better appreciation in the FN community of how funding decisions are made and will ultimately result in fewer surprises and more predictability in the evolution of funding policies affecting FN communities.

5. <u>Less focus on compliance and more focus on performance</u>: This would be a very welcome shift in the accountability relationship and would be seen as a positive response to long-standing complaints by FN organizations and communities that too much time and energy is spent on compliance reporting and not enough on substantive performance-related issues.

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6. A clearer path to government-to-government-like fiscal arrangements: The FN community would be able to see a clearer and les encumbered path to possible next stages in its fiscal relationship with the federal government. It may also provide added impetus to less well-performing communities to strive to qualify as grant recipients.

1.4 Recommendations

We offer four recommendations in furtherance of the findings and conclusions articulated in this report:

1. Engagement of Aboriginal forums: That AANDC engage the appropriate Aboriginal forums in the development of a model community plan, a model shared management agenda and a model performance management framework to serve as essential implementation companions to the MGA. While a lot of work has already taken place in the Aboriginal community, little recent progress is apparent. These would be adaptable to a wide range of FN community circumstances.

2. Engagement of Aboriginal institutions and organizations: That AANDC engage the appropriate Aboriginal institutions and organizations in developing appropriate performance review and accreditation/certification frameworks for use in the application of the MGA. These would allow increased reliance on culturally appropriate third-party actors in the administration of the MGA. Again, these should be adaptable to a wide range of FN community circumstances.

3. Engagement of key federal funders: That AADNC engage other principal federal funders (e.g., HC, HRSDC, CMHC) in the development of the MGA and its companion elements and in efforts to achieve increased alignment and harmonization in funding practices, terms and conditions targeting the same recipients. Ideally, the MGA should be crafted in a way that would allow it to serve as an aggregate funding vehicle for a number of key federal funders.

4. Engagement of program managers: Finally, it is recommended that AANDC make an effort to engage program managers in the work associated with the development of the MGA. Resistance to a shift to grants is likely to come primarily from program managers; as such, such a move would help to allay their concerns and ensure that legitimate program accountability needs are factored into the MGA.

1.5 Additional Research

We suggest the following areas for further research. They support the development of the MGA and its supporting elements and help in the implementation of the recommendations offered above:

1. Model community plan, model shared management agenda and model performance management framework.

2. Best practices in results and outcomes-based reporting.

3. Incentive practices and mechanisms to stimulate the growth of own source revenue and community-driven initiatives in economic and social development, in aggregation and other approaches that advance the FN communities' search for efficiencies in the delivery of services.

4. The application of principles of equalization and need-specific targeting in the MGA

5. The treatment of capital funding and institutional options such as a separate capital infrastructure investment fund.

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2. Introduction

2.1 This document

This document is the final report of the Special Study on Evolving Funding Arrangements. A number of salient facts are in order:

1. The finding, conclusions and recommendations provided are based on a literature and document review, limited discussions with officials and experts and analysis;
2. The report focuses on non-self-governing First Nations (FNs); moreover, as departmental officials and various reports and discussion papers estimate, only some 10-15% of all FNs (or some 60 to 100 FNs) are likely to qualify for a shift to a grant-based funding arrangement. Many of these FNs are already in fairly flexible, block contribution arrangements.

2.2 Objectives and Approach for this Study

The objectives of this Special Study are two-fold:

1. To determine to what extent, under what circumstances and through use of what conditions (if any) the use of grants to fund services provided by FNs may be appropriate for the department in furtherance of its and the government's policy objectives respecting First Nations, Aboriginal peoples and Northerners; and

2. To establish what mechanisms, techniques and approaches can be used within or in conjunction with funding arrangements (like grants) that provide additional flexibility to FNs in respect of the use of federal funding, while at the same time:

   a. Reducing the risk of non-performance or default to both the department and the FN community;

   b. Enhancing accountability of FNs in a way that effectively "pushes" accountability closer to the community while achieving effective accountability between recipients and their stakeholders and between the Minister and Parliament, and ultimately to Canadians;

   c. Reducing the administrative and reporting burden on FN recipients;

   d. Ensuring that adequate planning, performance and other program-related data is made available to the department in a timely and effective manner in order to ensure that the department can effectively "measure what matters", discharge ministerial accountability obligations to Parliament and plan ahead for evolving a more effective funding and accountability regime in its relationships with FNs.

2.3 Approach and Methodology for this Study

We employ the following approach and methodology to meet the objectives of the study:

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1. Documentation and literature review;
2. Preparation of a Preliminary Conclusions based on the document and literature review to facilitate early testing of assumptions, shape interviews and secure early feedback;
3. Selective interviews with AANDC and HC officials, First Nations and other Aboriginal organizations (e.g., FN Financial Management Board personnel) and funding arrangements and accountability experts;
4. Draft Report, where we presented draft key findings and conclusions and seek feedback, comments and suggestions from AANDC personnel and others; and
5. Preparation of the Final Report (this report), where we incorporate final findings, conclusions and the feedback and comments received in relation to the Draft Report.

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3. Background

3.1. First Nations: a disaggregated view

Before proceeding further it is helpful to understand how Aboriginal recipients of funding received from the Federal Government are actually organized and structured for the delivery of services to their members and for managing and reporting on disposition and results achieved with the funding received. This provides a clearer perspective on various aspects related to how funding is targeted; who actually uses this funding; and how local accountability works.

3.1.1 The First Nation as a "Reporting Entity"

An accounting perspective – a First Nation as a "Reporting Entity" (FNRE) – provides just such a disaggregated view of a First Nation in the diagram below.

The FNRE can take on many forms, but the most common structure is a First Nation government or Band as defined by the Indian Act.

Under the Indian Act, First Nations are constituted as communities, known as bands, and are governed by a chief and band council who are accountable to the members of the band. In recent years,

Source: Adapted form *First Nation Audit Engagements, Part 1: Understanding the Reporting Entity.* Bruce Hurst, CGA

certain First Nations have negotiated specific self-government agreements, which are implemented through federal and provincial or territorial government legislation. These agreements recognize the inherent right of self-government and remove those First Nations from the jurisdiction of the Indian Act.

As many studies repeatedly point out First Nations are not homogenous groups. They have different size populations, history, geography, culture, language, governance maturity, socio-economic conditions, treaty rights and circumstances, internal capacity, vision and priorities. Different bands have varying levels of resources, either own-source or federal funding, and they have different access to resources and training. Some now have a strong economy while others continue to rely to a much greater extent on traditional ways. First Nations also have different capabilities in terms of institutions and personnel to administer or deliver programs. Finally, because of factors such as size and geography, different

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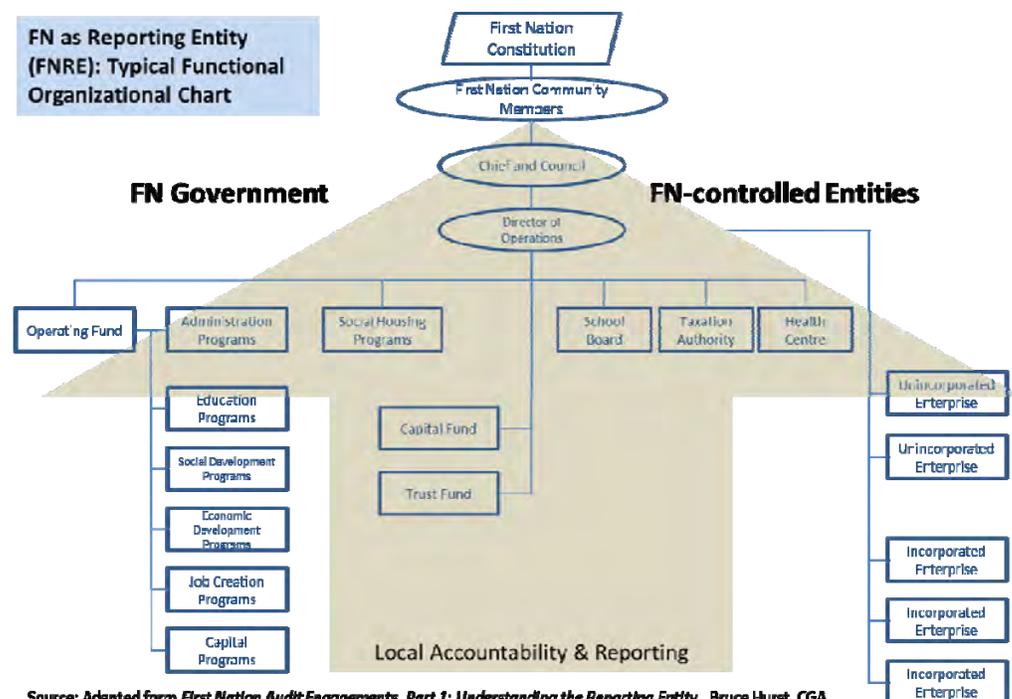
bands incur different costs for providing the same services (e.g., as a result of diseconomies caused by higher prices to attract and retain good people and to secure third-party services as a result of local conditions and remoteness). As a result, specific accountability relationships will differ from First Nation to First Nation.

As apparent from the diagram above, a First Nation government is a multi-faceted organization. Not unlike a municipal government, it delivers a variety of services and programs to its membership. It also might establish other entities such as societies, trusts, taxation authorities, school boards, unincorporated enterprises, incorporated companies, limited partnerships, and joint ventures to carry out a particular function or role for the benefit of its membership.

3.1.2   Special types of entities

In certain instances Tribal Councils have been created. A Tribal Council is a First Nation entity established by a number of First Nations. It is usually governed by a board or council typically made up of a representative from each member First Nation. This is usually done to pool resources in order that the Tribal Council can provide advisory services and programs to its member First Nations. Tribal Councils might also provide non-financially driven services such as a political voice in negotiations on matters that affect the member First Nations.

In some cases, the member First Nations might not have sufficient funding resources to provide services in certain areas. If all member First Nations pool their resources, there can be enough funding to justify the provision of these services. For instance, any one member First Nation might not have enough funding to support an economic development officer, but if resources are pooled there will be sufficient resources to hire the officer and provide administrative support services for the benefit of all member First Nations.

In addition to funding provided by the member First Nations Tribal Councils often receive funding directly from funding agencies, including AANDC and other Federal Government departments.

Similar to Tribal Councils, First Nation Political Organizations have been established to provide a political/advocacy voice and similar services on behalf of First Nation people. A good example would be the Assembly of First Nations or Treaty Negotiation organizations in British Columbia.

3.2   AANDC Funding Arrangements

Transfer Payments have been the route which the department of Aboriginal Affairs and Northern Development Canada (AANDC) has taken to devolve over 85 percent of First Nation programming to First Nations administration, with a corresponding change in the fiscal relationship. In so doing, AANDC has also promoted the goal of self-government for those First Nations that wish to pursue it and the corresponding design of new funding models.

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 AANDC 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. The department uses a number of funding arrangements to transfer funds and to ensure accountability for the delivery of such programs and services and the judicious use of the funds transferred. The choice of funding arrangement is guided largely by the recipients' capacity to administer programs and services and the existence/non-existence of a self-government agreement with Canada.

Table 1: Range of AANDC Funding Arrangements Going Forward (Pre-PTP)	
FUNDING ARRANGEMENT	**DESCRIPTION**
CONTRIBUTION AGREEMENT (CA)	An arrangement AANDC enters into with eligible recipients for specific programs or projects which require significant interaction. Funding is based on reimbursement of eligible expenditures. Unexpended balances or unallowable expenditures are debts due the Crown.
COMPREHENSIVE FUNDING ARRANGEMENT (CFA)	The CFA is a program-budgeted funding arrangement that DIAND enters into with Recipients for a one year duration and which contains programs funded by means of: • Contribution, which is reimbursement of actual expenditures; • Flexible Transfer Payment, which is formula funded and Council may use non-capital Surplus amounts at its discretion and shall use capital Surplus amounts for projects on the DIAND Approved Capital Plan; and/or • Grant, which is unconditional.
CANADA/FIRST NATIONS FUNDING AGREEMENT (CFNFA)	The CFNFA is a multi-year (five year) funding agreement that INAC and other federal government departments enter into with First Nations and First Nations organisations. CFNFAs have more flexible terms and conditions than CFAs, giving First Nations a greater range of options for delivering programs that meet their community priorities. They are typically for a duration of five (5) years. Funding is transferred in two streams: block and targeted, according to the following funding authorities: Block Funding: • Alternative Funding Arrangement (AFA) - a transfer in which funding for the initial fiscal year for the programs and services eligible to be funded under the AFA TB authority is established based upon allocation methodologies identified in individually approved program authorities. Subsequent fiscal year funding is adjusted based upon a formula which reflects changes in price and volume. Unexpended balances are not debts due the Crown provided program requirements have been met. Targeted Funding: • Contribution - a conditional transfer in accordance with specific program terms and conditions and based on reimbursement of eligible expenditures. Unexpended balances or unallowable expenditures are debts due the Crown. • Flexible Transfer Payment (FTP) - a conditional transfer in accordance with specific program terms and conditions and based on a predetermined fixed level of expenditure. Unexpended balances are not debts due the Crown provided program requirements have been met.
SELF-GOVERNMENT FINANCIAL TRANSFER AGREEMENT (SGFTA)	The SGFA is a multi-year funding agreement that INAC and other federal government departments enter into with First Nations governments. These types of agreements are funded through grants, providing First Nations with the most flexibility in delivering programs to their communities. To be eligible, First Nations must first have entered into a Self-Government Agreement with Canada. The SGFTAs last for five (5) years, and is subject to renewal.

Table 1 above provides a description of the pre-PTP funding arrangements, many still currently in use. Column one shows these arrangements AANDC in decreasing order of departmental control and increasing recipient flexibility. The choice of arrangement depends on the recipient's capacity to administer the programs and services and the funding received and to account for the use of the funds.

The department is currently reviewing a new architecture in establishing these funding agreements, shown in Table 2 below.

The funding regime is therefore complex and with the involvement of other departments beyond AANDC the programming obligations and reporting requirements can become tangled and onerous. A number of observers within and outside of AANDC, including the Royal Commission on Aboriginal Peoples, the Auditor General of Canada, the Independent Blue Ribbon Panel on Grant and Contribution Programs as well as First Nations themselves, have called for a fundamental change in how departments understand, design, manage and account for their funding to First Nations.

Table 2: Range of AANDC Funding Arrangements Going Forward (After PTP Implementation)	
FUNDING ARRANGEMENT	**DESCRIPTION**

New Funding Arrangement Model based largely on the CANADA/FIRST NATIONS FUNDING AGREEMENT (CFNFA)	INAC has a new funding agreement model. The model is based upon the principles and elements of the Canada/First Nations Funding Agreement (CFNFA) approach which was co-developed by INAC and Health Canada. The new agreement model permits:
	• multiple program authorities to be used, and, where appropriate;
	• 1 year or multi-year agreements ;
	• the following funding approaches to be used:
	  ✓ set contribution;
	  ✓ fixed contribution;
	  ✓ flexible contribution;
	  ✓ block contribution; and
	  ✓ grant.
	The new model is structured so that it can be a single year agreement or a multi-year agreement.

SELF-GOVERNMENT FINANCIAL TRANSFER AGREEMENT (SGFTA)	The SGFA is a multi-year funding agreement that INAC and other federal government departments enter into with First Nations governments. These types of agreements are funded through grants, providing First Nations with the most flexibility in delivering programs to their communities. To be eligible, First Nations must first have entered into a Self-Government Agreement with Canada. The SGFTAs last for five (5) years, and is subject to renewal.

3.3   Key areas of concern and opportunities for improvement

A number of reports from a variety of sources point to areas of concern and identify opportunities for improvement in the selection, architecture, management and accountability related to funding arrangements used by the department. Key ones and their conclusions are summarized briefly in the following paragraphs.

3.3.1 The Royal Commission on Aboriginal Peoples (RCAP)

The Royal Commission on Aboriginal Peoples was appointed in 1991 to help, in the Commission's words, "... restore justice to the relationship between Aboriginal and non-Aboriginal people in Canada and to propose practical solutions to stubborn problems." The Commission's final report was made public in November 1996.

The Commission proposed the following five objectives for financial arrangements that will support meaningful and effective self-government:

1. <u>Self-reliance</u> - Aboriginal governments will need an adequate land base, adequate resources and the authority, such as tax powers, to have access to independent sources of revenue.
2. <u>Equity</u> - New funding arrangements must produce equity 1) among Aboriginal governments; 2) between Aboriginal and non-Aboriginal peoples; and 3) between individuals.

3. Efficiency - Financial arrangements and the processes employed to achieve them should be designed to be efficient.
4. Accountability - Governments should be held accountable for their expenditures, primarily by their citizens and also by other governments from which they receive fiscal transfers.
5. Harmonization - Arrangements should include mechanisms that provide for harmonization with adjacent governing bodies at the federal, provincial and municipal levels.

Based on these objectives, the Commission argued for fundamentally new fiscal arrangements, not adaptations or modifications of existing fiscal arrangements for Indian Act band governments. In fashioning these new arrangements, the RCAP recommends, "the negotiating parties should take into account the differences that exist between Aboriginal and non-Aboriginal governments, such as the high cost of services in remote areas; the fact that many First Nations have non-contiguous land bases; the likelihood that many Aboriginal governments will not immediately exercise all of the jurisdiction available to them."

3.3.2 Various Auditor General Reports

The Auditor General of Canada established Aboriginal issues as an important focus area for performance audits. In its reports to Parliament between 2001 and spring 2010, the Office of the Auditor General published 16 chapters addressing First Nations and Inuit issues directly. Another 15 chapters dealt with issues of importance to Aboriginal people. The Office made numerous recommendations calling on Indian and Northern Affairs Canada (AANDC) and other federal departments to address a wide range of issues of importance to First Nations and Inuit people.

Most recently, in her *2011 June Status Report of the Auditor General of Canada*, the Auditor General indicated that "many of the problems facing First Nations go deeper than the existing programs' lack of efficiency and effectiveness. We believe that structural impediments severely limit the delivery of public services to First Nations communities and hinder improvements in living conditions on reserves. We have identified four such impediments:

1. Lack of clarity about service levels,
2. Lack of a legislative base,
3. Lack of an appropriate funding mechanism, and
4. Lack of organizations to support local service delivery. "

3.3.3 The Blue Ribbon Panel Report

In June 2006, the President of the Treasury Board commissioned an independent panel to review and recommend ways of simplifying the administration of grants and contributions. On February, 2007, the *Independent Blue Ribbon Panel on Grants and Contributions* released their much anticipated final report, *From Red Tape to Clear Results*. The report's conclusions cover a broad range of topics related to the administration of grants and contributions.

The panel identified a need for the federal government to dramatically simplify its reporting and accountability regime related to grant and contribution agreements. It recommended that the Treasury

Board and departments modify their monitoring and recipient reporting requirements to avoid duplication or redundancy, and ensure that requirements are clearly connected to a demonstrable need.

Based on consultation with government, the voluntary sector, the business community and others, the panel set out the following three conclusions:

1. There is a need for fundamental change in the way the federal government understands, designs, manages and accounts for its grant and contribution programs.
2. Not only is it possible to simplify administration while strengthening accountability, it is absolutely necessary to do the first in order to ensure the latter.
3. Making changes in an area of government as vast and multi-faceted as grants and contributions will require sustained leadership at the political and public service levels.

In their report, the Panel makes 32 short and long term recommendations to government that aim to change administrative practice. The recommendations fall into 4 categories:

1. Respect the recipients—they are partners in a shared public purpose. Grant and contribution programs should be citizen-focused. The programs should be made accessible, understandable and useable.
2. Dramatically simplify the reporting and accountability regime—it should reflect the circumstances and capacities of recipients and the real needs of the government and Parliament.
3. Encourage innovation—the goal of grant and contribution programs is not to eliminate errors but to achieve results, and that requires a sensible regime of risk management and performance reporting.
4. Organize information so that it serves recipients and program managers alike.

3.3.4 A Descriptive Model of Government of Canada – First Nations' Accountability

Baker (2010) has constructed a descriptive model (shown in the diagram) of the current accountability relationship between the Government of Canada and First Nations bands and the key problematic areas in this relationship.

He uses the model to examine each element in the Government of Canada-First Nations Band accountability relationship in order to:

The accountability relationship problematic in the current fiscal relationship between FN and the Government of Canada

Accountability Style: Western

Government of Canada/AANDC

Mostly contract-based (contribution) — Transfer — Driven by GOC procedures and expectations

Heavy, driven by GOC needs — Reporting requirements — Onerous, compliance focused

Lack of transparency and information sharing — Reporting — Not helpful to the community

Strong, one-way recourse (e.g., through intervention) — Recourse: Feedback, Review and Adjustment — Weak recourse and influence on program policy and decisions

FN Band

Accountability Style: Aboriginal

Adapted from Ron Baker, *A Descriptive Model of Government of Canada – First Nations' Accountability*.

- Assess the degree to which it is a partnership (i.e., government-to-government)[it is not];
- Look for contradictions amongst the elements of accountability that could lead to tensions [there are many, not the least being the differing accountability styles]; and
- Draw the attention of those currently working to rebuild or reconstitute the accountability relationship to the implications associated with each element.

The model begins with the transfer element. This is depicted as a unidirectional arrow from the Government of Canada (through a department) to a First Nations band. The prevailing transfers are contribution-based, driven by federal government conditionality, procedures and expectations. This is accompanied by the demand for information or "reporting requirements". This, too, is depicted by a unidirectional arrow reflecting the evidence that reporting requirements are dictated to the bands. The supply of information ("reporting") is unidirectional from the band to the Government of Canada. This connotes the one-sided nature of the accountability relationship. As Baker puts it, "To be more specific, it represents the relationship of accountability of the band to the Canadian government. In doing so it represents the view that historically the Government of Canada has not been accountable to First Nations, a significant factor". Finally the model shows the element of recourse (feedback, review and adjustment) as an exchange. Again this is a unidirectional exchange, reflecting the strong recourse available to the federal government (e.g., through intervention policy, discontinuance of funding, etc.), and the week recourse available to FNs.

3.3.5 Special Study on Departmental Funding Arrangements (2009)

The objective of the study was 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 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 AANDC) policy instruments (horizontally); and

2. To establish to what extent the accountability provisions in these arrangements are *appropriate* and *effective* in achieving the accountability and reporting needs of First Nation recipients (to local stakeholders) and those of the Minister (to Parliament and Canadians).

The special study found that, *inter alia* that:

1. With the devolution of the delivery of programs and services from AANDC 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. However, there has been little progress 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.

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2. Funding arrangements were seen to be focused on AANDC's policies and programs and not those of the recipient. Flexibility was constrained by the amount of funding.

3. Despite the centrality of funding arrangements to the Department and their importance in terms of AANDC'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 AANDC 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.

4. In terms of the effectiveness of funding arrangements in meeting AANDC'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.

5. 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 AANDC since they did not receive feedback.

6. There is little coordination of funding arrangements across the federal government and widely varying terms and conditions across departments.

3.4   Departmental Action

Against this backdrop, the department is determined to address key shortcomings and take advantage of opportunities available – some of which were already identified in previous studies and reports, others which would become available through further review, analysis and consultation. This special study is just one among a number of concerted initiatives underway and planned.

3.5   Summary

A variety of previous studies and reports provide a rich tapestry of facts and narratives underlying the fiscal and accountability relationship between the federal government and FNs.   The 2009 Special Study (IOG, 2009) provides an excellent summary of the significant kinks in this tapestry:

1. General reluctance, particularly among AANDC program managers, to move into more flexible arrangements or multi-year agreements lest there is loss of control, diminished accountability and less information available to support Ministerial accountability, and because of concerns about annual adjustments, particularly for income assistance and primary and secondary education.

2. Excessive focus on AANDC's policies and programs and not on those of the recipient.

3. Movement of First Nations, Tribal Councils and other Indian-administered recipients toward increasingly responsive, flexible, innovative and self-sustained policies, programs or services is not being sufficiently promoted.

4. Little information about what outcomes and results are being achieved on the ground, in the communities, since most of the reporting relates to compliance, inputs, activities or outputs and very little about outcomes or results.

5. Reporting is burdensome, the utility of the information collected and the ways they are used are uncertain and not clearly commensurate with the degree of risk or the amount of funding involved.

6. Insufficient coordination of funding arrangements across the federal government and widely varying terms and conditions across departments, making desirable aggregation difficult.

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4. A Conceptual Framework for this Study

4.1 The Study Framework

The diagram below captures the key elements that form the focus and object of this study.
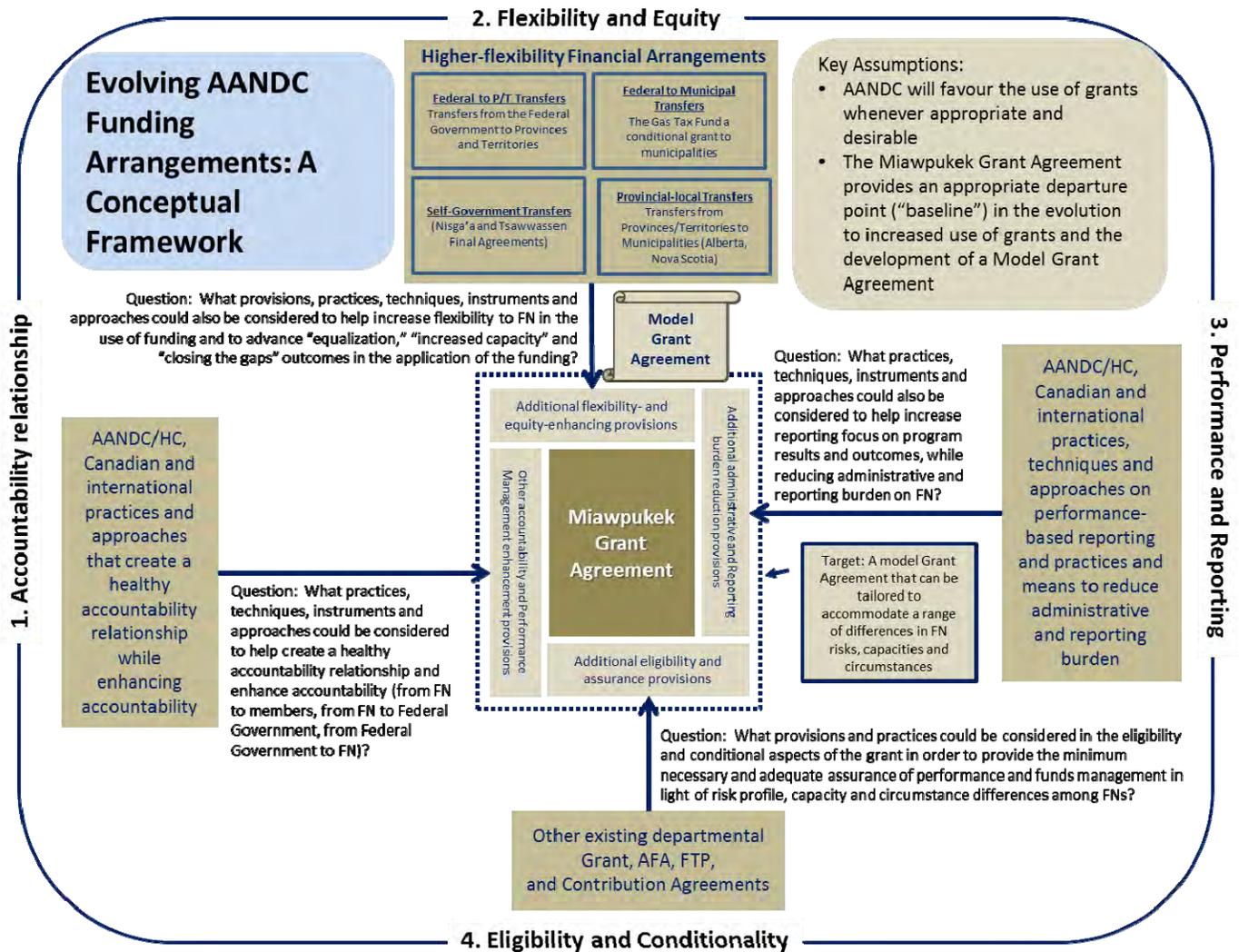
The following paragraphs provide an outline of the fundamental assumptions behind this framework, its component elements and the key questions around which information collection, analysis and the presentation of findings have been structured.

4.2 Overall assumptions and key principles underlying the framework

The following are the "global" assumptions and key principles behind the conceptual study framework outlined in the diagram above:

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1. The department wishes to explore the increased use of grants in funding program services delivered by First Nations (FNs) to their members in the belief that this may be beneficial to both department and FN recipients and may represent a step toward delivering positive responses to long-standing recommendations in the RCAP Report, the Auditor General's various reports on funding to FN and calls by the Assembly of First Nations (AFN) and other Aboriginal organizations for deep change in the fiscal relationship between the Federal Government and FN.

2. AANDC will favour the use of grants whenever appropriate and desirable, taking into account the differences that exist in the risk profiles, capacities and other circumstances characterizing FNs. "Appropriate" and "desirable" refer to those FNs whose risk profiles, capacities and other circumstances established through such instrumentalities as the General Assessment or certifications by agreed-upon third parties recommend and warrant the use of grants. It may be realistic to expect that only 10-15% of the over 600 FN currently funded through contributions may qualify, at least in the first "wave". A departmental strategy to bring new FN for consideration in subsequent waves (e.g., through capacity development work and "closing the gap" funding) will need to accompany this shift.

3. The use of grants will not replace, but will continue to complement, the other types of funding agreements (e.g., contributions for project-based funding), whose use will continue as circumstances warrant.

4. The Miawpukek Grant Agreement provides an appropriate departure point ("baseline") in the evolution to increased use of grants. As such, Miawpukek serves as a starting point on a journey toward a new Model Grant Agreement (MGA) that can be tailored to accommodate differences in the risk profiles, capacities and other circumstances characterizing FN. A description of the Miawpukek Grant Agreement and a rationale for its use as a baseline/ departure point is provided in Annex B.

5. The new Model Grant Agreement should provide a fiscal transfer vehicle for both a single department and multiple departments as funders, based on the principle of "one community, one agreement" whenever that is possible and desirable from both a funders' and FN's perspective.

6. To ensure streamlined administration, where multiple funders are involved, the MGA should be administered through a "single window", with AANDC acting as the point department and coordinator.

7. Finally, the MGA should establish an accountability relationship between funders and FN that provides more balance and symmetry through an increased "two-way" flow between funders and FN. As such, a desirable end-state would be to establish a "reciprocal" or "mutual" accountability relationship, with flows in both directions.

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4.3   The four thematic quadrants of the framework

As indicated in the assumptions and principles articulated above, the Miawpukek Grant Agreement (MGA) is a starting point. It would be unreasonable to assume that the agreement in its pristine form will be able to accommodate the entire range of risk profiles, capacities and circumstances extant in the FN funded by the Federal Government. As such, a number of additional provisions, approaches and practices will be required for the MGA to have the range and requisite variety to make it relevant and usable along the entire continuum of "grant-grade" FN risk profiles, capacities and circumstances.

The search for, analysis and presentation of these additional provisions is organized into four categories; these categories are actually the four thematic quadrants shown in the Conceptual Study Framework diagram.   They are:

1. Accountability relationship (recasting the accountability relationship between the federal government and FNs);
2. Flexibility and Equity (providing added recipient flexibility when appropriate while ensuring that adequate funding flows to those areas that need it most through, for instance, "equalization", "capacity-building, "closing the gaps" and other targeting approaches);
3. Performance and Reporting (shifting and strengthening the focus of reporting to performance-based reporting while reducing the administrative and reporting burden in accordance with recipient capacity and risk involved); and
4. Eligibility and Conditionality (ensuring, through rigorous up-front assessments, that adequate eligibility provisions and ongoing controls and assurance are in place, commensurate with recipient capabilities, capacity and risk, to manage the funding agreement with appropriate probity, openness and transparency).

The paragraphs below discuss briefly these quadrants. The same headings are then used to present the findings and conclusions of the report, which will form the object of the following sections.

4.3.1   Accountability relationship

The object of this quadrant is the articulation of accountability relationship models that should inform provisions and practices that could be included in the new MGA in addition to those already available in the Miawpukek Grant Agreement.

Thus the key question here is: what practices, techniques, instruments and approaches could be considered to help create a healthy accountability relationship and enhance accountability (from FNs to members, from FNs to Federal Government, from Federal Government to FNs)?   Answers will emerge through an analysis of relevant AANDC/HC, Canadian and international practices and approaches.

4.3.2   Flexibility and Equity

This quadrant provides the focus for the identification of practices, techniques, instruments and approaches that could also be considered to help increase flexibility to FNs in the use of funding and to advance "equalization," "increased capacity" and "closing the gaps" outcomes in the application of the funding. Principal sources of information for this quadrant are:

1. Federal to Provincial and Territorial and Provincial to Municipal Transfers;
2. Provincial-local Transfers, with particular emphasis on transfers from Provinces to municipalities; and
3. Transfers to Self-Governing FNs with which Canada has established a Self-Government Funding Agreement (SGFA).

4.3.3   Performance and Reporting

This quadrant seeks the identification of practices, techniques, instruments and approaches that could also be considered to help increase reporting focus on program results and outcomes while reducing administrative and reporting burden on both FNs and the department.

 Sources of information in this process include:

1. Interviews;
2. A review of AANDC's Multi-Year Community Fiscal Transfer Program;
3. A review on the various "Smart Reporting" initiatives;
4. A review of work undertaken by Federal Government small departments and agencies to lighten the reporting burden placed on them by Central Agencies;
5. A review of the MAF reporting process for small departments and agencies;
6. Work on the First Nations Health Reporting Framework; and
7. A review of international practices related to reducing administrative and reporting burden.

4.3.4   Eligibility and Conditionality

This quadrant seeks to identify what provisions could be considered in the eligibility and conditional aspects of the MGA in order to provide the necessary and adequate front-end assurance of qualifications, performance and funds management in light of the risk profile, capacity and circumstance differences among FNs. Relevant provisions from existing departmental Grant, AFA, FTP, and Contribution Agreements will be a primary source.

It should be noted that <u>this quadrant will only be indirectly (or tangentially) addressed in this study</u> as it forms the object of another study (Orbis) which reported separately.

4.4   Summary

This section proposes a conceptual framework for this study to help identify relevant and appropriate complements to the Miawpukek Grant Agreement. These complements, in the way of provisions, approaches and practices, should ensure that he MGA has the range and requisite variety to make it relevant and usable along the entire continuum of FNs risk profiles, capacities and circumstances. The four thematic quadrants of this framework are:

1. Accountability relationship;
2. Flexibility and Equity;
3. Performance and Reporting; and
4. Eligibility and Conditionality.

5.   Accountability relationship

5.1   Definitions

In the definition of accountability provided by the Office of the Auditor General (OAG December 2002 Report, Chapter 9), accountability is a relationship based on obligations to demonstrate, review, and take responsibility for performance, both the results achieved in light of agreed expectations and the means used. The Auditor General's definition of accountability is linked with an accountability framework that consists of five elements:

1. <u>Clear roles and responsibilities</u>. Roles and responsibilities should be well understood and agreed on by the parties.
2. <u>Clear performance expectations</u>. The objectives, the expected accomplishments, and the constraints, such as resources, should be explicit, understood, and agreed on.
3. <u>Balanced expectations and capacities</u>. Performance expectations should be linked to and balanced with each party's capacity to deliver.
4. <u>Credible reporting</u>. 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. <u>Reasonable review and adjustment</u>. Fair and informed review and feedback on performance should be carried out by the parties, achievements and difficulties recognized, appropriate corrective action taken, and appropriate consequences carried out.

In relation to the first element, the *Report of The Financial Reporting by First Nations Study Group*, (CICA, 2008) notes that the "there needs to be a clear understanding of the duties, obligations and related authorities of each party. Accountability is a two-way street and all parties to the accountability relationship have roles and responsibilities. As accountability relationships are not static, these roles and responsibilities will adapt to suit changes in social, economic and political circumstances."

5.2   Salient characteristics

As CICA (2008) notes, "First Nations are regaining and extending governance authority. The devolution of program management to First Nations governments, greater band control of government funding and an increase in the number of First Nations negotiating self-government agreements have changed the accountability relationships of First Nations. Most important, there has been a change in the relationship between the leadership of First Nations and their members. To have robust governance, not only is it necessary for the leadership of a First Nation to be accountable to its members, the members of a First Nation must also take responsibility for staying informed and holding their leadership accountable. As a result, the primary accountability relationship of a First Nation government is with its members."

The CICA report also points out that the relationship between First Nations and the rest of Canada is also changing. "Now, in most instances, First Nations – whether self-governing or operating under the Indian Act – will continue to depend on federal government transfers for funding for province-like programs and services such as health and education for on-reserve members. Because these are similar to the programs and services that the provinces and territories deliver to other people throughout Canada, the

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ongoing dependence of First Nations will be no different than the ongoing dependence that provinces and territories have on federal government transfers."

Writing on the relationship between First Nations and the rest of Canada, the Auditor General also notes in her 2006 Update (OAG, 2006) that "the relationship is still evolving, with continued emphasis on the transfer of program administration to First Nations and self-government initiatives."

5.3 FN Accountability Relationships

Attached is a diagrammatic view of the main accountability relationships a First Nation typically maintains.

As apparent, First Nations have three key main accountability relationships:

1. <u>To First Nation members</u>, living on-reserve and off-reserve, who have a right to select their First Nation government leaders. Thus the primary accountability relationship is the
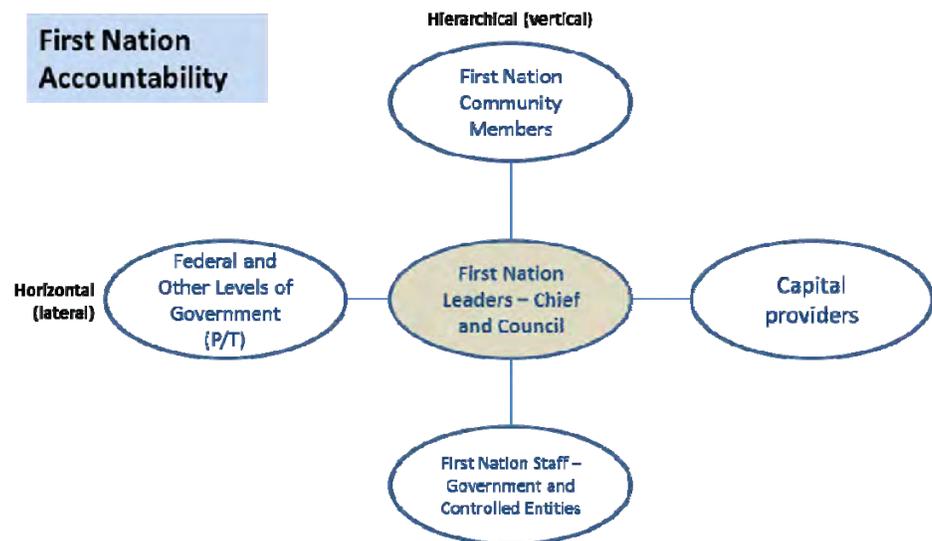
First Nation Accountability

Hierarchical (vertical)

First Nation Community Members

Horizontal (lateral)

Federal and Other Levels of Government (P/T)

First Nation Leaders – Chief and Council

Capital providers

First Nation Staff – Government and Controlled Entities

Adapted from Ron Baker, *A Descriptive Model of Government of Canada – First Nations' Accountability*. In turn, adapted from John Graham, Policy Brief No. 4 – *Building Trust: Capturing the premise of accounting in an Aboriginal context*. Institute on Governance, 1999.

relationship between a First Nation government and its members. In addition, there are accountability lines within First Nations governments: (1) elected and appointed representatives and officers; (2) operational and administrative management; and (3) employees.

Both FN government and members have important roles to play in the accountability relationship. The members have a duty to engage: they select their government and are also responsible for any changes in that government. Therefore, they need to hold their government accountable by reviewing government performance and ensuring that their government will make any required adjustments to its performance. Otherwise, there will be no accountability and the government will have no legitimacy. The First Nation government has a responsibility to provide services and ensure the well-being of its members. The chosen government needs to make sure that the members of the First Nation understand the activities their government has undertaken and that they have an opportunity for meaningful input.

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2. <u>To other governments</u> that provide funding to First Nations, including federal, provincial and territorial governments that have established legal or economic relationships with First Nations. Similarly, in the relationship between the federal government and the First Nation there is a need for the parties to understand their roles and responsibilities. Here, the emphasis is on federal funding and use of that funding by the First Nation for the purposes intended.

3. <u>To capital providers</u> who are investors, lenders and creditors and use the information for decision-making purposes. In the relationship between a First Nation and capital providers, the roles and responsibilities are more narrowly defined. Capital providers will assess the credit-worthiness of the First Nation and provide capital accordingly. The First Nation will be required to repay the principal amount as well as interest on the principal.

It should be noted in the FN Accountability diagram above that the FN accountability relationships can take two "orientations": hierarchical (vertical) and lateral (horizontal). "Orientation" typically refers to the nature of power in the relationship. As one commentator suggests (Baker, 2010) "the orientation of the relationship will be defined by the balance of power. Where power between the two parties is asymmetrical within the relationship, the orientation is hierarchical and assumes the form of a *principal-agent arrangement.* Where power is shared, the relationship can be said to have a lateral orientation or a joint undertaking between equal partners."

Baker goes on to point out that "power emanates from the ownership of resources, responsibility or both. In a principal-agent arrangement the owner of resources or the owner of responsibility (meaning one who is ultimately accountable for the discharge of those responsibilities) transfers resources or delegates responsibility to the agent. The relationship can be viewed as a contract where one party transfers resources and/or responsibilities to another and in return expects an account of how those resources were used or those responsibilities discharged."

The remaining paragraphs in the discussion on accountability will focus on the first element: <u>the nature of the relationship</u> viewed through the lens of roles and responsibilities in the accountability relationship. <u>The remaining three elements of the accountability relationship – expected performance; reporting requirements; and mechanisms for review and adjustment are addressed in the section dedicated to the third quadrant – Performance and Reporting – downstream.</u>

5.4 Current FN accountability relationship to the Federal Government: mostly a principal-agent relationship

In 1996, the Office of the Auditor General (OAG) conducted a study and produced a report entitled "Accountability Practices from the Perspectives of First Nations" (OAG, 2006). The objectives of this study were to explore the accountability relationship with the government based on actual views of selected First Nations collected through focus sessions and interviews. The report indicated that the government and First Nations generally "no longer understood each other's needs", making the current construct of accountability "unworkable because little legitimacy is attached to it".
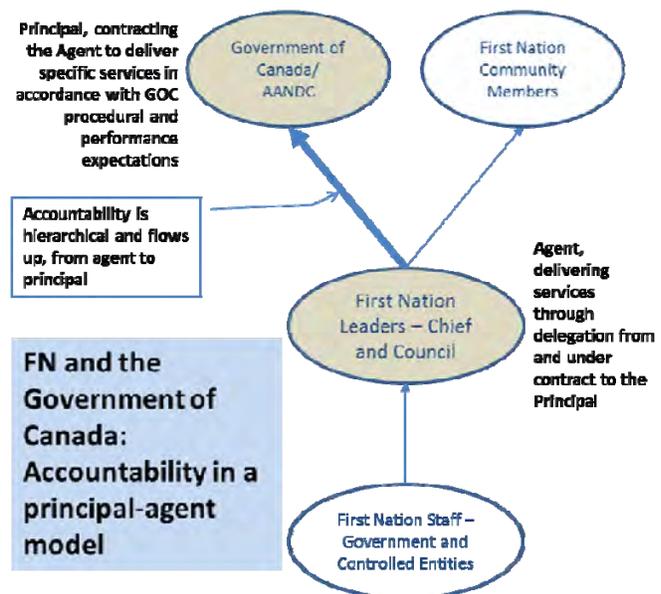
One of the key conclusions was that most First Nation participants in leadership positions or band council offices saw themselves as responsible to their membership for results and to the federal government for process. While participants recognized the need for the government to implement some systems and procedures to facilitate programs delivery, a less onerous process and more of a focus on results was stressed. One study on accountability in the aboriginal context notes that "since the mid-1980s, the federal government and in particular the Auditor General has become increasingly cognizant of the disparity between what might be meaningful accountability processes for First Nations and what the government presently expects" (Cosco, 2005, p. 153).

Another paper (Baker, 2010) notes that the Assembly of First Nations (AFN) has developed a First Nation Accountability agenda, asserting that an important step forward in recognizing inherent Aboriginal and Treaty rights and implementing First Nation governments involves "changing the accountability relationship between the Government of Canada, First Nations governments and organizations, and the citizens they all represent," (Assembly of First Nations, 2006).

In an attempt to do this, the AFN undertook an *Accountability for Results initiative* (AFN, 2006-1) to improve the accountability process for First Nations organizations. Through this initiative, the AFN had reached an agreement in principle with the Government of Canada to improve the accountability of all governments through the development of shared principles that pertain to both the accountability relationship and to how it is implemented (see *Federal Background Paper: Accountability for Results Roundtable Follow-up Session*, 2006). With regard to the accountability relationship, both FN and the Federal Government recognize that:

1. The primary accountability of any government is to its citizens;
2. For policies, programs and services to First Nations, the primary objective is to improve results for First Nations citizens;
3. Accountability is shared between Government of Canada and FN governments;
4. Accountability is mutual between Government of Canada and FN governments.
5. For both the AFN and the Government of Canada, "there is a shared vision of adopting and adapting the principles for accountability of the Auditor General of Canada," as part of a collaborative process to establish "a new model of accountability for results that supports the aspirations of communities while assuring every one of the effective management of resources").

Using the First Nation Accountability model shown in section 5.3, the diagram attached

Principal, contracting the Agent to deliver specific services in accordance with GOC procedural and performance expectations

Accountability is hierarchical and flows up, from agent to principal

Government of Canada/ AANDC

First Nation Community Members

Agent, delivering services through delegation from and under contract to the Principal

First Nation Leaders – Chief and Council

First Nation Staff – Government and Controlled Entities

FN and the Government of Canada: Accountability in a principal-agent model

captures the current model of the accountability relationship between FN and AANDC/Federal Government. This principal-agent accountability relationship is widely considered as increasingly inadequate and representing the paternalistic past where, as a recent paper (Brinkley, 2009) points out, the "framework established by the Indian Act subordinates Band councils to the department. Every action of the Band council is subject to the discretion of the Minister of AANDC."

5.5   An accountability relationship continuum

In the classical sense, accountability is a process through which people entrusted with responsibilities are kept under check to carry out the tasks assigned to them. The architecture of this process and its mechanics fit a typology of four accountability models (Droop et al, 2008), as shown in the diagram below.

An Accountability Relationship Continuum

Principal-agent	Representative	Cooperative	Mutual
• Hierarchical (top-down, from principal to agent) • Less freedom for the agent • Involve both procedural and performance expectations • Strong answerability and enforceability	• Applies to the public sector (e.g., GOC) • Parliament, the judiciary and central agencies provide legislative, judicial and policy checks • Strong answerability and enforceability	• Collaborative framework • Relies on voluntary compliance (e.g., through shared rules, regulations or codes of conduct) • Members (e.g., in professional associations) with a shared goal and objectives agree on rules and ensure compliance	• A framework for partnerships around shared goals • Two or more parties hold one another accountable for the commitments they have voluntarily made to one another • Fits government-to-government relationships (e.g., international aid)

One-sided accountability ←   → Two-sided, shared accountability

Adapted from the review of a variety of discussions on governance and accountability, primarily in the context of granting and international aid activities.

At the "one-sided" end of the spectrum is the Principal-Agent model. In this model, the accountability relationship is primarily defined in the funding agreements between the two parties. Thus, the accountability relationship is hierarchical (top-down, from principal to agent) and contractual, involving less freedom for the agent where activities and expectations are tightly defined.

The second model is the Representative Accountability. This model applies to public sector. Implementing agencies are responsible to the elected representatives of the citizens. Accordingly, institutions such as parliament and the judiciary provide legislative oversight and judicial checks respectively. Both representative and principal- agent models have two non-separable elements: strong answerability and enforceability.

Answerability requires the executing agencies to justify their decisions and actions. Accordingly, information on performance is gathered and analyzed based on pre-determined criteria. In addition, there are clear incentives for improving performance. By the same token, enforceability is the process

and framework for penalizing non-compliance or poor performance and rewarding full compliance or good performance.

The third model is the Cooperative Model. While clear avenues for sanction and tools for compliance exist in both representative and principal-agent accountability models, the cooperative model is a more collaborative framework that relies on voluntary compliance arising from social norms such as codes of conduct to define standards of behaviour. It is therefore incumbent upon members with a shared goal and objective to set up the rules and regulations that govern this behaviour.

At the two-sided, "shared" end of the spectrum is the fourth model, which we will refer to as "mutual accountability" (also referred to in the literature as "two-way", "shared" or "reciprocal" accountability). It is the process by which two or more parties hold one another accountable for the commitments they have voluntarily made to one another.

5.6 A mutual accountability relationship between FN-Federal Government: what would it look like?

The diagram attached captures, using the FN accountability model outlined in 5.3, what a mutual accountability relationship between FN and the Federal Government would entail.
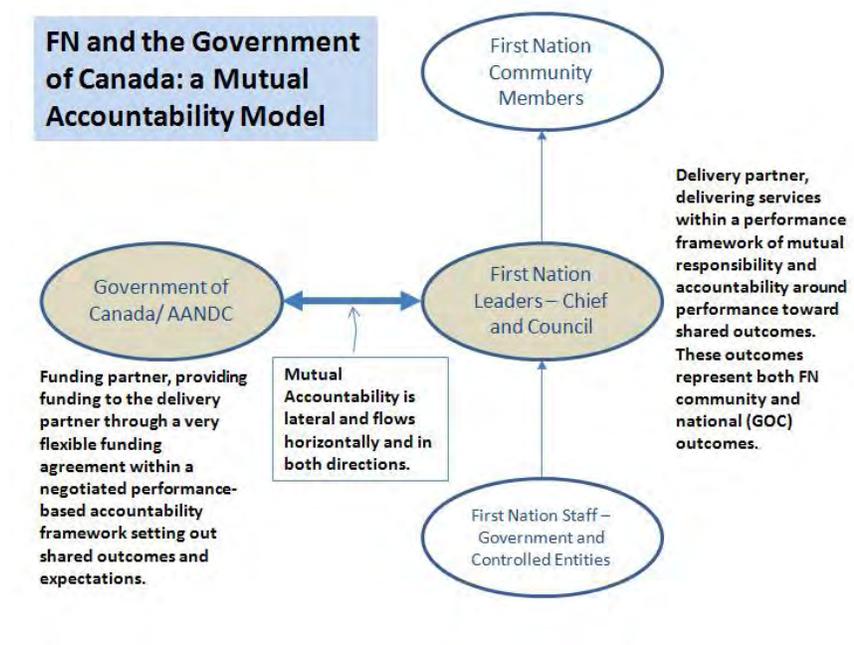
It should be noted that the mutual accountability model is currently the target accountability model in the international aid community and forms the object of one of the five principles of the 2005 *Paris Declaration on Improving aid Effectiveness.* These principles are:

1. <u>Local Ownership</u>: support for developing country leadership on development strategies, plans and policies.

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2. <u>Alignment</u>: linking donor support to developing country strategies, greater use of country systems, strengthening capacity of these systems for effective management of development, and greater untying of aid.

3. <u>Harmonization</u>: better donor coordination, streamlining of procedures, encouraging common arrangements, and sharing workload among donors including in fragile states.

4. <u>Managing for Results</u>: improving management of resources and decision-making in support of development results.

5. <u>Mutual Accountability</u>: shared accountability for development results.

These principles reflect a drive for more judicious use of aid resources to sustainably reduce poverty in developing countries. Mutual accountability in particular aims to increase the incentives and collective responsibility for governments and development partners to achieve their development goals in an increasingly aligned and coordinated fashion. It requires that both donors and partner countries who are recipients of development assistance be <u>accountable to each other</u> in the achievement of development results. It recognizes that in a true development partnership, each of the partners must come good on their commitments for the shared goals to be realized.

As opposed to other forms of accountability, Mutual Accountability is the process by which two or more parties hold one another accountable for the commitments they have voluntarily made to one another. Accordingly, the commitment of diverse stakeholders to the process is maintained, largely, through positive incentives and the desire to protect reputation as opposed to sanctions. Using the aid world model of Mutual Accountability, the following conditions should obtain in a mutual accountability relationship involving government funders and First Nation recipients:

1. <u>A shared performance-based management agenda and objectives</u> that brings together all the partners as a basis of cooperative action. In the case of mutual accountability, the commitment of diverse stakeholders to the process is maintained, largely, through positive incentives and the desire to protect reputation as opposed to sanctions;

2. <u>Existence of performance information</u> based on mutually agreed performance criteria; and

3. <u>Genuine dialogue and debate</u> process based on mutual consent, common values and trust.

Mutual accountability has been recognized as one of the most challenging of the Paris Declaration principles to implement, given the imbalances of power and complex chains of accountability involved in aid relationships. In the past, the donors viewed themselves as principals, providing resources to governments as agents to deliver development results. However, given the characteristics of the development aid market, mechanisms for enforceability and answerability proved difficult to establish.

The development aid world has come up with a number of emerging tools and practices for strengthening mutual accountability. These include two in particular that would be helpful in establishing and strengthening a FN-Federal Government mutual accountability relationship:

1. <u>Effectiveness Reviews</u>: These are joint assessments by partner countries and donors, sometimes commissioned from independent experts, of mutual progress on aid effectiveness

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commitments. To support mutual accountability, the Paris Declaration calls on partner countries and donors to organize joint assessments of mutual progress towards aid-effectiveness commitments. A number of countries have now introduced independent reviews of aid effectiveness, usually by mixed teams of international and country experts, jointly commissioned by government and donors. This complements the monitoring of the Paris Declaration indicators done bi-annually in each country. A recent study by the German Development Agency notes that critical success factors for mutual accountability include confidence and trust, coherence, capacity, information and credible incentives.

2. Common Results Frameworks: These are often linked to Joint Assistance Strategies or multi-donor budget support arrangements and help to align partner country and donor efforts behind shared development goals. Most donors produce Results Frameworks as part of their country assistance strategies, setting out the development results they hope to contribute to with their assistance and indicators for measuring progress. These frameworks enable donors to assess their impact, supporting management decision making and accountability. Under the Paris Declaration, the results and indicators should as far as possible be aligned with results frameworks in national development plans, and be monitored using national processes like annual progress reports on poverty-reduction strategies. Some donors are also moving towards joint results frameworks, as part of joint assistance strategies or multi-donor budget support arrangements. By combining government and donor contributions towards development outcomes, common results frameworks support mutual accountability and put the focus on overall development results.

5.7   Lessons from Public Management

In a variety of recent papers and presentations Ian Clark, former Secretary of the Treasury Board, reflected on challenges in establishing and maintaining accountability relationships that emanate from good governance and reasonable management and relationship principles based on a balanced view of the interests, capacities and incentives of the parties involved. The caption attached provides a brief snapshot of a precursor initiative to the current MAF – the Shared Management Agenda (SMA).

In a recent presentation, (Clark, 2010) Clark articulates seven principles of "frugal public management" that, ideally, would underpin the structuring and management of a shared management agenda (SMA). Five of these principles are quite relevant to the recasting of the accountability relationship between the Federal Government and FNs

Evert Lindquist in Treasury Board's Management Accountability Framework, How Ottawa Decides, 2009-10.

For officials with some institutional memory, there were lessons to be learned from the early 1990s when Ian Clark, as Secretary to the Treasury Board, introduced the Shared Management Agenda (SMA), underpinned by Departmental Management Assessments (DMAs). In the midst of great flux in management initiatives in the late 1980s and very early 1990s flowing from the Increased Ministerial Authority and Accountability initiative, Public Service 2000, the shift to operating budgets, special operating agencies, employment equity, and ongoing expenditure cuts –to name only a few – Clark sought to engage deputy ministers in a more collaborative manner. This included using advisory councils and undertaking department "management assessments" based on information drawn from across TBS and the Office of the Comptroller General and their respective policy domains (then TBS included what would eventually become the Canada Public Service Agency). This information was assembled and distilled by an analyst in the Management Initiatives group with modest support, and used as a basis for a short two or three page note to inform bilateral meetings between the Secretary and deputy ministers and agency heads to identify mutual management priorities. The DMAs were also used by the Committee of Senior Officials in the performance review of these top executives.

around a SMA. They are presented below, adapted for FN recipients as partners in such a relationship:

1. <u>Results-oriented measures and objectives</u>: state objectives in ways that make it possible to construct performance measures that can form the basis for appropriate incentives and the structuring, targeting and management of funding arrangements.

2. <u>Performance-related incentives</u>: think through what behaviours you want from individuals and the SMA partners and encourage that behaviour.

3. <u>Efficiency-related concentration and specialization</u>: Seek to encourage aggregation, creation of shared services arrangements between FN, centralize processes where average cost falls as scale is increased; concentrate where efficiencies are gained through specialization; collocate where benefits can be obtained from working in proximity to those performing related activities.

4. <u>Equity-oriented targeting</u>: Target the benefits of funding arrangements to those who most need them in the FN communities. "Need" in an equity context refers to requirements around service delivery, equalization, comparability of services, closing of critical gaps in the community, etc.

5. <u>Change-sensitive implementation planning</u>: Because rigorous application of these principles would alter the nature of the accountability relationship and the structure of the attendant processes (performance frameworks, performance "conversations", targeting of funding to create incentives and increase equity, etc.) changes need to be carefully planned and phased, with appropriate grandfathering and other adjustment provisions.

5.8   Strengthening FN Institutions

One of the essential ways in which FN accountability relationships are improved is through the establishment and strengthening of FN institutions that play an assurance and supporting role in discharging accountability relationships.

AFN's Accountability for Results paper (AFN, 2006) names FN institutions with a role to play in improving accountability, noting that some exist now (2006), some could be strengthened, while others are not yet created:

- First Nations Governments
- First Nations Statistical Institute
- First Nations Ombudsperson – (AFN Proposal #8)
- First Nations Certification Institute – (AFN Proposal #9)

Source: Adapted from the 2010/11 FMB Corporate Plan.
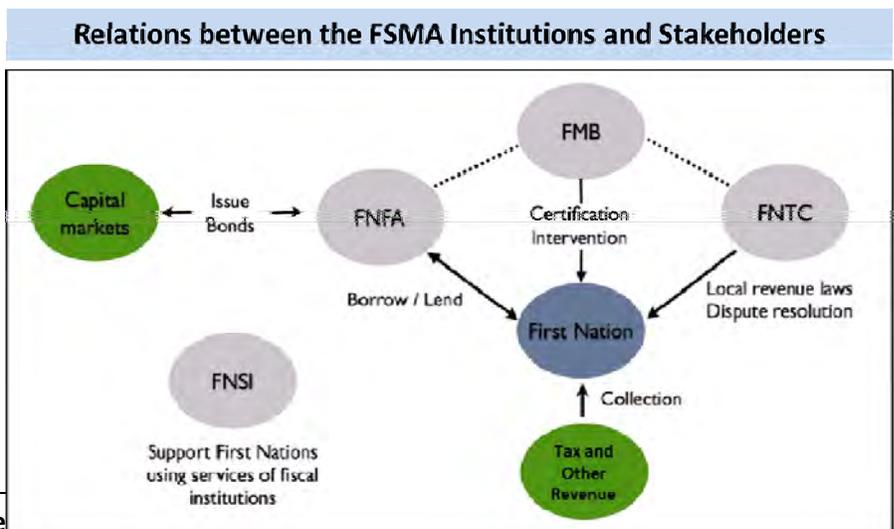
- First Nations Auditor General
- First Nations Comptroller General
- First Nations Fiscal Office.

Many of these institutions are now functional (although the names may differ, as in the case of the Aboriginal Financial Management Board (FMB) for the initially-conceived First Nations Certification Institute). The addition of a First Nations Auditor General and a First Nations Ombudsperson – currently under discussions – would further complement the constellation of FN institutions and will contribute to improving FN accountability while providing further assurance that more flexibility in federal government-FN funding arrangements, more reliance on local accountability and less onerous administrative and reporting regimes are both justified and appropriate.

5.9   Summary

This section reflected on the nature of the accountability relationships for First Nations. While noting that these relationships are evolving, there is a strong consensus that the most active aspects of this evolution involve:

- A more mutual conception of the accountability relationship between FNs and other levels of government, including the federal government.
- Strengthening of the local accountability relationship – from FN council to members;
- Accommodating the evolving nature of the accountability relationship between the FNs and the rest of Canada in general and the federal government in particular, where more government-to-government (or "nation-to-nation") accountability features are factored into the mix;
- Development and strengthening of FN governance and accountability support and assurance institutions within the Aboriginal community; and
- More alignment and coordination (coherence) between funders focusing on shared concern for community outcomes and results.

6.   Flexibility and Equity

6.1   Moving beyond grants and contributions?

A 2009 IOG report (Graham, J and Motsi, G, 2009) notes that "the First Nation perspective, as espoused by the Assembly of First Nations, would see an accountability relationship with the federal government

> "Fiscal arrangements with First Nations governments are complex, reflecting not only the varied circumstances of the 630 First Nations of Canada but also the fact that payments to First Nations governments are (or ought to be) more like intergovernmental transfers than typical grants and contributions. The panel is of the view that mechanisms other than grants and contributions for the funding of essential services such as health, education and social assistance in reserve communities are needed, but we have concluded that trying to address this issue would take us well beyond our mandate." – The Blue Ribbon Panel Report.

mimicking closely that between the federal and provincial governments, a position based on its understanding of Aboriginal and treaty rights and the Crown's fiduciary obligations to First Nations. Key attributes would be a constitutionally recognized order of government; the federal government being as much accountable to First Nations as the reverse; significant own source revenue for First Nations (but not only from taxing its own citizens); and unconditional fiscal transfers determined by legislation and resembling equalization and other federal transfers in the health and social fields. "

The preferred approaches of the Penner Committee, the Royal Commission on Aboriginal Peoples (RCAP) and the Blue Ribbon Panel clearly lean in the same direction, eventually involving abandoning grants and contributions altogether and moving toward replacing them with an intergovernmental transfer mechanism more akin to that found in the federal-provincial-territorial arena for essential services such as health, education and social assistance.

6.2   Are federal/provincial/territorial/municipal transfers relevant models for FN funding arrangements?

Gusen (2008) points out that although F/T/P/M fiscal transfer arrangements differ from one another, they are similar in one major respect: they involve few if any constraints on how the recipient is to use the transferred funds or requirements for the recipient to account to the federal government on how the funds were used. In that respect, they are largely unconditional transfers.

This absence of conditionality reflects the fact that each order of government, federal and provincial, has primary or exclusive jurisdiction over certain areas of public sector activity. Each may conduct its affairs in those areas without the approval of the other. Providing funding with conditions attached might be seen as threatening this notion of jurisdictional non-interference.

6.2.1   Federal-Provincial transfers

Equalization grants now form the dominant component of federal transfers to provinces in Canada. These are unconditional transfers, the rationale for which is derived from two overarching federal principles, a 'federal rationale' and a 'citizenship rationale':

1. The justification for equalization based on the 'federal rationale' is that if the federal principle is to be meaningful, then each level of government in the federation should have the requisite

financial means and financial security (complementing and buttressing legitimacy and authority) to carry out its constitutional responsibilities (section 36 of the constitution).

2. The justification for equalization derived from the 'citizenship rationale' is based on the reasoning that the citizens of a federation, wherever they may live, should have access to certain 'key economic and social rights – rights that ought to attend citizenship, as it were' (Courchene, 1998). Equalization transfers also serve as a valuable aid to the stability of a federation – another glue to keep a heterogeneous population together.

According to Gusen (2008), provincial governments differ in some notable ways from Aboriginal governments. Generally speaking, provincial governments:

- Serve large populations, so benefit from economies of scale
- Are responsible for delivering essentially a common set of public services
- Serve residents with needs that are quite similar
- Have access to well-qualified staff
- Have many years of experience in managing program delivery and time-tested good-governance, assurance and accountability mechanisms in place
- Raise most of their revenue from their own sources, rather than depending on federal transfers.

Therefore, when the federal government transfers funds to provinces with few strings attached, it can be reasonably confident that the money will be applied efficiently and in the public interest. If it isn't, there is good reason to believe that the public will hold their provincial representatives primarily responsible through the provincial institutions (e.g., Provincial Parliaments) and assurance bodies (e.g., Provincial Auditors General).

Arrangements that resemble federal-provincial transfers may work for a very few innovative First Nations. But, according to Gusen, three main problems would persist in most cases:

- The system would not respond well to inter-community differences in need.
- The accountability mechanism would not reflect the fact that almost all First Nations' funding comes via the transfer and that they consequently have almost none of their residents' own money to account for.
- The inadequate capacity to manage the full range of province-like programs.

6.2.2 Territorial Formula Financing (TFF)

According to Gusen, the description of provincial governments' situation vis-à-vis the federal generally applies to territorial governments as well, but with some limitations:

- Territories enjoy fewer economies of scale – the largest territory has only one-quarter as many people as the smallest province.
- Different powers have been devolved to different territories, whereas provinces all have essentially the same set.

- The needs of territorial residents are on average greater than in provinces, and are more diverse.
- Owing to their limited ability to generate own-source revenues territories get most of their revenues from TFF, whereas provinces are more financially self-sufficient.
- Recognizing these differences, the federal government uses a territory-specific TFF program to fund the northern governments, rather than trying to fit them into the single federal-provincial transfer mold.

TFF resembles federal-provincial transfers in that funds are transferred to territories largely without conditions in terms of reporting or spending restrictions.   While territorial governments are closer to their Aboriginal counterparts than they are to provinces, it appears that a TFF-like model would not be directly appropriate for funding Aboriginal governments.

6.2.3   Provincial-Local Transfers

Funding arrangements for health authorities, school boards and municipalities are quite diverse. Nevertheless, as Gusen notes, some common characteristics are worth noting:

- They are designed to operate in an environment where the recipients differ significantly from one another in terms of management capacity, public service needs of their residents, and size of population being served.
- They are able to reflect, in some instances at least, recipients' particular stage of development in terms, for example, of responsibilities assumed.
- The recipient bodies are seen by their clients as primarily responsible for delivery of the service and principally accountable for any shortcomings. This impression prevails despite the fact that the provincial funding arrangements under which the recipients operate impose tight restrictions in terms of managing operations and disbursing funds.
- They often constitute the main source of funding for the recipient. Again, this does not seem to detract from the recipient being held responsible by the public for delivery of service.

Municipalities receive both conditional and unconditional grants from provincial and territorial governments. Conditional grants are sometimes distributed only among municipalities that apply for them (proposal-based funding), based on an assessment of the strength of their case. Under this procedure, no formula is involved.

Gusen (2008) goes on to make the point that "of all the government-to-government transfer models examined, the provincial-local case seems most readily applicable to the Aboriginal government situation." Aboriginal governments, like health authorities, school boards and municipalities, are a diverse group. A good funding arrangement must allow for this diversity and give recipients at all stages of development the opportunity and incentives to evolve towards greater autonomy and self-reliance. The provincial-local model seems to do this.

Gusen concludes by noting that provincial-local financial arrangements offer a more relevant model for funding Aboriginal governments in most cases, because:

- They can handle situations with a large number of recipients that differ substantially in size, needs and administrative capacity.
- They are effective in having community members hold local authorities to account for problems rather than provincial governments.
- They encourage local authorities to align decisions with provincial goals.

6.3   Principles of good fiscal arrangements from Inter-governmental Transfer Payments

6.3.1   Expert Panel on Equalization and Territorial Formula Financing

It is instructive to examine the set of principles enunciated by a group charged with proposing reforms to two of Canada's major federal/provincial/territorial transfer programs, the Expert Panel on Equalization and Territorial Formula Financing (2006).   A few of these deal with adequacy/affordability, while most of the rest pertain as much to the Aboriginal funding situation as they do to the federal/provincial. The following principles were identified by the Expert Panel:

Principles of a Good Funding Arrangement – Summary
• Fair
• Responsive
• Predictable and stable
• Sound incentives
• Simple and transparent
• Reflecting special circumstances
• Flexible
• Consistent with commitments
• Appropriate respect for autonomy
• Ensuring accountability
• Efficient

1. Fairness of treatment as between recipients.
2. Responsiveness to changes in recipient's financial situation, set against
3. Predictability and stability of payments, both for the federal government, which must budget the expenditure, and the recipients, which must have a degree of revenue security to plan their activities.
4. Sound incentives for the recipient to promote economic development, expand revenue sources, address social issues, and foster self-sufficiency.
5. Avoidance of excessive complexity.
6. Program operation and outcomes that are clear (transparent) to the recipient authorities, their community members and the general public. They should also be objective and driven by accurate, reliable and timely data, rather than at the discretion of the granting authority.
7. Reflection of special circumstances in some recipients' communities.
8. Flexibility to accommodate changes in arrangements to allow for evolution in the recipient's scope of responsibility and capacity to manage.

In a review of these recommendations Gusen (2008) suggests that it would be safe to substitute "Aboriginal authorities" for "provinces/territories" in respect of "recipient." Furthermore, some further adaptation of the Expert Panel's principles helps align them with the Aboriginal funding situation. For example:

1. Fairness of treatment among recipients has added dimensions. As such:

- AANDC funding to bands or tribal councils must meet a double fairness test – fairness among regions, and fairness within a region among bands or tribal councils.

- The fairness-related concept of provincial comparability is intrinsic to Equalization and in fact appears in the Constitution (S. 36). The term is also used in the Aboriginal funding context, where it takes on a slightly different meaning. Public services to people on reserves are to be reasonably comparable to those enjoyed by *other residents of the province.* In the Equalization case, fairness applies <u>between</u> provinces, whereas for Aboriginal funding it applies <u>within</u> a province between Aboriginal and non-Aboriginal communities.

2. An important additional consideration must be the efficiency of funding arrangements. The administrative requirements of operating an arrangement should be no more onerous than necessary, since resources applied to complying with rules and regulations are not available for delivering public services. In this context:

- Reports should be for a good purpose. They should be more concerned with whether or not results are achieved than with detailed information on how dollars were spent. Where possible, they should rely on data that are being collected in any case for other purposes.

- The negotiating process should be streamlined so as not to absorb resources unnecessarily.

- Federal departments should co-ordinate their processes for approving and delivering support, including the terms and conditions they impose on recipients.

3. Providing "sound incentives" takes on additional significance in the Aboriginal government context. To wit:

- Recipients as a rule are delivering services to small populations, so funding mechanisms should encourage them, where it makes sense, to seek aggregation opportunities and enter into co-operative arrangements for the delivery of public services, to establish shared-services arrangement with other FNs, or to purchase efficient services from outside suppliers or neighboring authorities.

- Many Aboriginal government recipients are still gaining experience with delivery of public services. Funding should promote development of best practices in this regard, such as long-term planning, good governance and financial management procedures, evolution towards greater autonomy and self-reliance.

4. "Flexibility" refers to an arrangement's ability to respond to the recipient's evolving responsibilities and capacity to manage. Flexibility also means the arrangement gives the recipient the latitude to reflect local priorities, to capitalize on opportunities, and to address crises.

6.3.2   AFN: New Fiscal Relationship between First Nation Governments and the Government of Canada. Spring 2011 Planning Forum

In AFN's view (AFN, 2011) a new fiscal relationship should look and feel according to the following principles:

1. A <u>nation-to-nation agreement</u> that will eliminate the 2% cap and create fundamentally new and stable fiscal transfer arrangements based on predictable escalators such as demographics, inflation and factors of need.
2. This new relationship will ensure <u>First Nations governments receive the funding they need</u> to look after their citizens, wherever they reside, and affirm First Nations governments as leaders in accountability and successful administration.
3. There currently exist some models which provide a good standing from which to start. For example, the vision of a new Fiscal Relationship put forward by the Royal Commission on Aboriginal Peoples (RCAP) begins by <u>defining First Nations governments as nation-based rather than community-based</u>. To pay for the many services First Nations governments provide, RCAP proposed the development of a tax system transfer approach modeled after Canada's Equalization program. This would specify the relationship between tax revenues and transfer entitlements for all First Nations.
4. However, given that First Nations are often very remote and impoverished, RCAP proposed <u>introducing the element of 'need' in the transfer formula</u>, similar to what is done with the financing of territories.

6.4   Are there lessons available from transfers to self-governed FNs?

An excellent recent departmental policy paper (AANDC, 2011-5) starts by reflecting on the variety of challenges Aboriginal governments face, which include:

- <u>Geographic circumstance</u> – Many Aboriginal communities are situated in remote locations, where access to employment opportunities and government services can be difficult;
- <u>Small populations</u> – The population of Aboriginal communities is relatively small, many with only a few hundred residents, some far fewer;
- <u>Poor socio-economic conditions</u> – Aboriginal communities suffer disproportionately from unemployment, lower educational attainment and poor health outcomes;
- <u>Overlapping government responsibilities</u> – Different levels of government, including the local, provincial or territorial, and federal governments may have overlapping roles to provide services for Aboriginal community members, resulting in some diffusion of responsibility;
- <u>Limited fiscal capacity & high fiscal need</u> – Aboriginal communities typically have a limited ability to raise revenues (fiscal capacity) and face higher costs of delivering services given their smaller scale and remoteness (fiscal need).

In light of these challenges, the paper goes on to propose that the design of AANDC's fiscal arrangements with self-governing FNs should be based on the following principles (each balanced against the others):

1. <u>Fairness and consistency</u> – Fiscal arrangements should treat Aboriginal governments in reasonably comparable fiscal circumstances in a reasonably consistent manner.
2. <u>Comparability</u> – Citizens of self-governing Aboriginal communities should have access to reasonably comparable programs and services as other Canadians in comparable circumstances.
3. <u>Transparency</u> – Fiscal arrangements should be managed openly and transparently, with funding policies and methods set out clearly.
4. <u>Accountability</u> – Fiscal arrangements should provide clarity of roles and responsibilities, promote sound public administration, and ensure appropriate public reporting standards are met by all governments.
5. <u>Shared responsibility</u> – Aboriginal, federal, and provincial or territorial governments share an interest in, and responsibility for supporting, Aboriginal governments and citizens.
6. <u>Manageability</u> – The fiscal arrangement must be manageable and designed to support efficient and effective administration by both the federal government and the Aboriginal government.
7. <u>Policy neutrality</u> – Fiscal arrangements should not distort policy choices for governments.
8. <u>Flexibility and responsiveness</u> – The arrangements should provide flexibility to accommodate changes over time and be reasonably responsive to changing circumstances and fiscal need of each Aboriginal community.
9. <u>Predictability and stability</u> – Adjustments to fiscal transfer payments over time should be relatively stable and predictable, and the policy and related institutional arrangements upon which they are based should also ensure stability.
10. <u>Affordability</u> – The costs of managing the implementation of fiscal arrangements must be affordable.
11. <u>Legislative authority</u> – Arrangements must respect the authority of legislatures in the appropriation of funds.

While targeted at transfers to self-governed FNs, many of these principles are relevant in the consideration of various aspects of the new MGA.

6.5   Summary

While the F/P/T fiscal transfers are a problematic fit as a model for fiscal transfers to Aboriginal communities, the Provincial-to-local transfers to local boards and municipalities provides a better model. At the same time, transfers to self-governing FNs (through SGFAs) – and in particular the harmonization efforts currently underway and the drive to an increasingly more formulaic approach embracing a broader conception of Equalization (more akin to F/P/T transfers) – provide a useful directional vector for the evolution to increased use of grants. As such, it may be desirable that an evolving granting regime for non-self-governing FNs and SGFAs be located in adjoining policy neighborhoods based on similar principles and providing a relatively easy transition from one to the other.

A number of issues from the discussions on F/P/T/local/self-governing FNs seem particularly germane to the structuring of the fiscal transfer regime underlying a new Model Grant Agreement:

1. <u>Fairness</u>: AANDC funding to bands or tribal councils must meet a double fairness test – fairness among regions, and fairness within a region among bands or tribal councils. In the F/P/T Equalization case, fairness applies between provinces, whereas for Aboriginal funding it applies within a province between Aboriginal and non-Aboriginal communities. As such, citizens of self-governing Aboriginal communities should have access to reasonably comparable programs and services as other Canadians in comparable circumstances regardless of geographic circumstances. As such, it may be appropriate that the MGA feature increased reliance on Equalization principles embodied in F/P/T transfer payments.

2. <u>Administrative efficiency</u>: The administrative requirements of operating an arrangement should be no more onerous than necessary, since resources applied to complying with rules and regulations are not available for delivering public services.

3. <u>Effective incentives</u>: For efficiency-enhancing purposes funding mechanisms should encourage them, where it makes sense, to seek aggregation opportunities and enter into co-operative arrangements for the delivery of public services, to establish shared-services arrangement with other FN, or to purchase efficient services from outside suppliers or neighboring authorities.

4. <u>Clarity and predictability in funding policies</u>: Adjustments to any fiscal transfer payments over time should be relatively stable and predictable, and the policy and related institutional arrangements upon which they are based should also ensure stability and predictability. In this regard, a concerted move to formula-based transfer arrangements is warranted where there is more clarity in funding formulas used and less need for protracted and expensive negotiations upon renewal of the agreements.

5. <u>Confidence to "let go"</u>: There is resistance, particularly within program managers ranks, to "let go" and embrace a granting regime where accountability for performance and reporting flow to local communities. This resistance can only be overcome with practical demonstrations (e.g., through pilots) that new performance management and reporting approaches will continue to provide them with the assurance – if not always the detailed evidence – that funds are used and administered as expected.

7. Performance and Reporting

7.1 Focus of this section

As indicated earlier, this quadrant will focus on the three remaining elements in the accountability relationship outlined in the Accountability quadrant discussion (see section 5):

1. Expected performance: the second element of the accountability framework, expected performance, refers to the need for parties to the accountability relationship to have mutually understood and accepted expectations. If expectations are not clear, it is difficult to determine whether or not performance was acceptable and whether it needs to be adjusted. Different accountability relationships will have different performance expectations. The challenge for a First Nation government will be to ensure that performance expectations are realistic and balanced against capacity, and that expectations can be managed in a way that satisfies that government's key accountability relationships.

2. Reporting requirements: the third element of the accountability framework is reporting requirements, which are the subject of this report. The accountability framework demonstrates that reporting requirements cannot be determined in isolation without considering: who is doing the reporting, who they are reporting to and what they are reporting on.

3. Mechanisms for review and adjustment: mechanisms for review and adjustment (or "recourse") are the fourth element of the accountability framework. This element deals with what is done with the reporting once it is produced and refers to the ways in which performance will be reviewed and adjusted.

7.2 Expected performance

We review a number of issues related to performance management in an FN-Federal Government accountability relationship.

7.2.1 Aboriginal views on improving performance measurement and monitoring

The following statements summarize Aboriginal views, extracted from various reports and position papers, on ways to improve performance measurement and monitoring:

- Creating a two way performance measurement process;
- Ensuring understanding of the link between performance measurement and decision making;
- Establishing a framework on what kind of data is to be shared;
- Knowing what to do with information collected (so what?);
- Engaging across sectors to measure links between governance, health, education, etc.;
- Providing communities with the infrastructure to interpret and use information;
- Aboriginal people setting performance and outcome measures through a joint process;
- Tying outcomes to a community plan; and

- Finding ways to measure outcomes of such things as the link between funding received and the treaties, the government-to-government relationship, cross sectoral outcomes.

7.2.2   Use of various performance indexes

Canadian Index of Well-Being (CIW)

The CIW is a new way of measuring societal wellbeing. It provides unique insights into the quality of life of Canadians (including FN communities) overall and in eight specific areas that matter:

1. Our standard of living,
2. Our health,
3. The quality of our environment,
4. Our education and skill levels,
5. The way we use our time,
6. The vitality of our communities,
7. Our participation in the democratic process, and
8. The state of our arts, culture and recreation.

This approach is much broader than traditional measurements of wellbeing, which tend to focus on narrow economic indicators such as Gross Domestic Product (GDP). Unlike the GDP, which goes up in response to all economic spending (including tobacco purchases, depletion of natural resources, construction of prisons), the CIW distinguishes between beneficial activities (including those which don't involve any exchange of money such as volunteer activity) which it treats as assets, and harmful ones, which it treats as deficits.

The CIW goes beyond conventional silos and shines a spotlight on the interconnections among the many factors that shape our wellbeing: for example, how changes in income and education are linked to changes in health.

The long-term goal of the CIW is to establish a national framework that profiles a full array of indicators of wellbeing in a single composite index. Once fully developed, it will be a robust information tool – one that will report regularly on wellbeing trends and will enable Canadians to promote wellbeing with policy shapers and decision makers.

Community Well-Being (CWB)

The Community Well-Being (CWB) Index is a method of assessing socio-economic well-being in Canadian communities. It combines census data on income, educational attainment, labour force activity, and housing into well-being "scores" for each of the several thousand communities in Canada. The CWB Index was first released in 2004.

The CWB complements the Registered Indian and Inuit Human Development Index (HDI) (Registered Indian HDI and Inuit HDI), developed by AANDC to compare the average level of well-being of Registered Indians and Inuit with other Canadians. The Registered Indian and the Inuit HDI are based on the United

Nations' Human Development Index, a composite index used by the United Nations' Development Program to measure and compare the quality of life in some 170 countries.

The CWB Index is derived from the Canadian Census of Population. It is composed of the following four components, each of which runs from a low of zero to a high of 100:

1. Education, which looks primarily at how many community members have at least a high school education, and secondly at how many have attained a university degree.
2. Labour force activity, which looks at how many community members participate in the labour force and how many labour force participants have jobs.
3. Income, which is calculated based on total income per capita.
4. Housing, which looks at the number of community members whose homes are in an adequate state of repair and are not overcrowded.

7.2.3 Use of funding/accountability/governance/performance frameworks and programs

AFN: Community-based [Performance] Agreements

AFN's Accountability for Results (AFN, 2006-1) proposed that FNs and funders "negotiate community-based agreements in a manner analogous to a contract, or as government departments would do in a results-based management accountability framework/risk-based audit framework. This allows for long-term, comprehensive strategic planning to take place and to guide the use of the resources that are available to a community. It also allows for the specificity necessary to reflect both the aspirations and the capacities of individual communities, while at the same time identifying possible areas of cooperation and synergy between communities that share the same goals and have mutually beneficial capacities. Such agreements can create a new management accountability structure for FN governments whether they operate under the Indian Act, they are self-governing, or they are at some point in between."

The AFN paper goes on to point out that "The preparedness of a FN government – in other words, sufficient understanding of its own objectives and sufficient capacity to apply the five principles [these refer to OAG's five principles of effective accountability] effectively – and the commitment of the GOC as a partner will determine the success of these agreements." It is worthwhile, in other words, to "take the time to work through these issues before agreements are entered into, setting out conditions for participating and a model for what might be included. Such work could involve conducting a needs assessment or comprehensive community planning process. For its part, the GOC should be prepared to provide innovative financing and reporting models that are suited to a community's needs and aspirations. Most importantly, these agreements should address fully each party's understanding, responsibilities and commitment to all of the AG's five principles."

Health Canada's Contribution Funding Framework

A few years ago Health Canada introduced a *New Contribution Funding Framework*. The Framework was designed to achieve the overall objective of better health outcomes for First Nations and Inuit

communities, but with a stress on a "continuum of control" as the recipients develop greater management capacity. Its focus was on:

- Developing recipients' capacity to manage health services. The amount of funder's control over spending decision and the amount of recipient reporting required to Health Canada are reduced as the recipient moves along the "continuum of control" by exhibiting growing capacity in program and financial management. There is no near insurmountable jump from closely controlled Indian Act status to the virtually fully autonomous self-government world. This capacity is assessed based on the recipient's health management experience and its demonstrated strengths and weaknesses. That experience is used not only to assess the recipient's degree of capacity, but as a tool to build it.

- Tying funding to community plans. An early requirement in establishing a funding arrangement is to have the community develop a health plan. As funding arrangements evolve along the "continuum of control", the planning requirements become more involved. The requirement for a health plan helps in three ways:

  - To direct funding to best respond to community needs.

  - To serve as a standard. Health Canada and the community judge whether funds are well used by comparing outcomes to the plan.

  - To build capacity. Community members involved in the planning develop experience in health matters.

- Incentives for creating service delivery partnerships – funding arrangements require that recipients look into co-operative arrangements (e.g., aggregation, shared services) with other communities including adjacent non-Aboriginal health service providers. This is particularly important for small communities, where such partnerships can lead to more efficient use of health dollars.

- Accountability is first and foremost to community members. Development of the health plan involves community members from the outset, giving them a stake in monitoring results. Plans must include provisions for community reporting. Moving along the "continuum of control" depends on community capacity and reporting experience.

Labour market programs

In 2008, a new approach to federal support for labour market programs was introduced. It continued the devolution of primary responsibility for the design and delivery of labour market programs to the provinces and territories.

The federal-provincial-territorial agreements, which define this arrangement, provide for $500 million to be distributed annually by the federal government on a per capita basis. In exchange for the increased flexibility accorded the provinces and territories in designing and delivering services under the agreements, they agree to accept and adhere to an accountability framework that encompasses

planning, financial reporting and auditing, performance measurement, public reporting of results, program evaluation, participation in a joint committee, and public acknowledgement of federal funding.

One innovative aspect of this agreement is that it requires funding recipients to demonstrate (with independent verification) that the federal funding has been used to support program activities that are in addition to, and not substituted for, those supported by normal provincial funding.

Management Governance Framework (Atlantic First Management Governance Framework, 2008)

The Management Governance Framework (MGF) provides a "big picture" explanation of how Aboriginal-delivered programs and services in the Atlantic Provinces fit together. Comprehensive planning includes goals that impact all programs and services and provides guiding principles for implementation through the MGF processes:

- Social
- Housing
- Health (includes broad determinants of health)
- Economic Development
- Education (early child development through to Post-secondary)
- Community services and infrastructure
- Policing, etc.

General Budgetary Support Nation to Nation

In the international aid arena General Budgetary Support (GBS) is support provided by one or more donors to the overall national budget of a developing country. General budgetary support has also been used to support a particular sector.

A *Common Performance Assessment Framework* is developed among donors that form the basis of periodic reviews and the release of the next tranche of funding. The funding is then managed in accordance with the recipient's own planning, budgeting, financial management and reporting system – rather than through separate accounts or procedures that each donor stipulates.

AANDC's Multi-Year Community Fiscal Transfer Program initiative

The Multi-Year Community Fiscal Transfer Program (now defunct, it seems) was intended, in the wake of the report of the Blue Ribbon Panel, to have the following major features, many of which are worth taking on board in the design of the new Model Grant Agreement:

1. Aimed at a target group of high performing First Nations, as well as qualifying Tribal Councils with full program delivery responsibilities;
2. To use accreditation or rating of creditworthiness by an independent, culturally appropriate third-party as a condition of entry;
3. Full integration of all programs and services of AANDC, with the capacity to include all federal government programs and services;
4. Requirement for a community plan as the basis of the fiscal transfer;
5. An annual results-based report to the Government of Canada;

6. A funding term of five to ten years, allowing genuine flexibility and long-term community planning;

7. Cost-neutrality; and

8. Grant funding authority, acknowledging both the recipient's strong record and its primary accountability to First Nation members.

7.2.4 Accreditation/Certification

One author (Graham, 2000) raised the idea of an Aboriginal accredited system which would certify, for instance, the performance-worthiness of a FN in the area financial management using an independent agency. In the author's view the advantage of such a system would be the provision of a concrete, practical means of ensuring financial integrity of First Nations governments. This approach would be voluntary and would be driven by First Nations electorates and would demonstrate the connection between horizontal and vertical accountability. Incentives for First Nations to seek certification would perhaps lessen the amount of reporting required by government for those who are certified. As well, financial institutions may be more apt to work with those communities that are certified; it would also enhance employment.

Graham contends that a promising reform in the accountability relationship between GOC and the First Nations "might be an accreditation system, akin to the existing ISO series of standards for organizations, whereby First Nations would seek to be certified in the financial management area by an independent agency. Principal elements of such a system would be:

1. First Nations would establish a non-profit financial management institute to run the certification system. The institute would be independent of any First Nation or political advocacy organization and, while Aboriginally controlled, might have on its board individuals linked to existing financial management organizations (such as the Aboriginal Financial Officers Association and the Canadian Institute of Chartered Accountants) [Note: this has already occurred in the guise of the Aboriginal Financial Management Board];

2. The institute would establish a financial management standard consisting of a number of elements [Note: this has already occurred at the Aboriginal Financial Management Board];

3. The standard might have several 'levels' of complexity to take into account the wide variation in the size and circumstances of First Nations;

4. First Nations would voluntarily apply to be certified by the institute; indeed, they would pay a fee to cover some of the costs of certification (remaining costs would have to be covered by a grant from the federal government or from the private sector);

5. To gain certification, First Nations would have to demonstrate that all of the elements of the standard not only existed in their community but were operating effectively;

6. Certification would be for a certain period of time (say three years) but could be withdrawn at any time for well-defined reasons (say a qualified audit or a significant deficit);

7. Market forces would produce firms adept at providing First Nations with the assistance necessary to develop the elements of the standard or improve those that needed upgrading in their communities. "

7.3   Reporting requirements

7.3.1   What reports are required of FNs?

Differing roles and responsibilities and differing expectations will lead to different types of reporting. The form and information content of reporting depends on the nature of the relationships between First Nations governments and other parties. The diagram shown – FN Performance Reporting Model – from the *Report of The Financial Reporting by First Nations Study Group, 2008,* lays out the full scope of reporting for accountability purposes. Such reporting is known as accountability reporting or performance reporting. The exhibit indicates the types of information that accountability reports can contain, as well how they can be delivered.

The report of the Study Group points out that although reporting usually takes a written form, oral reporting is also used in a community setting, where leaders can make speeches to a general assembly or reports can be delivered on a community radio station. There is tremendous diversity among the mechanisms for delivering local accountability across the country. The design and implementation of mechanisms must be left to the discretion of the community.

Organizations usually make the annual report the centerpiece of their written forms of reporting. The annual report should include the financial statements and notes to the financial statements, as well as a variety of other information.

Accountability reporting provides both financial and non-financial information. Financial information includes the financial statements and notes to the financial statements, various schedules, budgets and other material stated in monetary terms.

Some of the financial information is governed by GAAP, specifically the summary level financial statements and related notes. Other financial information, such as detailed product cost calculations or disclosure of salaries for top officials, is not governed by GAAP.

Non-financial information can be quantitative or qualitative. Ideally, non-financial reporting focuses on an FN government's strategic plan, what was achieved with the resources used and whether or not the plan was met. Quantitative non-financial information would include such items as: percentage of
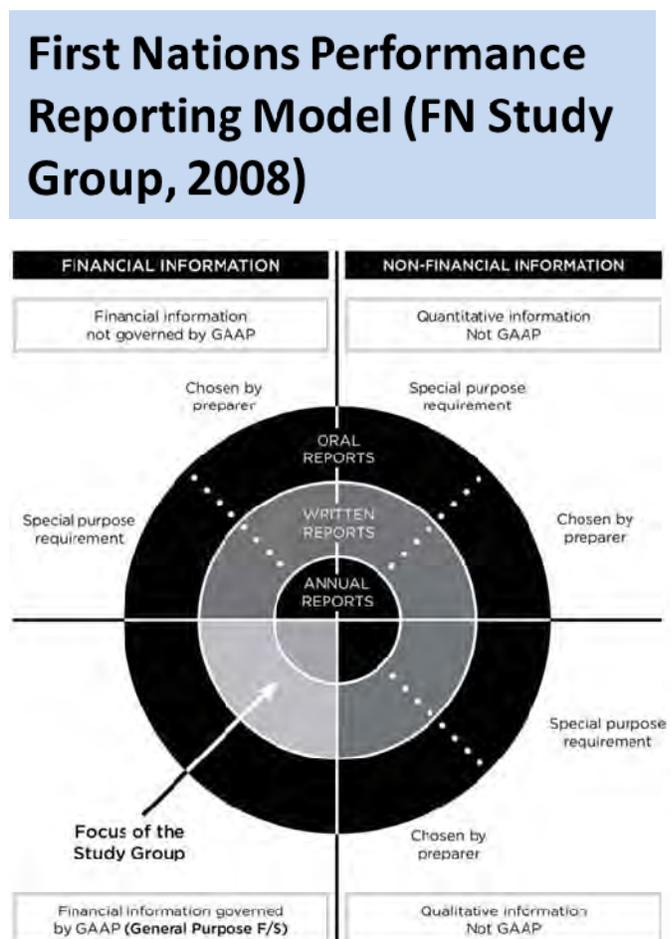
population completing high school and birth weight statistics. Qualitative non-financial information would include such descriptive items as rating safety issues as having "high," "medium" or "low" risk. Or, employment rates may be simply referred to as "improving," "staying the same" or "getting worse." Not only does non-financial information report on past performance, it also identifies areas that need to be addressed by future strategic plans.

Special purpose reports may include financial information not governed by GAAP. This information, which is usually more specific and is provided in addition to the general purpose financial statements, might include capital project costs or information on revenue streams. Special purpose reports may also include non-financial information not governed by GAAP. Such non-financial information may be quantitative or qualitative in nature and may be used, for example, to describe compliance with agreements, statutes and regulations.

Special purpose reports are based on contracts, covenants, legislation or mutual agreements reached by the parties in an accountability relationship and are designed to meet the unique needs of those parties. There is no standard form for special purpose reports and, therefore, it is not possible for GAAP to give guidance on how special purpose reports are to be prepared. The Study Group does believe, however, that increased reliance on general purpose financial statements should reduce the need for special purpose reporting.

A typical First Nation is required to file special purpose reports with several federal government departments including: AANDC, Health Canada, HRSDC and CMHC. The 2002 Report of the Auditor General of Canada describes federal reporting requirements as a burden and estimates that First Nation communities must provide at least 168 reports annually. The Report states that "Federal organizations need to review and better co-ordinate their reporting requirements." Indeed, the 2002 report concludes: "Instead of information on narrowly-defined program activities, reporting needs to provide meaningful information to First Nations and to the federal government. Fundamental change is required."

In its conclusions on reporting, the Study Group notes that "general purpose financial statements should satisfy many of the needs of users in the three key accountability relationships of First Nations as well as those in other accountability relationships. Although there are concerns about the impacts of providing the full financial picture of First Nations, doing so is critical from an accountability point of view. It should also be more cost-effective. In the ideal, the distribution of general purpose financial statements should limit the number of special purpose reports required and, therefore, minimize the reporting burden of First Nations."

7.3.2 Improving Reporting: Views and Opinions

Baker (2010) notes that "…we observed that the majority of reports are of a compliance rather than performance nature. This type of accountability treats the bands as an arm or a sub-department of the Canadian federal government rather than as governments of their own where one might expect to see a greater emphasis on program and policy accountability and reports that reflect the needs of the organization and the community it serves."

The lack of performance reporting was also noted by the Auditor General's study on First Nations reporting, as was the lack of consultation with First Nations during the development and introduction of the reporting requirements (Office of the Auditor General, 2002). Problems cited in the Auditor General's 2002 report include:

- Overlap and duplication among the required reports;
- Limited use being made of reports;
- Reporting requirements dictated with insufficient consultation;
- Information reported not being used to set funding levels;
- Reports that do not reflect community priorities;
- Insufficient feedback to first nations; and,
- A lack of information on program performance or results.

The following paragraphs provides a few perspectives on how reporting can be improved and made less onerous.

AFN Background Paper on Accountability

The AFN *Background Paper on Accountability* (2005) points out that a discussion of good reporting involves two basic questions:

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

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

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

IOG 2009 Report (Graham and Motsi)

The authors point to three approaches for improving reporting in collaborative arrangements:

1. Adopting common reporting formats and data collection – an example was the Child Benefit Program where the federal and provincial governments agreed to produce an annual joint accountability report and to eventual joint evaluations of the program.

2. Creating joint efforts to improve data – an example is the Canadian Institute for Health Information (CIHI), an independent, not-for-profit organization that serves as a focal point for collaboration among the major players in the Canadian health system – the federal government, provincial governments, regional health authorities, hospitals, researchers, and associations representing health care professionals – for statistical information and analysis about a variety of health topics affecting Canadians.

3. Instituting joint reviews – jointly coordinated audits is one example but a more interesting one is the establishment of the Health Council of Canada as part of the 2003 Health Accord, a body that speaks directly to Canadians, offering a national, system-wide perspective and impartial assessment on the status of health care renewal in Canada.

Aboriginal Report Card

An Aboriginal Report Card (according to the *Aboriginal Roundtable: Accountability for Results,* 2006) would:

- Provide insight into results, reporting, accountability and relationships. Reports would need to be separate for each group (First Nations, Inuit and Métis)
- Apply a cross-culturally appropriate lens:
- Enable direct participation in processes dealing with political issues, policy development and program delivery.

The following were suggested as general elements that could focus discussion on a report card:

- Expenditure data—devolution; core funding
- The relationship measure; grade; rights, process and partnership
- Quality of life indicators—national; provincial; local; national, cultural retention
- Service utilization—Canadian Health and Social Transfer (CHST); measuring how we get access; institutional access; constitutional access.

The *Federal Background Paper: Accountability for Results Roundtable Follow-up Session* (2006) also discusses possible elements of an Aboriginal Report Card (ARC), suggesting that an ARC could outline a set number of socio-economic results to be achieved, and reporting on indicators that could be used to track and measure progress towards the desired results. It could incorporate the following elements:

- Shared outcomes: all partners (federal, provincial/territorial and Aboriginal) would agree on outcomes to be tracked over time, e.g., health status of Aboriginal people equivalent to that of other Canadians;

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- Shared indicators: partners agree on indicators that could be used to track results, e.g., life expectancy as an indicator of health status;

- Shared data: partners agree to share data with each other, e.g., provincial/territorial vital statistics aggregated to arrive at national data (or disaggregated to provide community-level data);

- Coordination of reporting: parties could report together or separately as long as there is agreement to prevent duplication, e.g., provinces and territories could choose to develop separate reports on the Aboriginal population in their jurisdiction, or distinct Aboriginal peoples may choose to develop separate reports, but all could draw on common data sources.

Reporting through round-table reviews

The *Improving the Way We Work with Aboriginal Community Controlled Organizations* project (Victoria State Government, Department of Health, 2011) was undertaken to support Aboriginal organizations to maintain strength and stability, deliver culturally appropriate services consistent with their funding agreements, and meet government accountability requirements.

Key findings from the project identified that for Aboriginal organizations:

- Reporting against funded program areas is the single biggest issue;
- Current reporting processes fail to capture the achievements and breadth of activities undertaken by Aboriginal organizations; and
- The way in which reported information is used by the departments is unclear.

Round-table review sessions bringing Aboriginal organizations, community members and funders together were seen as a better approach to reporting. The objectives of the sessions are to:

- Provide Aboriginal organizations with an opportunity to talk with funding bodies about their organization and their community in addition to talking about service provision;
- Support Aboriginal organizations to improve the consistency and quality of information they report and to receive feedback about their reporting; and
- Reduce the administrative burden on Aboriginal organizations by using a meeting format to address and replace current reporting requirements.

The guiding principles of round table reporting are to:

- Provide Aboriginal organizations with a more meaningful and culturally appropriate form of reporting, including opportunities for two-way communication and feedback;
- Increase regional staff's understanding of Aboriginal organizations, their challenges, issues and successes;
- Create improved communication and relationships between Aboriginal organizations and the departments of Health and Human Services;

- Provide an opportunity for both departments to discuss reporting with Aboriginal organizations in a format that allows immediate response and follow up of any issues;
- Reduce and streamline the number of meetings and reporting arrangements both departments currently have in place with Aboriginal organizations; and
- Focus on outcomes for the Aboriginal community.

Moving to "continuous reporting" and "continuous assurance"

In the US in particular the movement to more *continuous reporting* (CR) and *continuous assurance* (CA) of financial statements appears to be a matter of when and how such changes will take place, rather than if they will occur.

Computing infrastructures and software applications have advanced to the point where it is now technically and economically feasible to begin preparing and disseminating financial statements on at least a monthly basis. Perhaps someday it is likely that full or partial financial and nonfinancial disclosures will be processed and presented in real time on an ongoing basis.

Information consumers are demanding – and the Securities and Exchange Commission (SEC), American Institute of Certified Public Accountants (AICPA), and International Accounting Standards Board (IASB) are contemplating – reporting and assurance changes of this nature.

Thus, whether "continuous" is defined in terms of monthly, daily, hourly, or real-time reporting, rapidly converging market factors indicate that in the foreseeable future organizations subject to public scrutiny will publish and auditors will assure financial information on a more frequent basis than the current quarterly interval.

The major challenge going forward is to investigate how changes of this nature might affect the decision-making processes and consequential outcomes of various constituent groups, such as funders, investors, preparers, and assurers.

AFN Closing the Gap Reporting Framework

The AFN *Closing the Gap Reporting Framework* was developed in accordance with the following principles:

1. The reporting framework should respect the distinctiveness of First Nations. First Nations must not be lumped into a pan-aboriginal policy process, which will of necessity look for 'lowest common' solutions;
2. The reporting framework will be based on the concept of reciprocal (mutual/shared) accountability. The federal government must demonstrate the extent to which it meets its fiduciary obligation to First Nations who possess Inherent Aboriginal and Treaty Rights;
3. Indicators must flow from "expected results" which, in turn, flow from First Nations collective vision and objectives. The ten-year plan for Closing the Gap between First Nations and other Canadians has set the following vision:
4. A ten-year plan for closing the gap in quality of life between First Nations and the Canadian population. This will be achieved by recognizing and exercising First Nations jurisdiction, creating

sustainable development opportunities, building institutional capacity, and through concentrated efforts on all of the determinants of health

5. The framework will be a practical tool used for reporting to F/P/T and First Nations governments, but also for public education to raise awareness on the needs, issues and special relationship of First Nations to these governments;

6. The framework will allow for comparison with the general Canadian population to measure progress in closing disparities in outcomes;

7. Indicators development and implementation of a First Nations reporting framework must respect the principles of OCAP (Ownership, Control, Access and Possession -- see below);

8. Data will be reported by gender and, wherever possible, by urban/rural and on/away from community locations of residence; and

9. More in-depth work on First Nations indicators development regarding each determinant will be undertaken in the future. Implementation of reporting frameworks must prioritize new data collection, analysis, interpretation and dissemination infrastructure in First Nations communities, organizations and governments.

First Nations Health Reporting Framework (FNHRF)

AFN has elaborated a First Nations Health Reporting Framework (FNHRF) aimed at identifying key indicators on which federal/ provincial/ territorial (FPT) and First Nations governments would report to measure their performance with respect to First Nations health more specifically. The FNHRF defines four health domains (Individual Health, Health Services, Health Determinants, and Community Health) and a sub-set of twenty indicators.

The development of the FNHRF has been guided by the following principles:

1. The principles of OCAP (Ownership, Control, Access, and Possession) will be respected;

2. The health reporting framework will have a First Nations focus;

3. The health reporting framework will complement activities being undertaken with respect to the First Nations Health Framework in the Blueprint on Aboriginal Health;

4. The framework will be a practical tool used for community planning that will also allow for reporting to FPT governments;

AFN First Nations Health Reporting Framework (FNHRF)
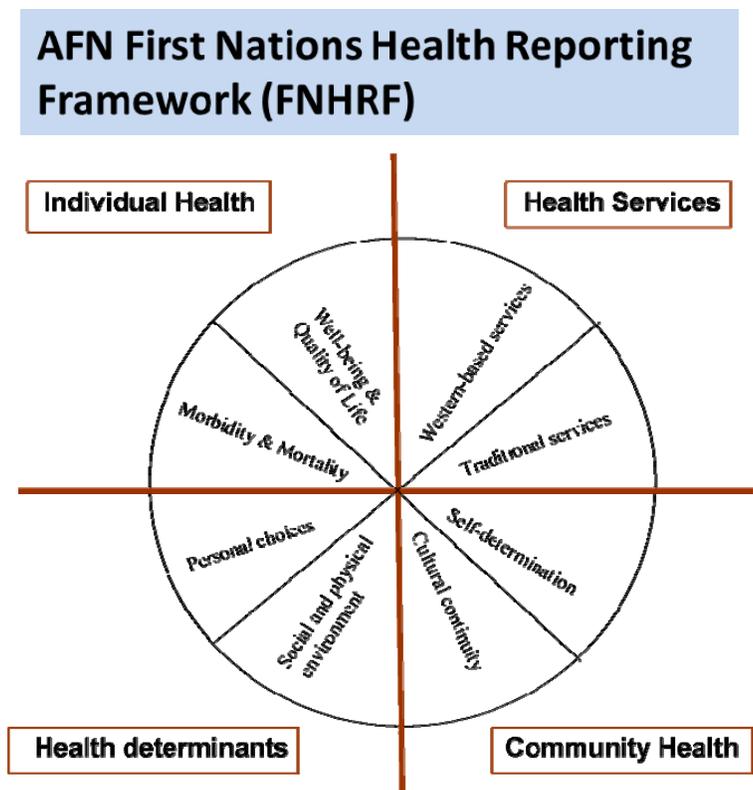
5. The framework will allow for comparison with Canadian data;
6. Selected indicators will be tied to data reporting mechanisms that are currently in place or that could conceivable be implemented in the near future;
7. Traditional indicators that are considered immeasurable will be omitted from the framework but referenced in the text for future consideration;

7.4   Mechanisms for review and adjustment

Mechanisms for review and adjustment constitute the fourth element of the accountability framework, which states that "fair and informed review and feedback on performance should be carried out by the parties, achievements and difficulties recognized, appropriate corrective action taken, and appropriate consequences carried out." This element deals with what is done with the reporting once it is produced and refers to the ways in which performance will be reviewed and adjusted.

In modeling the accountability relationship between the federal government and First Nations bands (see diagram attached), Baker (Baker, 2010) recognizes recourse (shorthand for feedback and mechanisms for review and adjustment) as the final exchange in the accountability process. In the current, largely principal-agent accountability relationship between the federal government and FNs, recourse is, in Baker's words, "the exchange that involves the action or inaction of the principal that results from the receipt and analysis of the information provided by the agent. It is in this exchange that sanctions, such as withholding funds or the appointment of a third-party manager, are meted out. Alternatively, for those bands whose reports indicate compliance with the funding agreement and with targets such as debt to revenue ratio, no formal action is taken. This inaction, however, still represents an exchange in the form of implicit approval for the continuance of the relationship in its current form (including the provision of funding)."

Baker also notes that the direction of the response process in this element is also important. The unidirectional process suggests an imbalance of power, as does the severity of the recourse available to the federal government (e.g., intervention or discontinuance of funding).

Baker's conclusions match an earlier

Adapted from Ron Baker, *A Descriptive Model of Government of Canada – First Nations' Accountability.*

contention by AFN (AFN 2006-1) that "a complete mechanism does not yet exist for … ensuring that reasonable review and adjustment take place so that results improve on the ground. These mechanisms must be built, and they must be built in a collaborative, cooperative and mutually satisfactory manner."
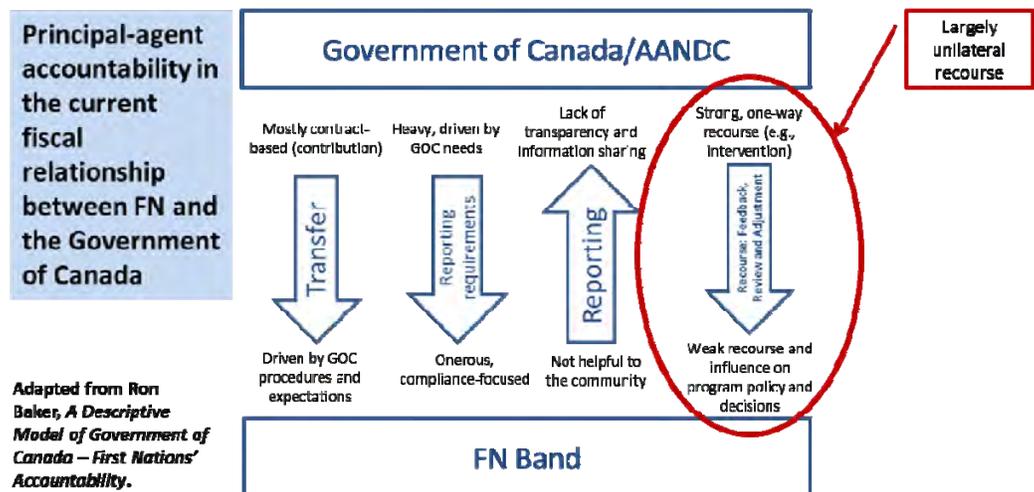
While balanced recourse must be available in the accountability relationship between FN and the federal government, an equally robust recourse must be available locally, between FN council and community members. If the primary accountability relationship is the relationship between an FN government and its members, then both government and members have important roles to play in the accountability relationship. As Baker puts it, "The members have a duty to engage: they select their government and are also responsible for any changes in that government. Therefore, they need to hold their government accountable by reviewing government performance and ensuring that their government will make any required adjustments to its performance."

It is fair to conclude that mechanisms for review and adjustment constitute the weakest element in the current spectrum of accountability relationships involving FNs. This is an area where significant work will be required based on a commitment to reasonableness, balance and robust two-way flow in developing and implementing mechanisms for review and adjustment in an increasingly mutual accountability relationship.

7.5   Summary

This section has focused on three elements of the accountability framework:

1. Expected performance;
2. Reporting requirements; and
3. Mechanisms for review and adjustment.

Key conclusions for the Model Grant Agreement for which this section provides supporting evidence include:

1. Use of performance reviews by independent, culturally appropriate third-party as a complement (or even alternative) to the department's own performance assessments. A review by a mutually acceptable third-party in a specific performance domain (e.g., financial management) could simply be accepted by the department in lieu of its own performance assessment.

2. Requirement for a performance-based community plan as the basis of the fiscal transfer. The community plan would be rooted in a community results- and outcomes-based shared performance management framework contributed to by community members and funders alike. The Plan will provide the basis for granting the FN genuine flexibility in the use and application of the funding received as funders are more secure in the knowledge that their investment in shared outcomes is guided by a long-term community plan and watched over by engaged community members.

3. An annual results-based report to the community and the Government of Canada using the shared performance management framework as its template. Furthermore, the report could take the form of a Report Card that, aside from being an annual reporting vehicle can also serve as a longitudinal barometer and tracking device for the changes in performance parameters along the lifetime of the funding agreement.

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4. <u>Use of alternative reporting and review and adjustment vehicles such as round-table performance reviews</u>. Using round-table performance reviews could further reduce the reporting burden on all parties concerned, as a well as serve as a forum for two-way face-to-face discussions and exchanges, feedback, review and adjustment involving the FN and the funders.

5. <u>Use of automated "continuous reporting"/"continuous assurance" with FN communities that are relatively well-equipped with information technology skills, tools and infrastructures</u>. This could range from simply "web harvesting", where a federal funder "harvests" relevant information from accountability-driven web posts directed at the FN community, to system-to-system (e-commerce-like) transfers of relevant information using industry standards (e.g., XBRL – which stands for e**X**tensible **B**usiness **R**eporting **L**anguage. It is one of a family of "XML" languages which is becoming a standard means of communicating electronic information in the business world.)

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8. Conclusions and Recommendations

8.1 Use of grants is a positive move in the current policy discourse

Upon extensive review of a lot of documentation and intense discussions on the subject, one finds it difficult to escape the sense that there is a general convergence – an "omega point" so to speak – in the current policy discourse around something approaching a consensus that the ultimate state of the fiscal relationship with First Nations must involve a departure from the increasingly difficult domain of policy- and administrative-procedures-driven grants and contributions, and toward something more akin to statutory, equalization-driven and formula-based funding that characterize F/P/T transfer payments.
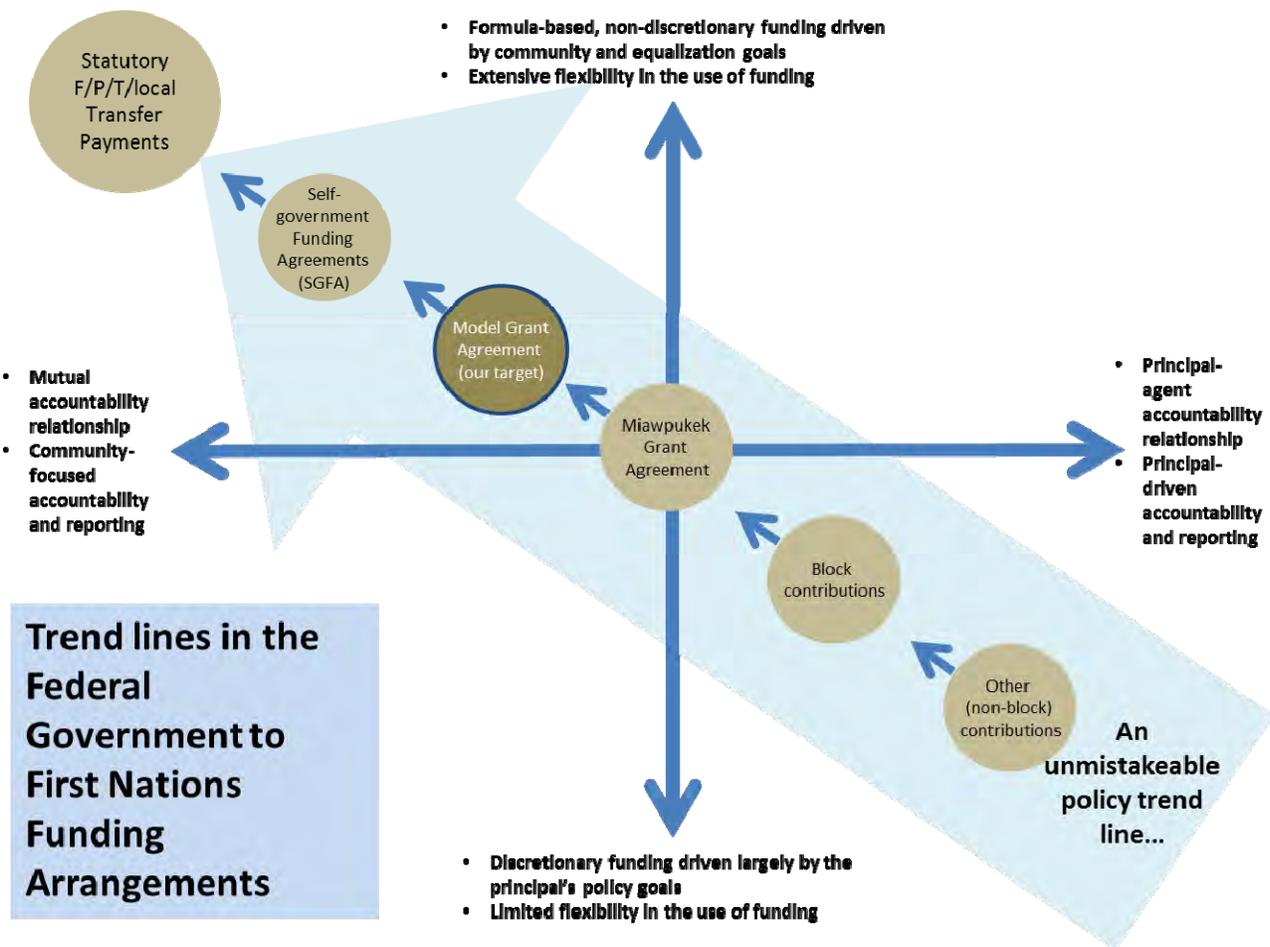
This discourse, as is well-known, goes back to Penner, RCAP and more recently the Blue Ribbon Panel report. This tenor of the policy conversations goes back to Penner, the Royal Commission on Aboriginal Peoples (RCAP) and more recently the Blue Ribbon Commission report. While no federal policy statement or intent exists that clearly articulates the need to move to more formula-based transfer payment regimes and to increase the use of grants with non-self-governed FNs, this approach represents an unmistakable evolution in that direction.

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A move to increased use of grants is a positive response to findings, conclusions and recommendations put forth in many of the reports and studies reviewed and is consistent with the general policy trend toward a fiscal relationship that deals with the Aboriginal communities as a level of government in the Canadian polity.

8.2   The Accountability Relationship in the Model Grant Agreement (MGA)

To be successful, we believe that the accountability model underlying the MGA must rely on a more mutual conception of the accountability relationship between FN and other levels of government, including the federal government. At the same, this relationship must take on board and build a rich nexus of "tentacles" into a number of supporting realities:
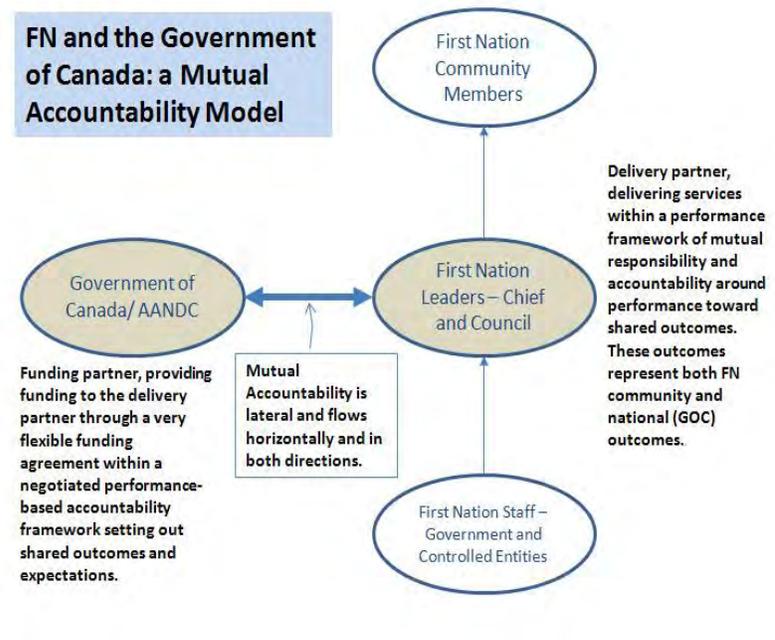
- The need to strengthen and build on the local accountability relationship – from FN council to members;
- The need to accommodate the evolving nature of the accountability relationship between the FNs and the rest of Canada, where more government-to-government (or "nation-to-nation") accountability features are factored into the mix;
- The need to strengthen and increase reliance on FN governance and accountability support and assurance institutions; and
- The need for more alignment and coordination between federal funders focusing on shared concern for community outcomes and results.

With the right substitutions, the five principles of the 2005 *Paris Declaration on Improving aid Effectiveness* provide a set of useful precepts – if not principles – for the context in which the accountability relationship between FN and the federal government operates:

1. <u>Local (Community) Ownership</u>: The FN community essentially owns, through its community plan and leadership on service provisions and development strategies, plans and policies, its service provision and development agenda.

2. <u>Funder alignment</u>: Federal funders link their funding to community strategies and plans and to the need for strengthening capacity for effective management of services and development.

3. <u>Funder harmonization</u>: Better federal funder coordination, streamlining of procedures, encouraging common arrangements, and sharing workload among funders through single coordination windows, common performance frameworks, joint performance reviews, joint reporting.

4. <u>Managing for Results</u>: Through a Shared Management Agenda (SMA), work to improve management of resources and decision-making in support of community results.

5. <u>Mutual Accountability</u>: Shared accountability for results between federal funders and the FN communities.

Of the seven principles of "frugal public management" (Clark, 2007) that would underpin the structuring and management of a shared management agenda (SMA), five are quite relevant to the recasting of the accountability relationship between the Federal Government and FN around a SMA. Adapted for FN recipients as partners in such a relationship, they read:

1. <u>Results-oriented measures and objectives</u>: state objectives in ways that make it possible to construct performance measures that can form the basis for appropriate incentives and the structuring, targeting and management of funding arrangements.

2. <u>Performance-related incentives</u>: think through what behaviours you want from individuals and the SMA partners and encourage that behaviour.

3. <u>Efficiency-related concentration and specialization</u>: Seek to encourage aggregation, creation of shared services arrangements between FN, centralize processes where average cost falls as scale is increased; concentrate where efficiencies are gained through specialization; collocate where benefits can be obtained from working in proximity to those performing related activities.

4. <u>Equity-oriented targeting</u>: Target the benefits of funding arrangements to those who most need them in the FN communities. "Need" in an equity context refers to requirements around service delivery, equalization, comparability of services, closing of critical gaps in the community, etc.

5. <u>Change-sensitive implementation planning</u>: Because rigorous application of these principles would alter the nature of the accountability relationship and the structure of the attendant processes (performance frameworks, performance "conversations", targeting of funding to create incentives and increase equity, etc.) changes need to be carefully planned and phased, with appropriate grandfathering and other adjustment provisions.

With the foregoing in mind, we conclude that the following should be factored into the structuring of the accountability relationship with grant-qualifying First Nations:

1. A more mutual conception of the accountability relationship between FN and other levels of government, including the federal government.

2. Strengthening of the local accountability relationship – from FN council to members;

3. Local (Community) Ownership: The FN community essentially owns, through its community plan and leadership on service provisions and development strategies, plans and policies, its service provision and development agenda.

4. Accommodating the evolving nature of the accountability relationship between the FNs and the rest of Canada in general and the federal government in particular.

5. Development and strengthening of FN governance and accountability support and assurance institutions within the Aboriginal community; and

6. More alignment, harmonization and coordination between funders focusing on shared concern for community outcomes and results.

7. Through a Shared Management Agenda (SMA), improve management of resources and decision-making in support of community results.

8.3   Flexibility and Equity in the MGA

The F/P/T fiscal transfers do not really fit as a viable model for current fiscal transfers to Aboriginal communities. However, the Provincial-to-local transfers involving local boards and municipalities provides a better model, as do transfers to self-governing FNs (SGFAs) and the harmonization efforts currently underway toward an increasingly more formulaic approach to fiscal transfers that also embrace a broader conception of Equalization (more akin to F/P/T transfers).

One of the benefits of seeking to harmonize, within the limitations available, the provisions of the MGA with SGFAs and Provincial/local transfers is that a more direct and less discontinuous track is established for the MGA to evolve ever closer to a fiscal transfer regime more akin to transfers between levels of government. There is benefit, in other words, to locating an evolving granting regime anchored in the MGA for non-self-governing FN in adjoining policy neighborhoods with SGFAs and fiscal transfers between levels of government. While creating a pool of potentially shareable good policy approaches and leading administrative practices, this would also promote an easier transition for recipients from one to the other.

A number of F/P/T/local/self-governing-related issues should be considered in the structuring of the fiscal transfer regime set out in the Model Grant Agreement:

1. Funding terms of five to ten years, allowing genuine flexibility and long-term community planning.

2. Fairness: AANDC funding to bands or tribal councils must meet a double fairness test – fairness among regions, and fairness within a region among bands or tribal councils. In the F/P/T

Equalization case, fairness applies between provinces, whereas for Aboriginal funding it applies within a province between Aboriginal and non-Aboriginal communities. As such, citizens of self-governing Aboriginal communities should have access to reasonably comparable programs and services as other Canadians in comparable circumstances regardless of geographic disposition. Thus it may be appropriate that the MGA feature increased reliance on Equalization principles embodied in F/P/T transfer payments.

3. Clarity and predictability in funding policies and stability of payments, both for the federal government, which must budget the expenditure, and the recipients, which must have a degree of revenue security to plan their activities. Adjustments to any fiscal transfer payments over time should be relatively stable and predictable, and the policy and related institutional arrangements upon which they are based should also ensure stability and predictability. In this regard, a concerted move to formula-based transfer arrangements is warranted where there is more clarity in funding formulas used and less need for protracted and expensive negotiations upon renewal of the agreements.

4. Program operation and outcomes that are clear (transparent) to the recipient authorities, their community members and the general public. They should also be objective and driven by accurate, reliable and timely data, rather than at the discretion of the granting authority.

5. Responsiveness to changes in recipient's financial situation and flexibility to accommodate changes in arrangements to allow for evolution in the recipient's scope of responsibility and capacity to manage.

6. Sound incentives for the recipient to promote economic development, expand revenue sources, address social issues, and foster self-sufficiency.

7. Reflection of special circumstances and distinct "needs" in some recipients' communities.

8. Full integration of all programs and services of AANDC, with the capacity to include all federal government programs and services.

8.4 Performance and Reporting in the MGA

The Model Grant Agreement should allow for the following provisions in respect of performance and reporting:

1. Use of performance reviews by either the department or independent, culturally appropriate third-parties. A review by a mutually acceptable third-party in a specific performance domain (e.g., financial management) could simply be accepted by the department in lieu of its own performance assessment.

2. Requirement for a performance-based community plan and performance management framework. The community plan would be rooted in a community results- and outcomes-based shared performance management framework contributed to by community members and

funders alike. The Plan will provide the basis for granting the FN genuine flexibility in the use and application of the funding received as funders are more secure in the knowledge that their investment in shared outcomes is guided by a long-term community plan and watched over by engaged community members.

3. An annual results-based report to the community and the Government of Canada using the community plan and the shared performance management framework. The report could take the form of a Report Card that, aside from being an annual reporting vehicle can also serve as a longitudinal barometer and tracking device for the changes in performance parameters along the lifetime of the funding agreement.

4. Use of alternative reporting and review and adjustment vehicles such as round-table performance reviews. Using round-table performance reviews could further reduce the reporting burden on all parties concerned, as a well as serve as a forum for two-way face-to-face discussions and exchanges, feedback, review and adjustment involving the FN and the funders.

5. Use of automated "continuous reporting"/"continuous assurance" with FN communities that are relatively well-equipped with information technology skills, tools and infrastructures. This could range from simply "web harvesting", where a federal funder "harvests" relevant information from accountability-driven web posts directed at the FN community, to system-to-system (e-commerce-like) transfers of relevant information.

8.5   A Possible Accountability, Performance and Reporting Model

With the foregoing in mind, the diagram below captures the possible functional components, processes
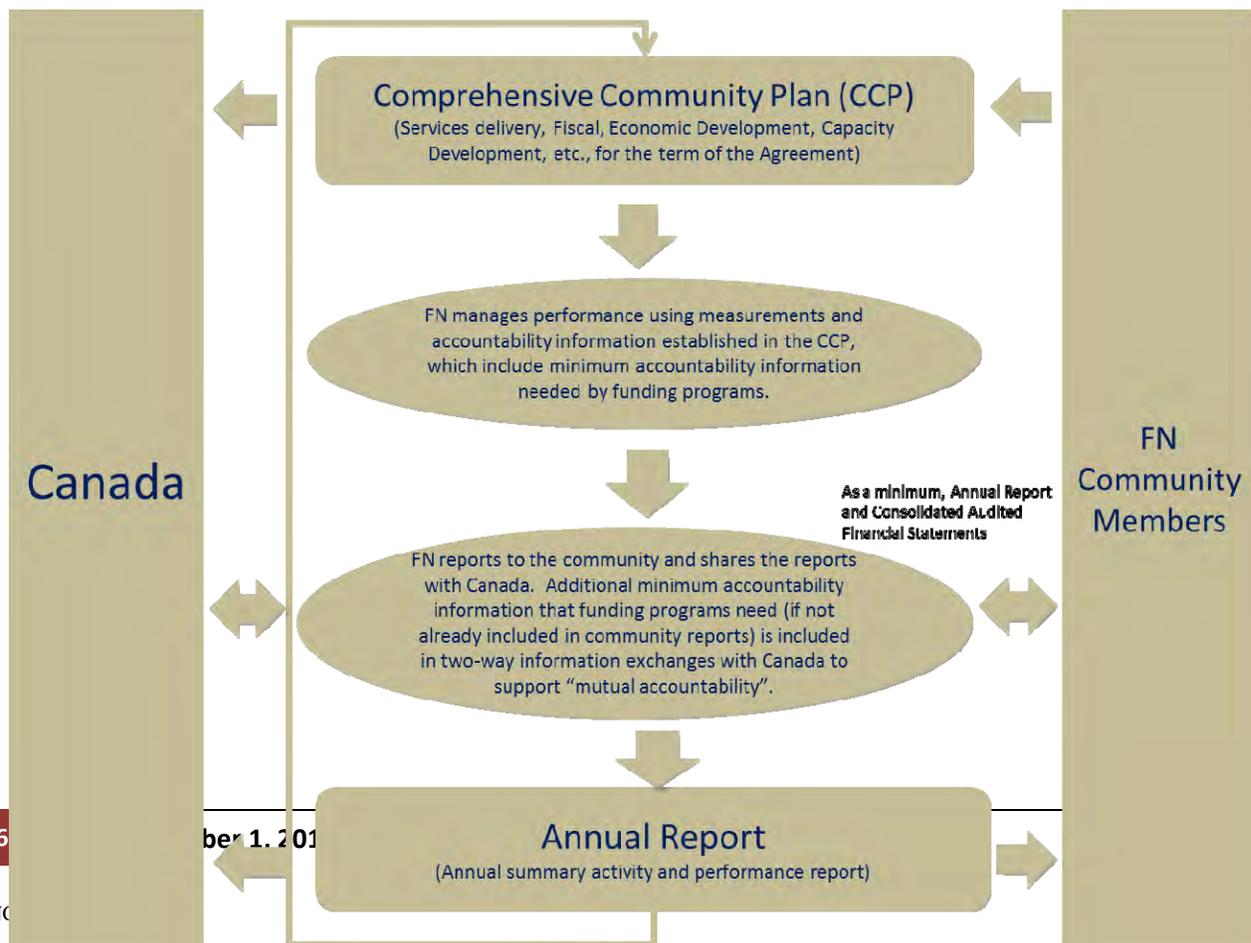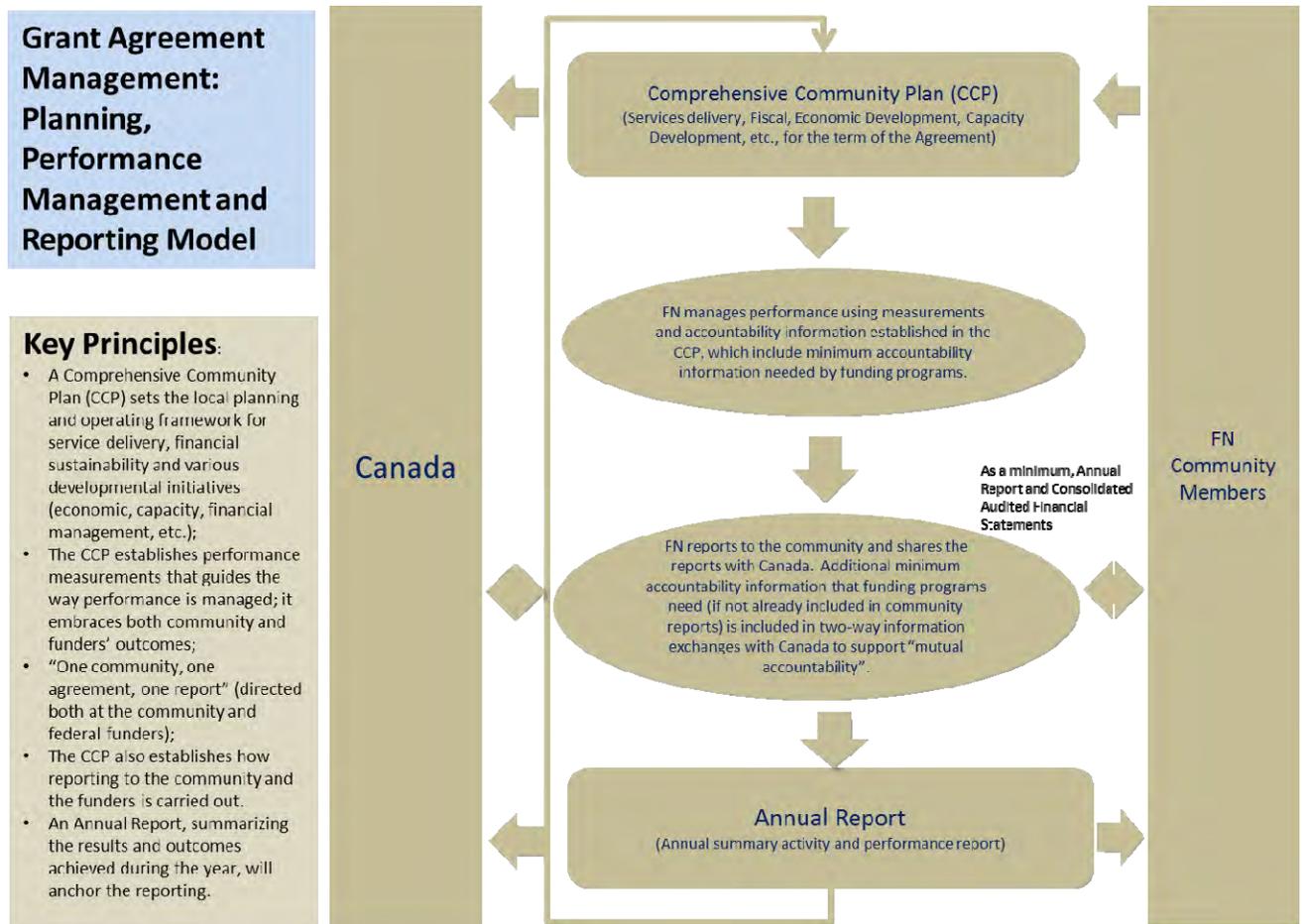
and mechanics associated with the implementation of an Accountability, Performance Management and Reporting Model in relation to the Model Grant Agreement.

The model is based on a number of key principles derived from the findings and conclusions outlined earlier.   These are:

- A Comprehensive Community Plan (CCP) sets the local planning and operating framework for service delivery, financial sustainability and various developmental initiatives (economic, capacity, financial management, etc.);
- The CCP establishes performance measurements that guides the way performance is managed; it embraces both community and funders' outcomes;
- "One community, one agreement, one report" (directed both at the community and federal funders);
- The CCP also establishes how reporting to the community and to the funders is carried out.
- An Annual Report, summarizing the results and outcomes achieved during the year, will anchor the reporting to both community and funders.

8.6   How would qualifying FNs benefit from the granting regime provided by the Model Grant Agreement?

It is expected that qualifying FNs (most of which are already in relatively flexible contributions agreements) would perceive the following features provided by the MGA as particularly attractive:

Grant Agreement Management: Planning, Performance Management and Reporting Model

Key Principles:

- A Comprehensive Community Plan (CCP) sets the local planning and operating framework for service delivery, financial sustainability and various developmental initiatives (economic, capacity, financial management, etc.);
- The CCP establishes performance measurements that guides the way performance is managed; it embraces both community and funders' outcomes;
- "One community, one agreement, one report" (directed both at the community and federal funders);
- The CCP also establishes how reporting to the community and the funders is carried out.
- An Annual Report, summarizing the results and outcomes achieved during the year, will anchor the reporting.

Canada

Comprehensive Community Plan (CCP)
(Services delivery, Fiscal, Economic Development, Capacity Development, etc., for the term of the Agreement)

FN manages performance using measurements and accountability information established in the CCP, which include minimum accountability information needed by funding programs.

As a minimum, Annual Report and Consolidated Audited Financial Statements

FN reports to the community and shares the reports with Canada. Additional minimum accountability information that funding programs need (if not already included in community reports) is included in two-way information exchanges with Canada to support "mutual accountability".

Annual Report
(Annual summary activity and performance report)

FN Community Members

1. <u>Shift from contribution (paternalistic, conditional) to grant (collaborative, trust)</u>: This is likely to have significant moral and psychological benefits for the community. It would likely be seen as recognition of a good record of community leadership and performance and an expression of trust in the capacity of the community to manage its own affairs. This may also translate in a better reception by capital markets and other investors.

2. <u>No audit by the Minister</u>: This translates in less administrative hassle for the FN community.

3. <u>Significantly lighter reporting regime</u>: This also translates into less administrative hassle.

4. <u>More effective mechanisms for reporting, review and adjustment</u> (e.g., interactive round-table reviews): This provides an important lever for the FN community to exercise influence on funding policies, on changes that reflect the evolving circumstances in the FN community and on specific community needs that should perhaps be factored into the funding decisions.

5. <u>Better accountability from the federal government to the FN community (mutual accountability relationship)</u>: This would create a better appreciation in the FN community of how funding

decisions are made and will ultimately result in fewer surprises and more predictability in the evolution of funding policies affecting FN communities.

6. <u>Less focus on compliance and more focus on performance</u>: This would be a very welcome shift in the accountability relationship and would be seen as a positive response to long-standing complaints by FN organizations and communities that too much time and energy is spent on compliance reporting and not enough on substantive performance-related issues.

7. <u>A clearer path to a government-to-government-like fiscal arrangement</u>: The FN community would be able to see a clearer and les encumbered path to possible next stages in its fiscal relationship with the federal government. It may also provide added impetus to less well-performing communities to strive to qualify as grant recipients.

8.7   Recommendations

We offer four recommendations in furtherance of the findings and conclusions articulated in this report:

1. <u>Engagement of Aboriginal forums</u>: That AANDC engage the appropriate Aboriginal forums in the development of a model community plan, a model shared management agenda and a model performance management framework to serve as essential implementation companions to the MGA. While a lot of work has already taken place in the Aboriginal community, little recent progress is apparent. These would be adaptable to a wide range of FN community circumstances.

2. <u>Engagement of Aboriginal institutions and organizations</u>: That AANDC engage the appropriate Aboriginal institutions and organizations in developing appropriate performance review and accreditation/certification frameworks for use in the application of the MGA. These would allow increased reliance on culturally appropriate third-party actors in the administration of the MGA. Again, these should be adaptable to a wide range of FN community circumstances.

3. <u>Engagement of key federal funders</u>: That AADNC engage other principal federal funders (e.g., HC, HRSDC, CMHC) in the development of the MGA and its companion elements and in efforts to achieve increased alignment and harmonization in funding practices, terms and conditions targeting the same recipients. Ideally, the MGA should be crafted in a way that would allow it to serve as an aggregate funding vehicle for a number of key federal funders.

4. <u>Engagement of program managers</u>: Finally, it is recommended that AANDC make an effort to engage program managers in the work associated with the development of the MGA. Resistance to a shift to grants is likely to come primarily from program managers; as such, such a move would help to allay their concerns and ensure that legitimate program accountability needs are factored into the MGA.

8.8   Further research

We suggest the following areas for further research. They support the development of the MGA and help in the implementation of the recommendations offered above:

1. Model community plan, model shared management agenda and model performance management framework.

2. Best practices in results and outcomes-based reporting.

3. Incentive practices and mechanisms to stimulate the growth of own source revenue and community-driven initiatives in economic and social development and in achieving efficiencies in the delivery of services to FN community members.

4. The application of principles of equalization and need-specific targeting in the MGA.

5. The treatment of capital funding and institutional options such as a separate capital infrastructure investment fund.

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Annex B: Miawpukek Grant Agreement – why is it appropriate as a baseline for the Model Grant Agreement?

Note: The contents of this annex are based on the Final Report of the Evaluation of the Miawpukek First Nation Grant Agreement, February 2011[2], conducted by the Performance Measurement and Review Branch, Audit and Evaluation Sector.

B.1 Background and Description

The Miawpukek First Nation (MFN) is located in Conne River, Newfoundland and Labrador (NL) and has a total membership of approximately 2,600 people with 828 members living on reserve. The Grant Agreement, first signed in 1986 between Canada and the MFN, is unique among AANDC agreements with First Nations. When Newfoundland joined Confederation in 1949, the federal and provincial governments chose not to apply the Indian Act to the province but rather put in place cost-sharing arrangements with Aboriginal communities. In 1974, Conne River was included in these arrangements.

In 1984, in response to a lawsuit launched by the Indian residents of Conne River as to the question of their Indian status, the MFN was recognized as a band. In 1987, a reserve was established and a grant agreement between Canada and MFN was created. The unique funding arrangement resulted, in part, from this historical funding of the community through federal-provincial arrangements in place prior to MFN being recognized as a band. The Grant Agreement not only provided MFN with control over management, administration and delivery of programs within the community, it also allowed MFN to identify community priorities and to allocate funds from the Grant to these priorities. This approach differs from other less flexible funding arrangement models whereby recipients must allocate funds as per terms and conditions contained within the funding arrangement.

A transition from the Grant Agreement to a Canada / First Nation Funding Agreement type of arrangement was contemplated in 2003, to be consistent with other AANDC funding arrangements. However, as MFN was entering into self-government negotiations at the time, the Grant Agreement was extended to support the transition to self-government. There have been five Grant Agreements between Canada and MFN with the current Grant Agreement being a one year extension agreement (2009/10 to 2010/11). The Grant Agreement is supported through the Grant Authority, Grant to the Miawpukek Indian Band to support designated programs.

Three evaluations were carried out in respect of this grant agreement:

- A recent evaluation (2011)[3] was carried out to support the process of seeking a renewal of the Grant Authority and the Grant Agreement, both of which expired the end of March 2011;

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[2] AANDC Performance Measurement and Review Branch, Audit and Evaluation Sector: *Evaluation of the Miawpukek First Nation Grant Agreement*, February 2011.
[3] Ibid.

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- A 2005 evaluation was carried out, which found the MFN's approach to financial management generally effective—despite the recent failure of a First Nation-owned business that resulted in a deficit. In response to this crisis, MFN immediately developed a remedial plan that included a number of sound practices for managing budgets and expenditures;

- An earlier evaluation carried out in 1996 found that "… the Miawpukek Band Funding Agreement has successfully achieved its objectives." Its flexibility has led to the development of innovative programming, highly regarded by community members, and effective in addressing challenges and opportunities facing the Miawpukek, without compromising programming. The Band Council has met minimum program requirements as stipulated, and has developed and implemented effective accountability to community members. "Administration of the Agreement is, generally, preferable to other departmental approaches from the perspective of both the Band Council and DIAND."[4]

The use of a grant authority as the basis of AANDC's funding relationship with the MFN arose as an historical accident. When Newfoundland joined Canada in 1949, the MFN was not recognized as enjoying status under the Indian Act. It gained this only in 1984, when the federal government recognized community members as Status Indians. Once the MFN was officially recognized as a band in 1985, its fiscal relationship with Canada began. In the 1984/85 fiscal year MFN negotiated its first grant authority with the federal government. This process led to the establishment of the Conne River Agreement in 1986—an agreement that was unique for its reliance on a grant authority. This arrangement followed from the way the community had been funded through federal-provincial arrangements prior to its being recognized as a reserve.

The Grant Agreement provides funding for programming in a wide variety of areas. MFN has used the flexibility provided under the Grant Agreement to design and implement programs in a number of areas not covered by the Grant Agreement (e.g. job creation, natural resources, recreation and culture, justice and policing)[5].

Under the Grant Agreement MFN is accountable to the community for services delivered and quality of governance and administration. MFN remains accountable to AANDC for the quality of its financial administration. Findings from the evaluation conclude the current role of MFN is appropriate with a high level of community accountability demonstrated.

The evaluation concludes AANDC is able to properly execute its roles and responsibilities under the Grant Agreement. The submission of annual audited financial statements allows AANDC to verify the funds provided by the Government of Canada are properly spent with appropriate accounting. One ramification is AANDC having less information about MFN than bands with greater reporting

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[4]AANDC (Goss Gilroy), *Evaluation of the 1991/2 - 1996/7 Miawpukek Mi'kamawey Mawi'omi Band Funding Agreement*, December 1996.

[5] Incidentally, the results of the General Assessment for MFN indicates a very low risk (risk score of 6.75 of a possible 75).

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requirements. However, if additional information is required by AANDC, MFN has demonstrated they will provide the Department with the required documentation.

B.2   Objectives and Expected Outcomes

The purpose of the Grant Agreement is to provide:

1. A transfer grant to permit MFN flexibility to define objectives and plans for the community, and to design its own programs and to allocate funds in accordance with community priorities;
2. For the amount of funding to be allocated, and the conditions upon which such funding is to be transferred, by Canada to MFN, to financially assist MFN in providing Programs and Services in accordance with its objectives and plans for the community and the terms and conditions of the Grant Agreement;
3. For the primary accountability of MFN to community members for the delivery of the Programs and Services for which funding has been transferred to MFN under this Agreement and for the sound management and use of funds; and,
4. For the accountability of MFN to Canada for the sound management and use of the funds transferred to the Council pursuant to the Agreement.

Under the Grant Agreement, MFN is responsible for the provision and delivery of the following Programs and Services:

1. Indian Registration and Band Lists;
2. Land Management;
3. Elementary/Secondary Educational Services;
4. Post-Secondary Education;
5. Social Assistance and Support Services;
6. Capital Facilities and Maintenance;
7. Funding for Band Governments; and
8. Economic Development.

B.3   Management of the Grant Agreement

The Grant Agreement is managed by MFN, which is accountable to band members for provision and delivery of all programs and services (listed in Schedule "B" of the Grant Agreement).

MFN provides an annual report, including audited financial statements, to band members and maintains accountability policies which address disclosure, transparency and redress. MFN is also responsible to Canada for the management and use of funds transferred under the Grant Agreement and is required to provide AANDC with annual audited financial statements.

Within AANDC, the Senior Assistant Deputy Minister of Regional Operations Sector has overall responsibility for the Grant Agreement and, with AANDC's Atlantic Region, is responsible for the management of the Grant Agreement through the Funding Services Directorate.

The grant amount above does not represent the entire amount of funding provided to MFN by the Government of Canada. During the same period, an additional $30,580,871 was provided as follows:

- $12,259,464 was provided by AANDC under Comprehensive Funding Arrangements to support individual projects related to Economic Development, Capital Infrastructure and other program activities; and,
- $18,321,407 in other federal funding from departments such as Health Canada, Canada Mortgage and Housing Corporation (CMHC), Fisheries and Oceans (DFO), Natural Resources Canada, and Industry Canada, Atlantic Canada Opportunities Agency (ACOA).

B.4   Features of the Miawpukek Grant Authority

The Miawpukek Grant Authority enables the First Nation to design its own programs and allocate funds in accordance with community priorities—provided it meets certain broad standards set out by AANDC. With its initial funding set at $5 million/year, the agreement was designed to be renegotiated every five years. The risk management practice in place is same as the one used for the CFNFA.

Similar to the proposed multi-year community fiscal transfer program, the funding arrangement includes the following features:

- Enhanced flexibility
- Reduced administrative burden
- Community-oriented accountability

B.4.1   Relatively low Administrative and Reporting Burden

Reporting requirements associated with the Grant Agreement are much less demanding than other federal funding arrangements. MFN is required to report once each year with an audited financial statement. Typically under a DFNFA, 15 reports are required each year.

Administration of the Grant Agreement is also efficient from an AANDC perspective. AANDC estimates the amount of time a funding services officer is required to administer the Grant Agreement amounts to two to four days per year. By contrast, it is estimated 20 days of effort are required to administer a DFNFA and 40 days of effort are required to administer a Comprehensive Funding Arrangement.

B.4.2   Effective Leveraging

The Grant Agreement has allowed MFN to leverage additional federal and provincial government funding. Having the flexibility and independence to make equity contributions when other government programs require such investments allows for leveraging to occur. Federal government regulations against program stacking, which prohibit the use of funds received under one federal government program to be used as an equity contribution when applying for another program, do not apply under the Grant Agreement.

The Grant Agreement has provided a steady guaranteed funding allotment without the risk of halted funds by AANDC due to outstanding reporting requirements. This has enabled MFN to secure favourable financial options against the Grant. This is in contrast to a DFNFA where funding can be halted due to

outstanding reports, which raises risk with financial institutions for borrowing. A band with a DFNFA can apply for bank funding, but may not receive as good funding terms as they would under a Grant Agreement. An example of how MFN was able to secure financial options against the Grant Agreement was demonstrated in relation to the aquaculture financial crisis which MFN faced in 2001. The flexibility of the Grant Agreement was a key element of the debt management plan, which MFN successfully negotiated with a financial institution and AANDC.

B.4.3 Planning rooted in the community

Findings from the evaluation conclude MFN has strong planning processes, which involve actively consulting with the community and responding to community priorities. Planning starts with Chief and Council (for two and five year planning horizons) with community input. These plans are implemented by MFN staff through their operational planning processes. While they are still refining this as a formal process, the fundamentals are clearly in place. At this point, annual operating plans of each department are tied directly to the budget cycle. Because the community is so involved in the setting of MFN priorities and planning, it is clear the allocation of funds under the Grant Agreement is in line with their priorities. The evaluation found many examples of MFN programs and initiatives resulting directly from community input.

B.5 Results

The evaluation found the administration of the Grant Agreement to be very efficient, particularly around reporting requirements. Once each year MFN presents its audited financial statements to AANDC. Compared to other bands, this is a much lower level of reporting. The Grant Agreement also requires far fewer resources from AANDC regional office to administer.

The Grant Agreement is economic for MFN. Over the course of this agreement period, MFN garnered $18.3 million in external funding (excluding the Grant Agreement funds and other AANDC specific contribution funding). These external funds are from federal and provincial sources and most require a contribution from MFN for which they have been able to use Grant Agreement funds. In addition, having a Grant Agreement has enabled MFN to secure favourable and flexible financing arrangements for both new initiatives and to meet financial challenges.

The analysis of the CWB Index results show MFN scores well above other First Nations in Canada and this margin has grown substantially since 1991. When compared to neighbouring non-Aboriginal communities over the same time period, MFN has reached a comparative level on all indices in 2006.

When the MFN reserve was established in 1987, it was a poor and isolated community with an unemployment rate of almost 90 percent. In the twenty years since the first Conne River Agreement was signed, the community has been transformed from a poor Newfoundland out-port to a vibrant, well-governed community that is now on the road to self-government. It is also a growing community, with membership—albeit most of it off-reserve—having increased significantly since 1990. By contrast to Newfoundland as a whole, the community is growing and has a younger population. —The demographic trends reflect the fact that few young people are leaving the community and a number are returning. This alone speaks well for the performance of its government in the past twenty years.

Several other indicators do as well. The priorities placed on education, economic development and active employment measures have shown results in the profile of individual and community well-being. On income, employment and education indicators, the Miawpukek Reserve fares well compared to the Bay d'Espoir area and the province as a whole:

- At $20,162 per year compared to $22,620 for Newfoundland, the average income in the MFN is slightly lower than the provincial average. But it is also up from previous years, when per capita income on reserve was $15,700 in 2001 and only $6,000 in 1996. The employment rate is high, with a labor force participation rate of 78.6%. This is compared to a national average of 66.4 percent—although much of the work is seasonal.
- MFN has a highly educated population for a community of its size. Its high school dropout rate is well below both the provincial average rate (42.36 percent) and the rate for registered Indians living on reserve throughout Canada (58.88 percent). MFN also has a higher level of combined trade/college and university training than other groups, with 48.6 percent compared to 39.02 percent for the province and 23.6 for registered on-reserve Indians throughout Canada

B.6   Conclusion

Despite both its geographic location in terms of economic development and its starting point in 1987, the Miawpukek First Nation has thrived in the twenty years since it began receiving grant-based funding. It would be inaccurate to give first credit to the grant funding authority for this achievement; those primarily responsible were clearly the First Nation and its highly capable government. Clearly, however, the MFN found its funding authority a highly effective and efficient instrument through which to achieve its goals.

The success of this match – Funding Agreement and MFN – cannot only be the unilateral outcome of a determined and well-managed community. The terms of the Grant Agreement and the flexibility and other enablers and burden-reduction provisions benefitting both AANDC and the MFN must be credited with some of the determinants of this success.