

FIRST NATIONS FINANCIAL
MANAGEMENT BOARD



The RoadMap Project

CHAPTER FIVE: JURISDICTION AND FISCAL POWERS



First Nations
**FINANCIAL
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**CONSEIL
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EXECUTIVE SUMMARY

IN 2016, THE GOVERNMENT OF CANADA ANNOUNCED it would pursue a “new fiscal relationship” with First Nations governments to address the inequality, poverty, and socioeconomic disparities between Indigenous and non-Indigenous Canadians. These disparities are the legacy of a failed colonial system that continues to deny First Nations the fiscal capacity to exercise the right to self-determination.






Thus far, improvements to the fiscal relationship amount to improving the grant-based system. New, long-term grants provide more certainty and reduce the reporting burden. Yet many First Nation governments are looking for options that go beyond improvements to the grant-based system. They want a new fiscal arrangement with the same fiscal capacity and tools that other levels of government use to fund the cost of governing. They want revenue-raising powers and more control over what they do with those revenues. As Indigenous thought-leader Harold Calla states, “Ultimately a new relationship means a sharing of power between Canada and First Nations.”

In the years following the *Constitution Act, 1982*, legal victories have driven the restoration and recognition of Indigenous self-governance. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), enshrined in Canadian law, recognizes and affirms the inherent right to self-determination. Yet it is not enough for the right to self-determination to be recognized; it must also be realized through fiscal capacity.

At their foundation, all sustainable governments have both the right to govern and the fiscal means – that is, fiscal powers and independent revenue – to govern. Other levels of government in Canada have the fiscal powers and tools to fund the cost of government, institutions, and services. They depend on revenue formulas that ensure high standards for services across Canada. UNDRIP recognizes this dual requirement in article 4, which states, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-governance in matters relating to their internal and local affairs, **as well as ways and means for financing their autonomous functions.**”



First Nations, on balance, are the most transfer-dependent governments in Canada. Where other levels of government have fiscal powers and financial tools, First Nations have limited resources to fund their governments – they have the right but not the means to self-govern. Federal transfers are chronically insufficient and the lack of independent revenue results in the application of federal policies over local affairs on reserve. The federal government manages poverty from afar, while First Nations could be managing wealth. The transfer system denies First Nations the capacity to govern and the results are all too familiar: boil water advisories, substandard services, low socioeconomic indicators, and a growing infrastructure gap are all symptoms of a systemic problem.

The absence of stable and sufficient revenues denies First Nations governments the ability to govern themselves. The means to govern must match the right to govern, or self-determination is diminished. Breathing life into UNDRIP, including recognizing inherent rights, will require the independent revenue and fiscal powers that all other governments depend on to function.

An optional path to a new fiscal arrangement

Instead of a federal bureaucracy overseeing poverty, unsafe living conditions, and a worsening infrastructure gap, what if First Nations governments had the means and jurisdiction to manage their own affairs, in accordance with their inherent rights as articulated in UNDRIP?

With the means to fund the cost of their governments, First Nations could not only actualize their right to self-determination but could begin the work of building sustainable and prosperous societies.

A new fiscal arrangement must include new options. First Nations do not only require improvements to a failed system; they require independent revenue and the fiscal powers to fund sustainable governments. Canada would not expect the federal, provincial, territorial, and municipal governments to function without independent revenue. Nor should it expect First Nations governments to do so.



Indigenous populations exercised jurisdiction before contact with European settlers. Both oral history and archaeology demonstrate that pre-contact Indigenous boundaries, hunting territories, and fee and tax collection systems were firmly established across Canada and the Americas. Indigenous jurisdiction was the basis for the Royal Proclamation and this recognition was the reason behind the Crown's requirement for treaties. Colonial legislation actively dismantled Indigenous institutions and systems of government. For any meaningful application of UNDRIP, First Nations require legislation that recognizes and empowers them to renew their jurisdiction and fiscal powers. The path forward begins with options for First Nations to expand both.

EXPANDED JURISDICTION

Clarity of First Nations, provincial, territorial, and federal jurisdictions is required. The legal rights and jurisdiction among federal, provincial, and territorial governments are defined in the Canadian Constitution. Jurisdictional clarity for First Nations governments will provide certainty to governments, citizens, and businesses. This clarity will also ensure that one government cannot override or overlap the authority of another within the other's jurisdiction. Jurisdictional clarity and expansion should include the following:

- **Clearly defined independent revenue collection rights**
- **Autonomy over the use and development of reserve lands**
- **Standards for service delivery**
- **Autonomy over expenditure of resources**
- **Legal paramountcy of First Nations laws in First Nations jurisdictions**
- **A mechanism to facilitate government-to-government relationships with federal, provincial, territorial, and municipal governments**





EXPANDED FISCAL POWERS

First Nations require the fiscal means to support governance, institutions, services, and infrastructure. As with all sustainable governments, First Nations revenue must be stable, sufficient, and independent. New options for fiscal powers should include both the ability to collect revenues as well as autonomy over how resources are spent. The *First Nations Fiscal Management Act* (FMA) is a proven platform for the risk-managed expansion of fiscal powers. First Nations governments that work with the First Nations Tax Commission (FNTC) already have the option of implementing a First Nations property tax law for their reserve lands. The structures are already in place to streamline the implementation of new and independent First Nations revenues – for Nations that choose to participate.

It is time to build on this success to provide more options for expanded fiscal powers, including the following powers to raise revenue:

- **First Nations Resource Charge (FNRC) in First Nations traditional territory (an optional standardized charge on resource projects that infringe on the treaty and Indigenous rights of participating First Nations)**
- **Hunting and fishing fees on traditional territories**
- **Expanded gaming revenues**
- **First Nations payroll charge on reserve lands**
- **Fuel, Alcohol, Cannabis, and Tobacco (FACT) federal sales tax and excise tax revenue sharing**
- **Provincial sales, fuel, and tobacco tax for revenue sharing**
- **First Nations goods and services tax**
- **First Nations carbon tax**

First Nations revenue must be **stable, sufficient, and independent**. New options for fiscal powers should include both the ability to collect revenues as well as autonomy over how resources are spent.



Both expanded jurisdiction and expanded fiscal powers will support First Nations self-determination. Jurisdiction ensures the legal right to self-determination while fiscal powers ensure the practical ability to exercise those rights. This pathway to greater self-determination lays a good foundation for strong, sustainable governance. Without the legal right to govern, there is no self-determination. In the absence of stable, sufficient revenue, the right to govern is meaningless. Yet with both the rights and the means, First Nations can choose their own path forward, provide for their own citizens, and respond to the needs of their societies. Instead of denying First Nations the basic tools for governing that all other sustainable governments enjoy, it is time to create new options for self-determination and prosperity.





INTRODUCTION

A Tradition of Sharing

FIRST NATIONS GOVERNMENTS HAVE EXERCISED FISCAL POWERS since time immemorial. Long before contact with Europeans, paying tribute for occupying or using territories was a widespread practice among First Nations across Canada.¹ Historical records show that First Nations governments collected revenues throughout their traditional territory. These revenues included tariffs on European traders in exchange for safe and unimpeded transport of their trade commodities, and rent from settlers for the privilege of fishing and trapping on their lands. They charged tolls to individuals who used bridges.²

Another form of revenue sharing took place as a redistribution of wealth. Potlatches and giveaway dances were formalized means for redistributing wealth within First Nations societies. The wealth distributed at these events would have been commodities, while modern potlatches have evolved to include collecting and distributing money as well as commodities.³ The Chinook trading language even includes the word *taksis* and there are many instances recorded of First Nations people paying *taksis* to their communities to support infrastructure and advance land claims.⁴

Colonial policy dismantled the fiscal powers of First Nations across Canada. From 1867-1927, federal and provincial governments systematically stripped First Nations of all independent revenue powers and assumed all tax powers over property, sales, income, and resources.⁵ During this time, these governments also legislated First Nations out of the economy and fiscal framework of Canada, banning wealth distribution and prohibiting early efforts to collect property and labour taxes. In 1927, amendments to the *Indian Act* made it a punishable offence for First Nations to raise public revenue through taxation to advance their land claims.⁶





Renewing First Nations Jurisdiction and Fiscal Powers

Today, years of colonial policy has left First Nations governments far too dependent on federal grants and transfers based on policies of the government of the day. This fiscal relationship undermines First Nations self-determination. Since First Nations are dependent on transfers from other governments, they have far less control over their spending decisions and paradoxically far greater reporting requirements to the ‘funders’ than other governments do. Federal and provincial funding comes with strings attached, and terms and conditions inhibit First Nations from making their own decisions at the community level.⁷ In short, other governments are making decisions from afar that First Nations governments should be making locally.

In 1975, the 7th Annual General Assembly of the Union of BC Indian Chiefs sought to change this dynamic, to reduce government control by reducing government funding. Their purpose was to renew First Nations independence by rejecting government funding.⁸ The First Nations in attendance would no longer permit the *Indian Act* to apply to their lands or the Department of Indian Affairs to administer their local affairs. One of the speakers, Willis Morgan of the Kitamaat Indian Band, warned that First Nations could not assert self-determination without their own independent revenue to pay for services, education, health, welfare, and the cost of government.⁹ In the spring of 1975, the First Nations of BC ignored his warnings and proceeded to reject government funding. Yet, by the fall of 1975, Willis was proved right: only independent revenue could support self-determination. The First Nations of BC did not have the capacity to deliver local services or the means to collect revenue. Within six months, almost all communities were forced to once again accept government funding.¹⁰

First Nations have an inherent right to self-determination. This right is a central tenet of UNDRIP and there can be no self-determination without a new fiscal arrangement. Fiscal self-determination requires two major components – jurisdictional rights and fiscal means. Jurisdiction focuses on the legal rights and authority to make decisions without interference from external sources, such as the federal government. Fiscal means is having the revenues to bring jurisdictional rights to life. These revenues need to be stable, secure, and sufficient to meet the service and infrastructure needs of First Nations communities. Fiscal means also includes the First Nations’ freedom to spend these funds as they choose in developing programs, establishing infrastructure, and defending the rights of the community.

The current fiscal relationship sees the federal government setting many of the fiscal priorities for First Nation communities. The federal bureaucracy is often disconnected from the local needs of First Nations communities and makes decisions that perpetuate socioeconomic gaps. Two examples include the provision and access to clean water and the dire state of residential housing. Greater self-determination is key to bringing about true reconciliation and unlocking the economic potential of First Nations.

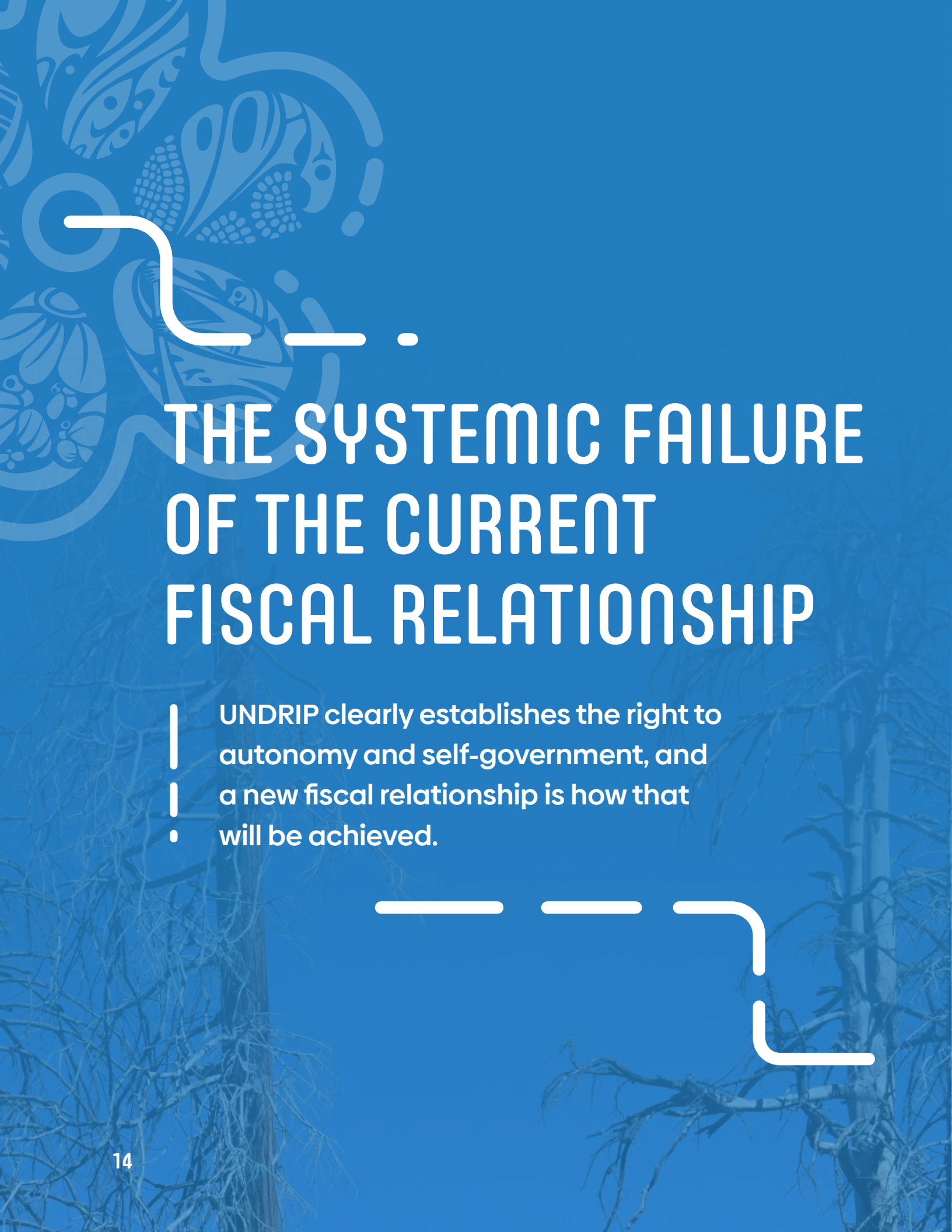


Canada's federal government and several provincial governments have stated that they want to support greater self-determination for First Nations. However, the way they provide support is often incompatible with community values, thus exacerbating the very situation they are trying to support. The framework to fiscal self-determination in this chapter outlines how First Nations can acquire the fiscal means needed for self-determination. This goal requires developing new revenue options founded on First Nations' legal authority within their jurisdiction.

Now is the time to turn promises of First Nations self-determination into reality. Many First Nations see the renewal of fiscal powers as an important means of generating independent revenue to fund the cost of government – without excusing federal and provincial governments from their financial obligations. First Nations governments have an inherent right to raise revenue that existed long before contact. It is time to reclaim that right. Join us on this pathway to advance First Nations fiscal self-determination; how reconciliation and autonomy are achieved.

The Right to Raise Revenue

Not all First Nations governments will wish to raise revenue through fiscal powers or taxation. However, all First Nations have the right to make that choice for themselves. As UNDRIP declares, self-determination requires that First Nations have independent revenue to fund the cost of government. For some First Nations governments, independent revenue will mean an improved government transfer system and own-source revenue flowing from economic activity. Yet for many others, independent revenue can only mean expanded fiscal powers.



THE SYSTEMIC FAILURE OF THE CURRENT FISCAL RELATIONSHIP

- | UNDRIP clearly establishes the right to autonomy and self-government, and
- | a new fiscal relationship is how that
- will be achieved.




What is a fiscal relationship?

THE TULO CENTRE OF INDIGENOUS ECONOMICS, a longtime FMA institutions ally, defines fiscal relationship in its simplest form as how public services and infrastructure are provided to citizens and paid for. Over the past century and a half, **Canada has built a successful fiscal relationship between most of its non-Indigenous citizens and their elected governments at all levels.** This has not been a perfect relationship, and has certainly had rough patches due to geography, cultural differences, and politics, among other things, yet Canadians know what to expect in terms of services, infrastructure, health, education, and security. Canadians enjoy some of the highest levels of wealth, freedom, and prosperity in the world today, which also means some of the highest levels in the history of human society.

The strict and stark contrast between the overall well-being and privilege of an average Canadian of settler origin and an average Indigenous Canadian speaks to the differences in the fiscal relationship. The FMA institutions and their allies have championed a new fiscal relationship. First Nations leaders and governments have asked for a new fiscal relationship and the Canadian government has accepted the idea in principle. UNDRIP clearly establishes the right to autonomy and self-government, and a new fiscal relationship is how that will be achieved.

Tulo suggests that a sound fiscal relationship provides clear answers to the following four questions:

- Which government provides which services?
- Which government has which revenue jurisdictions?
- Which government pays for which services?
- How does the system of transfers reconcile the differences between revenues and expenditure responsibilities and protect national service standards?¹¹



The strict and stark contrast between the overall well-being and privilege of an average Canadian of settler origin and an average Indigenous Canadian speaks to the differences in the fiscal relationship.



How other levels of government fund the cost of government

Canadian federal, provincial, and municipal governments have a clear and detailed plan that lays out revenue jurisdictions, revenue amounts, transfer formulas, and transactions among all levels. These mechanisms are legislated in Canada's Constitution and provincial law. They allow each level of government to project revenue availability, operate and build services and infrastructure, plan for future growth or change, and ensure comparable service standards among Canadian systems. Each part of government has defined areas of jurisdiction to collect revenues.

The federal government garners revenues from income and consumption taxes; the provinces from income taxes, provincial sales taxes, and property or resource taxes; and municipalities from property taxes. These revenues are pooled, expenses and service portfolios are divided, and the country's standards of care and service are maintained. With Canada being among world leaders in many areas, including GDP, the Human Freedom Index, and a myriad of other success indicators, the system is functioning well.

A Grant-Based System

The mainly successful system outlined above -- developed over time with inputs from Canadian citizens, municipalities, provinces, territories, and the federal government -- did not include Canada's First Nations. Legislation under the *Indian Act*, combined with what was done in practice, produced a confused and inadequate system with virtually no consistency, clarity, or recognition within the broader inter-jurisdictional framework. Services to First Nations were, and still are, provided by a mixture of federal, provincial, municipal, and Indigenous public sectors with little or no consistency. This system has had questionable success, indicated by the difference in well-being between an average non-Indigenous Canadian and an average Indigenous person, especially living on a reserve.

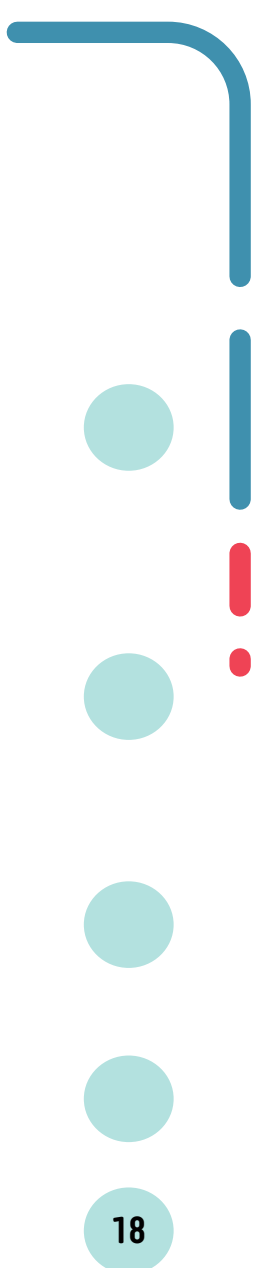
First Nations governments have nominal rights to tax on reserve, but so far many lack any sort of viable system, capacity, or means by which to collect tax revenues in their areas of jurisdiction. They still have no such rights in their traditional territories. Basic government services are funded through an overly complicated mix of government departments and organizations, with template reporting structures, short time frames, and Canadian government-specified areas of use. The system of transfers for First Nation communities is done through unclear formulas or is based on application. The amount of tax revenues raised from First Nation land bases and traditional territories does not meet needs for the quality and standard of services in most First Nation communities.

Specific areas of concern with the current fiscal relationship are:

- **First Nations lack access to their own revenues.**
 - This includes resource revenues and related tax jurisdictions. As a result, they are stymied in asserting their own interests, obstructed in developing capacity, and handcuffed in terms of developing services that meet their own unique needs.
- **There is no link between support for First Nations and non-First Nations services.**
 - Under the existing system of transfers, there is no explicit link between support for First Nation services and support for similar services in the rest of the country. As a result, there are issues with respect to comparability of services and a sense that First Nations must compete against the rest of the country for resources.
- **There are disputes surrounding service responsibilities.**
 - There are considerable disputes between the federal and provincial governments regarding service responsibilities for First Nation citizens and appropriate payment for services. When neither government can agree on who is responsible, no one is responsible and service quality suffers as a result (i.e., Jordan's Principle).
- **First Nations are too dependent on federal transfers.**
 - A high percentage of First Nation government revenue comes from transfers from other governments. As a result, spending decisions are primarily determined by other governments rather than at the community level. Additionally, federal funds come with strings attached and, in some cases, terms and conditions that inhibit a First Nation government from making practical decisions in the best interests of their community.
- **The existing transfer system in support of First Nation governments is cumbersome.**
 - This system is short-term and not transparent. In fact, it appears highly subjective and conditional. It creates large administrative burdens and is focused on control-oriented accountability conditions because it has failed to support incentives for good governance. The transfer system is clearly insufficient to support services and infrastructure comparable to the rest of the country and provides very limited flexibility.
- **First Nations lack access to capital.**
 - The existing relationship has not allowed First Nation communities to access funds for capital improvements on anything close to the terms available to other communities. This has severely limited their development prospects.¹²



A key to fulfilling the promises of UNDRIP, and the mandate of Canada's reconciliation efforts, is **self-determination and autonomy for First Nations.**



All parties involved want to change this unclear and inequitable fiscal relationship. A key to fulfilling the promises of UNDRIP, and the mandate of Canada's reconciliation efforts, is self-determination and autonomy for First Nations. Legislation exists, and practical steps are being taken to promote and ensure First Nations' rights to self-determination and autonomy, but those rights will continue to be aspirational and symbolic until they are met by the necessary and sufficient fiscal capacity needed to achieve them. Self-determination does not exist without the means to support the cost of government.

Anything less than the same jurisdictional clarity as the rest of Canada and the same optional level of fiscal capacity results in the status quo of First Nations dependency -- a result in the best interest of no one. Status quo dependency also extends to the organizational and leadership levels of many First Nations governments. If optionality, growth potential, and new services by First Nations and for First Nations does not expand with a new fiscal relationship, capacity within First Nations governments will also not grow. Capacity growth is one of the main pillars of each chapter of RoadMap, and a key tenet of increased First Nations autonomy and self-governance.

Further stalling of capacity growth will see the same level of service inequality that exists in many First Nations today continue into the future. Disparities in housing, employment, income level, health, formal education, and infrastructure are tangible examples of the human cost of the current grant-based system. Even high visibility problems that have existed for decades, like the drinking water advisories on many reserves, have not been solved.

A system based on dependence is not sustainable, and simply improving the current system is not sufficient. In the past several years, the grant system has been improved in areas for a certain number of First Nations, including slightly more control of funds flowing to First Nations and improving term lengths, allowing First Nations to plan and maintain needed assets a little more efficiently. Incremental improvements, however, are not the pathway to self-determination. Full jurisdictional rights and means will allow capacity growth, greater certainty of program and service success, and movement away from the federal government managing poverty to First Nations managing wealth.



Problems with the Current Fiscal Relationship

Indigenous peoples exercised jurisdiction over boundaries and revenue collection systems across Canada and the Americas before contact with European settlers. First Nations' governance and fiscal independence were taken away under the *Indian Act*, which restricts self-determination. While UNDRIP recognizes and affirms the inherent right to self-determination, it is not enough for this right to be recognized. It must also be realized through fiscal capacity.

The current fiscal relationship creates barriers for First Nations governments and limits their ability to develop economies, collect revenues, and deliver services. Transformational change is needed. Such a change was emphasized in the Report of the Royal Commission on Aboriginal Peoples.¹³

Excessive federal government control of how these funds are spent must change. While federal transfers will continue – especially transfers related to treaty rights and obligations – decisions about how these funds are spent are best made by the First Nation governments and communities. This shift will breathe life into the principle of self-determination as outlined in UNDRIP.

Too often, First Nations governments lack access to recognized legal instruments that could generate resource revenue for a community. The ability to implement a jurisdiction for independent revenue is one example. Too often, these revenues are collected by the provincial, territorial, or federal governments. By limiting possible sources of revenues, the *Indian Act* limits the ability of First Nations to fund their own programs, services, and infrastructure. The status quo results in other levels of government benefiting from the sale of resources that are on First Nations land and allocating a minor portion to First Nations governments through transfers.

The current fiscal relationship creates barriers for First Nations governments and limits their ability to develop economies, collect revenues, and deliver services. Transformational change is needed.



Many First Nations governments presently have three sources of revenue: 1) government grants and transfers, 2) FMA local revenues (e.g., First Nations property tax), and 3) other revenues (e.g., their own businesses and deals with private or government businesses operating in their traditional territory).

If First Nations governments had the jurisdiction to collect their own revenues, they could choose their own path forward without reliance on federally controlled transfers through Indigenous Services Canada (ISC). The status quo means many First Nations governments are dependent on transfers from the federal government.¹⁴ This situation demonstrates how restricted fiscal powers limit self-determination.

When Canada was established, the Crown allocated powers and jurisdiction between the federal and provincial governments in sections 91 and 92 of the *British North America Act*. This is the basis for the federal/provincial jurisdictions that exist presently in Canada. First Nations were never represented when this division of power was established, despite having inherent rights and legal orders that provided jurisdiction and fiscal means. Although “lands reserved for Indians” fall under federal jurisdiction, there is some overlap with provincial and territorial governments.¹⁵

As First Nations jurisdiction and fiscal powers are advanced, it will be necessary for the federal and provincial/territorial governments to clear jurisdictional space and establish First Nations as the third order of government within Canada. In part this can be accomplished under the FMA framework.

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The status quo means many First Nations governments are dependent on transfers from the federal government.




Chapter 4 on economic development discussed how limited jurisdiction over First Nations reserve lands limits access to capital. The *Indian Act* limits the ability to use reserve lands for financing purposes, which severely restricts access to capital for First Nations governments and businesses.¹⁶ In addition, using reserve lands for economic or community development often requires federal government approval. Financing is often used by non-Indigenous governments to advance local economies, develop community infrastructure, or meet cash flow needs. By limiting First Nations governments' ability to obtain financing, First Nations are put at a disadvantage and become more dependent on transfers from other levels of government.

A new fiscal relationship between Canada and First Nations governments is needed – one that will empower First Nations to achieve self-determination and economic reconciliation. This will be accomplished through greater jurisdiction and fiscal powers for First Nations governments. By advancing economic reconciliation through expanded fiscal powers, there will be greater career opportunities for First Nations people within their own communities. This will enable more Indigenous professionals and skilled workers to advance their careers within their home communities, thus strengthening both the social and economic foundations of their communities. This approach is supported by the National Indigenous Economic Strategy, which highlights the importance of recognizing First Nations jurisdiction to advance economic prosperity.¹⁷

First Nations should have the power to choose their own method of generating and collecting revenues and the decision-making authority to spend it in the best interests of their community, without bureaucratic interference from other levels of government.



A large, stylized, light blue graphic in the upper right corner, featuring indigenous motifs such as eyes, a sun, and a boat. The background is a dark, atmospheric photograph of a forest path leading into the distance.

ROADMAP TO SELF-DETERMINATION: EXPANSION OF JURISDICTION AND FISCAL POWERS



- Jurisdiction and fiscal powers are both essential to achieving self-determination. Jurisdiction
- includes the right and authority to make
- decisions without interference from other governments or powers.

A better fiscal arrangement is possible – one that adheres to the right of self-determination as outlined in UNDRIP. This section proposes an optional path forward for First Nations governments, where both jurisdiction and fiscal powers are expanded to enable self-determination. This pathway is an expansion of the FMA framework and uses the strengths of the FMA institutions to support First Nations governments on their journey towards fiscal autonomy.

A new fiscal arrangement must ensure that First Nations governments have the jurisdiction and fiscal powers to establish revenue sources that are stable, secure, sustainable, and unfettered.

Jurisdiction and fiscal powers are both essential to achieving self-determination. Jurisdiction includes the right and authority to make decisions without interference from other governments or powers. Just as the federal and provincial governments in Canada maintain distinct jurisdictions, First Nations governments have traditional territories where their respective Nations are located. The jurisdiction of these territories needs to be respected and recognized. Clarity about where First Nations jurisdiction exists and what is included in this jurisdiction is essential for providing First Nation governments with the tools for fiscal self-determination. With this clarity established, the paramountcy of First Nations laws and decisions within their jurisdictions can be advanced in a more meaningful way. This is a practical way to advance Indigenous self-determination as outlined in UNDRIP and in Canada's relating legislation – the *United Nations Declaration on the Rights of Indigenous Peoples Act*.¹⁸ It is important to have these rights recognized and enshrined in law, as this is a necessary step on the path towards self-determination.

Self-determination requires the fiscal powers to practically act on jurisdictional rights. Consider an analogy: we could claim that a person has the right to breathe air, but if this person is at the bottom of the ocean, this right is meaningless without the practical means to reach the air. In a similar way, First Nations jurisdictional rights are limited without the fiscal means to practice these rights. Fiscal means include the ability to choose what and how First Nations government revenues are collected (taxation, business revenues, resource charges, user fees, etc.) as well as the decision-making power to spend these resources without interference from outside influences.

Any pathway to self-determination must address both jurisdictional rights and fiscal powers. The implementation of UNDRIP will not be possible without the expansion of both.

EXPANDING JURISDICTION

There must be clarity around what legal rights are attached both to reserve lands and a First Nation's traditional territory. This clarity would provide certainty around potential sources of government revenues, expectations for service delivery to community members, and legal certainty that fosters a strong business environment. The legal rights and jurisdiction between the federal and provincial governments is well defined in Canada's constitution. This creates certainty for governments, private citizens, and businesses.

First Nations governments do not have jurisdictional certainty, resulting in several negative effects: insecure government revenues, uncertainty around service delivery expectations, and a riskier business climate.¹⁹ This must be rectified – First Nations must maintain legal clarity within their jurisdictions for self-determination to move forward. An important step in expanding First Nations jurisdiction is clearly defining what the jurisdiction is and providing legal certainties for the jurisdiction. These jurisdictional items should include:

- **Independent revenue collection rights on reserve**
- **Resource and revenue sharing agreements – with clearly defined metrics**
- **Service delivery expectations**
- **Freedom and control to spend resources according to local priorities and needs**
- **Clarity of First Nations legal and fiscal jurisdictions, and the advancement of First Nations' legal paramouncy within these jurisdictions**
- **A mechanism for government-to-government discussion to facilitate working relationships with federal, provincial, and municipal governments**

First Nations jurisdiction must be enshrined within law and not be overruled by other levels of government. This can be achieved by providing clarity around what First Nations jurisdiction is and ensuring the paramouncy of a First Nation's laws within its jurisdiction. With legal rights defined and protected, First Nations can move towards self-determination. The expansion of First Nations fiscal powers can bring these jurisdictional rights to life.



EXPANDING FISCAL POWERS

Fiscal powers enable governments to support important services and infrastructure that allow communities to thrive. There are two sides to fiscal powers, both the ability to generate and collect revenues (e.g., taxes, resource charges, user fees, etc.) as well as the freedom to choose how resources are spent. As discussed, limited fiscal powers leave First Nations governments largely dependent on federal transfers. Three common issues arise from this: 1) most transfers are based on demographic metrics, such as population, that may not accurately reflect the situation in First Nations communities, 2) they focus on dollar inputs and not community outcomes, and 3) limitations are often put on what activities can be funded. This gives considerable power to the federal government. Expanding fiscal powers to First Nations will overcome these problems – First Nations will be in control of the revenues that they collect as well as how the funds are to be spent. Examples of expanded fiscal powers that could provide expanded revenues for First Nations governments include:

- **First Nations Resource Charge (FNRC) in First Nation Ancestral Lands – an optional standardized charge on resource projects within the traditional territories of participating First Nations (details in following section)**
- **Hunting and fishing fees on traditional territories**
- **Expanding gaming revenues**
- **First Nations carbon tax**
- **First Nations payroll charge on reserve lands**
- **Fuel, Alcohol, Cannabis and Tobacco (FACT) federal sales tax and excise tax revenue sharing**
- **Provincial sales, fuel, and tobacco tax revenue sharing**
- **First Nations goods and services tax**

These optional expanded fiscal powers can provide First Nations governments with stable and secure sources of revenue. Stable revenues are essential to long-term planning, both for community use and for financing purposes. This is especially true for infrastructure and capital asset planning. Chapter 3 of the RoadMap highlighted problems with infrastructure projects being approved on a project-by-project basis. The expanded fiscal powers put forward in this chapter will address this previously discussed infrastructure issue and provide a First Nations-controlled method to pay for and finance long-term community infrastructure.

Both expanded jurisdiction and fiscal powers are necessary for First Nations to achieve self-determination. Jurisdiction ensures the legal rights to self-determination, while fiscal powers provide the practical means to bring these rights to life. The RoadMap to self-determination can become a reality through a phased approach to the expansion of both rights and fiscal capacity.

Three phases will further First Nations jurisdiction and fiscal powers. Phase 1 builds a strong fiscal foundation, where First Nations will advance their capacities and independent revenue sources. Phase 2 facilitates fiscal reconciliation through addressing current gaps that limit First Nations' fiscal advancement. Phase 3 empowers First Nations fiscal autonomy through greater independent revenue sources and stronger First Nations control over how their funds are spent. These phases will take time and be enabled through an expanded FMA framework.

Phase 1 – Fiscal Foundation

For self-determination to become a reality, First Nations governments must have a variety of options to collect their own revenues. The expansion of own-source revenues will require a strong foundation to be successful. The FNTC already has a structure in place to support First Nations property tax, including capacity supports and legal templates.²⁰ This section evaluates the needed foundation and is explored in three parts: 1) new independent revenues for First Nations governments, 2) the needed legal framework, and 3) necessary capacities to advance fiscal autonomy.

OPTIONAL INDEPENDENT REVENUES

New independent revenues, including taxes, can be effectively implemented with the assistance of the FNTC and its sister FMA institutions. First Nations who work with the FNTC already have the option of implementing a First Nations property tax law for their reserve lands. Structures are already in place to streamline the implementation of new independent revenues – for First Nations that choose to participate. First Nations scheduled to the FMA can develop and pass these laws with the support of the FNTC, which provides capacity development and quality assurance over the tax laws that are passed. Below are some optional independent revenue streams that First Nations could choose to implement.

A 5% federal Fuel, Alcohol, Cannabis, and Tobacco (FACT) sales tax on First Nations lands could be adopted by First Nations governments. This could be implemented through a First Nations FACT sales tax law and would apply to both non-status and status customers. The FNTC seeks to work with interested First Nations and Finance Canada to adopt a sales tax sharing agreement that will provide First Nations governments with new tax room.

In addition to the FACT sales tax, the federal government already charges **excise taxes on the sale of FACT products on First Nations lands**. While a portion of these excise taxes are indirectly shared through ISC, First Nations do not maintain direct control of these revenues. The FNTC and the FMA institutions propose that FACT excise taxes collected on First Nations land should be directly allocated to the respective First Nations government. By directly controlling revenues from these excise taxes, First Nations would be practising their own jurisdiction and fiscal powers without federal interference.

Provincial and territorial governments should be obligated to **expand tax-sharing agreements on provincial FACT sales taxes with First Nations governments**. As the provincial and territorial governments seek to enact UNDRIP, this type of tax-sharing agreement is a practical way to expand First Nations fiscal powers and empower First Nations self-determination. Discussions need to take place between each provincial/territorial government and the respective First Nations governments. The FMA institutions can assist in providing professional advice and legal assistance in making these agreements a long-term advancement of First Nations jurisdiction and fiscal power.

The newly developed and innovative **First Nations Resource Charge (FNRC)** can enable First Nations to codify their requirements from the private sector when major projects take place on traditional territories. These territories expand beyond just reserve land boundaries to include the traditional lands that First Nations people lived on.

This would accomplish several goals, including:

- **Provide a streamlined process to evaluate the impact of resource development on First Nations, enabling more transparent impact assessments that address the concerns of First Nations governments**
- **Provide participating First Nations with a secure and stable share of the revenues generated on traditional territories from major projects and development**
- **Provide First Nations with independent revenues to meet the needs of their communities and support their role as stewards of the land**
- **Significantly reduce the demands placed on administrations by the current resource/land development process**

The FNRC would provide a secure source of revenue for participating First Nations, streamline the process for resource and project development, and make for a stronger investment climate. Most importantly, revenues from the FNRC would be fully controlled by the First Nations governments, to be used for the benefit of their community – both current and future members. The FNRC can advance local First Nations resource economies, provide secure revenues for First Nations governments, and advance the strategic energy and resource needs of the federal and provincial governments.

With strengthened First Nations jurisdiction, First Nations governments can pursue independent revenue streams that increase their government's ability to provide strong government services and infrastructure. First Nations communities across Canada have distinct socioeconomic opportunities and needs. Ensuring a wide range of independent revenue options is

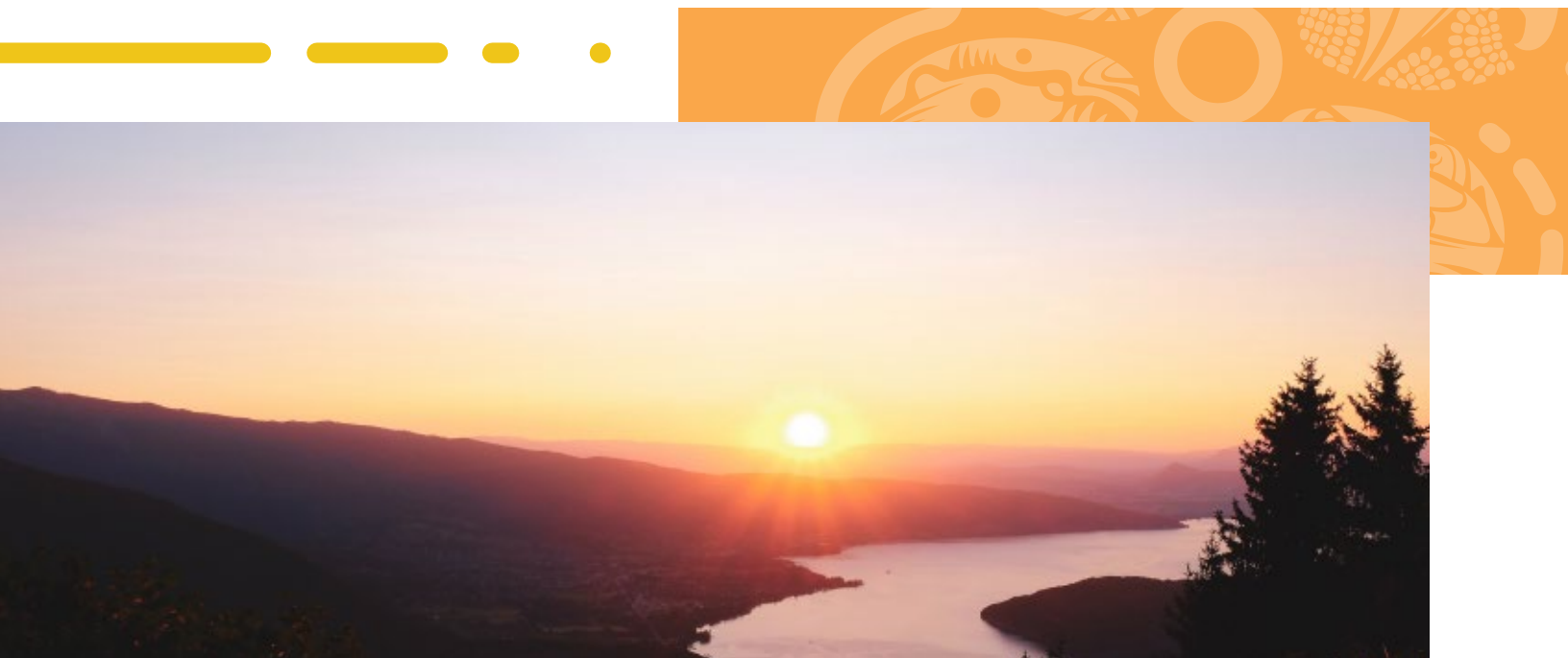


essential to reflect the distinct cultures, fiscal needs, and economic opportunities of each First Nations community. Optionality is a central principle of the FMA. The FMA is committed to advancing the independent revenue sources that First Nations desire to advance their communities. It is local First Nations leaders and rights holders that will choose the independent revenue sources that meet their needs.

Some of these options could include:

- **First Nations goods and services tax**
- **First Nations carbon tax**
- **First Nations payroll charge on reserve lands**
- **Expanding gaming revenues**
- **Hunting and fishing fees on traditional territories**

Tax coordination will be very important as First Nations assume greater tax jurisdiction. First Nations' taxation powers will only work if other levels of government vacate the tax space, preventing double taxation. This vacated space could include the FACT taxes, taxes on resource development, carbon tax, or the other sources of independent revenue discussed above.



Other governments must vacate space to ensure a strong economic and investment climate within First Nations jurisdiction. When the federal and provincial/territorial governments vacate this space, they should not expect that First Nations' taxes will remain the same. First Nations can use their jurisdiction to meet their expenditure needs and ensure a vibrant business environment. As First Nations jurisdiction is advanced, it is imperative that First Nations law takes precedence within these jurisdictions. As tax coordination is undertaken, there must be a recognition of the current and historical wrongs that contributed to the lower socio-economic conditions that many First Nations communities currently face (steps to address this will be evaluated in Phase 2 – Fiscal Reconciliation, which establishes a structure for First Nations equalization).

LEGAL FRAMEWORK

For expanded jurisdiction and fiscal powers to be successful in the long-term, there must be a strong legal framework that provides certainty and confidence. Legislation will be required at the federal, provincial/territorial, and First Nations levels.

Several provincial governments have identified Indigenous reconciliation as a priority. As discussed in Phase 1, provincial and territorial governments can take meaningful steps toward reconciliation through

revenue sharing of their FACT sales tax. Legislative changes will be required for each provincial/territorial government to implement this tax sharing. The FNTC can serve as a professional advisor to First Nations interested in pursuing this type of revenue-sharing agreement with provincial/territorial and federal governments.

A legal framework will also be necessary at the First Nations government level. Two types of First Nations laws will be required. First is the passing of a Financial Administration Law (FAL), which provides a legal framework for First Nations financial governance and internal financial controls. The FMB can assist First Nations in successfully passing and implementing these FALs. The second type of legislation is expenditure laws, which outline how First Nation funds are to be spent. As First Nations gain greater access to own-source revenues, expenditure laws will play an important role in maximizing the value that First Nations members receive from the expenditures of their First Nations government. The FNTC can provide support to First Nations governments as they pass and implement these expenditure laws.

At the federal level, several legislative changes will be required. First, updates will be required to adjust federal FACT sales and excise taxes to allow for revenue sharing with First Nations. Second are amendments to the

FMA. These amendments will expand the mandate of the FMA institutions to provide the needed capacity supports, professional services, and legal tools to empower First Nations governments.


Key changes to the FMA include:

- **expanded scope for the FNTC to provide supports for expenditures laws associated with the *First Nations Advancement Account (FNAA)*, which will be established to empower participating First Nations to manage their fiscal affairs, and**
- **expansion of scope for FALs to include provisions for financial oversight of new own-source revenues and funds allocated through the FNAA.**

FIRST NATIONS ADVANCEMENT ACCOUNT

Advancing Indigenous economic reconciliation and fiscal autonomy are essential to turning the principles of UNDRIP into reality. The current fiscal relationship, where ISC maintains near total control over transferred funds and programs, will never achieve reconciliation or autonomy for First Nations. A new fiscal framework is needed – one that will ensure First Nations fiscal independence, provide transparency and accountability for monies collected and spent, and provide financial confidence to First Nations members and all levels of government. We propose that the First Nations Advancement Account (FNAA) is the Indigenous-designed solution to achieve fiscal reconciliation and autonomy for First Nations who choose this path forward.

The FNAA will be the financial vehicle to address two key issues. First is to **close the current fiscal gap** faced by First Nations governments, including funding for physical infrastructure, services, administration and jurisdictional autonomy, and local capacities. Closing the fiscal gap will address current and past fiscal injustices faced by First Nations and remove barriers that hold First Nations communities back. These changes will require additional fiscal resources from




A new fiscal framework is needed – one that will ensure First Nations fiscal independence, provide transparency and accountability for monies collected and spent, and provide financial confidence to First Nations members and all levels of government.

the federal government to First Nations and the measuring of community well-being outcome metrics over time – metrics that reflect Indigenous cultural values. The role of the FNAA in fiscal reconciliation will be discussed further in section Phase 2 – Fiscal Reconciliation.

Second, the FNAA will play an important role in **advancing the long-term fiscal autonomy** of First Nations. Currently, most transfers from the federal government to First Nations flow through ISC. The federal department maintains significant control over how the funds are spent and often dictates how programs are to be run. Federal control over local First Nations' programs results in inefficiency, ineffective programs, and limited self-determination for First Nations.

The FNAA framework will take a different approach, where funds are transferred directly from the Department of Finance Canada (Finance Canada) to a First Nations government. Each First Nations



government will maintain its own FNAA – with funds transferred directly from Finance Canada to the First Nation through their distinct FNAA. The role of the FNAA in fiscal autonomy will be discussed further in section Phase 3 – Fiscal Autonomy. Every First Nations government in Canada will have the option to participate, if they choose, in the FNAA pathway.

The process for how First Nations would pursue the FNAA are as follows:

- 1. Each Nation who opts-in will request to be scheduled to the FMA and will agree to have the previously discussed metrics evaluated for their Nation through the FMA Statistical Initiative – both initially and then annually going forward.**
- 2. Nations will commit to a FAL with the support of FMB, along with a committed timeframe for implementing this law.**
- 3. Each First Nations government will develop a five-year financial plan (a key component of the FAL), which will involve local community consultation and reflect the local needs and desires of the community, and will establish annual budgets based on the plan.**


With the above structure in place, the FNAA will be the vehicle to advance both fiscal reconciliation and fiscal autonomy. This new fiscal framework will be supported by the FMA framework that provides assurance over the internal financial controls and financial governance of the First Nations government. This ensures that First Nations governments have the capacities to deliver quality services and infrastructure for their communities to thrive.

ADVANCING FIRST NATIONS CAPACITIES

Assuming full control of jurisdiction and fiscal powers requires a heightened level of local capacity and training. This capacity will provide confidence to First Nations members and other stakeholders that new fiscal powers will be utilized in a way that benefits the community. The FMA institutions and their partner organizations have structures in place to support First Nations, develop capacities, and mitigate risks associated with the transfer of fiscal powers from the federal government to First Nations governments.

As new revenue sources and jurisdiction are obtained, First Nations members will want to ensure that this revenue is spent in a way that benefits the community. This can be accomplished by the First Nation passing an expenditure law, which outlines how the funds are to be spent. The FNTC can provide support to First Nations governments in developing these expenditure laws, and in creating policies that First Nations staff can follow in bringing the expenditure law to life.

The First Nations Infrastructure Institute (FNII) can assist First Nations in developing life-cycle capital plans that will meet the long-term capital needs of the Nation. Life-cycle plans consider items such as new capital/infrastructure purchases, ongoing repairs and maintenance, asset replacement costs, as well as cash flow and financing requirements to meet the ongoing infrastructure needs of the community. In coordination with the FMB, an infrastructure project certification can be provided to reduce the risk of infrastructure failures and provide confidence to First Nations members and other stakeholders that capital dollars spent will add real value for First Nations communities.

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- **The FNAA will be the vehicle to advance both fiscal reconciliation and fiscal autonomy.**

The FMB also has a significant role in advancing the financial governance capacities and internal financial controls of First Nations governments. The FMB has established financial management system standards, which are a series of best practices for sound financial governance for First Nations governments. Participating First Nations can enact a FAL, which enshrines these best practices in the First Nation's own legal structure. The FMB provides capacity supports for First Nations staff and elected leadership to bring their FAL to life, and provides a Financial Management System (FMS) certification, which certifies that the FAL is being followed. A component of a FAL requires that a Nation obtain an annual audit of their financial statements, and that an Annual Report is presented to the membership of the Nation. This process provides members with the highest confidence in the financial administration of the First Nation, offers assurances for other stakeholders, and creates an atmosphere of trust and accountability.²¹

The First Nations Finance Authority (FNFA) provides financing services to First Nation governments as well as advisory services for First Nations governments and staff. These advisory services can inform First Nations about the potential benefits of FNFA's low-rate loans and how these loans can benefit their communities.

Likewise, the Tulo Centre of Indigenous Economics provides university-accredited programs tailored specifically to First Nations governments and administrations. Examples of Tulo's programs include certificate programs in First Nations Tax Administration, Applied Economics, and Lands Management, to name a few.²²

Each of the FMA institutions and affiliated organizations plays a vital role in advancing the local capacities of First Nations governments. To summarize, Table 1 reviews the proposed new revenue sources, the needed legal structure, and how the FMA institutions will support this new fiscal arrangement.

Table 1: Summary of the Fiscal Foundation

New Revenue Sources	Legal Framework	FMA Capacity Supports and Risk Reduction
<ul style="list-style-type: none"> • Hunting and fishing fees on traditional territories • First Nations payroll charge on reserve lands • Expanded gaming revenues • Federal FACT sales tax sharing • Federal FACT excise tax sharing • Provincial sales and FACT tax sharing • First Nations Resource Charge (FNRC) • First Nations goods and services tax • First Nations carbon tax 	<ul style="list-style-type: none"> • Amendments to the FMA • Updates to federal laws governing federal FACT sales and excise taxes • Updates to provincial and territorial laws governing FACT sales tax • At the local First Nations level: <ul style="list-style-type: none"> - Passing or updating a local FAL - Passing or updating a local expenditures law - Opting into the First Nations Advancement Account (FNAA) 	<ul style="list-style-type: none"> • FNTC: supports in developing expenditure laws • FNII: assists in developing life-cycle capital plans and providing capacity supports for First Nations capital managers • FMB: provides capacity supports to advance financial governance and internal financial controls, and certifies Nations' Financial Management Systems (FMS) • FMB: certifies infrastructure projects • FNFA: provides financing and advisory services to support informed borrowing decisions • Tulo: provides university-accredited programs to advance the administrative capacities of First Nations governments

It is important to pause here and recognize the shift that is taking place. It is the First Nations governments themselves that would pass the expenditure law and capital plans, outlining how the Nations' funds are to be spent. Clear and transparent financial reporting would take place with direct reporting back to the members of the First Nation as described in the First Nation's FAL. The federal government's role is greatly reduced in this process as capacity, transparency, and accountability are significantly improved and focused on those most impacted by the First Nations' decisions. Both the revenues and expenditures would be fully controlled by the First Nations government, answerable to the First Nation's membership and, as appropriate, other impacted constituents. This is fiscal autonomy – First Nations controlling their own destiny, free from interference from other governments. The goal of fiscal autonomy can only be achieved once a solid foundation is laid. This foundation requires new revenue sources, a sound legal structure, assurances for quality service delivery, and the advancement of local First Nations capacities. The FMA institutions will build up capacity and establish a risk-managed system that provides confidence to First Nations members, stakeholders, and other levels of government.

Before we reach full fiscal autonomy, it is necessary to address the need of fiscal reconciliation.

Phase 2 – Fiscal Reconciliation

The second phase on the RoadMap to self-determination is fiscal reconciliation. Significant gaps exist between non-Indigenous and Indigenous communities,^{23 24} especially in the areas of 1) physical infrastructure, 2) services, 3) administrative and jurisdictional autonomy, and 4) local capacities. These gaps must be addressed, as they are major contributors to the social and economic inequality that First Nations peoples face (note that Phases 1 and 2 are not mutually exclusive, and progress will be made in both phases at the same time as First Nations advance toward self-determination).


FOUR GAPS AND RELEVANT METRICS

Objective metrics will be established to measure and track these gaps – both initially and in future years to evaluate whether the gaps have been sufficiently addressed. As discussed in Chapter 2, the FMA Statistical Initiative will play a key role in advancing data and statistics for the benefit of First Nations. The metrics to evaluate these gaps are prime examples of the importance of the FMA Statistical Initiative and the practical benefits that the initiative will provide.

Chapter 3 discussed the challenges that First Nations face in advancing **physical infrastructure** within First Nations communities. This can include items such as community buildings, housing, roads, water and sewer infrastructure, and information communications technology infrastructure, to name a few. Closing the physical infrastructure gap will seek to bring First Nations infrastructure to levels comparable with non-Indigenous communities, as well as ensuring comparability among First Nations communities. Specific metrics include financial investment in physical infrastructure (e.g., monies invested per financial statements), residential housing conditions, as well as physical counts of owned assets (e.g., number and square footage of properties and houses or physical measure of roads/water/sewer infrastructure). Comparable metrics could be evaluated against other participating First Nations, as well as other local governments.

The **services** available in First Nations communities are often much more limited compared to non-Indigenous communities. Public sector services may include healthcare, educational and training opportunities, or social services. Access to private sector services such as financial services, retail options, and specialized contractor services (e.g., certified tradespeople or technicians) may also be limited.²⁵ Gaps in both public and private sector services perpetuate ongoing social inequality and restrict the ability to advance local Indigenous economies. Public sector services could be evaluated via per capita funds available for these services that are adjusted to reflect local purchase price parity, as well as on-the-ground accessibility to such services (e.g., wait-times for health services, local educational program opportunities, variety of community services available, or accessibility of local social services). Metrics that reflect wellbeing from an Indigenous perspective will be emphasized. Living by traditional practices and active use of Indigenous language are a critical aspect of Indigenous wellbeing, which are linked to community-level services and programs. One such metric that could be evaluated is the percentage of the population with knowledge of Indigenous language.

An accessibility metric for private sector services can also be developed. This metric could identify service deficiencies and opportunities for First Nations to work together and develop regional businesses to meet service needs (these types of opportunities will be explored further in the next chapter of the RoadMap).



The **administrative and jurisdictional autonomy** gap hinders the ability of First Nations governments to advance their communities and economies. This gap underlies the content and purpose of this chapter of the RoadMap and is central to self-determination. Many First Nations do not have the full ability to make decisions about revenue collections, expenditures, and even day-to-day administrative tasks.

Possible metrics to evaluate this deficit include:

- **percentage of own-source revenue (compared to total revenue)**
- **percentage of expenditures that fall under the First Nation's expenditure laws (compared to total expenditures)**
- **total number of decisions that require approval from the federal government**

The final gap is **local capacities**, which includes capacities within the local First Nations government and general educational capacities in First Nations communities. The earlier section of Phase 1 – Fiscal Foundation discussed in detail the importance of local First Nations government capacities, and how these are needed to advance fiscal autonomy. The FMA institutions can play a significant role in advancing these capacities. A second component here is advancing the formal educational levels of First Nations communities (potential metrics for evaluating First Nations government capacities and formal education are listed in Appendix A).

ROLE OF THE FIRST NATIONS ADVANCEMENT ACCOUNT (FNAA) IN RECONCILIATION

During the reconciliation phase, the FNAA will be the financial vehicle to close the four gaps of physical infrastructure, services, administrative and jurisdictional autonomy, and local capacities. In Phase 1 we introduced the FNAA, which would serve as the vehicle for new revenues and transfers to be allocated to First Nations. In the fiscal reconciliation phase, federal funds would

Every First Nation government in Canada will have the option to participate, if they choose, in this pathway to self-determination and have their own FNAA.

be allocated to the FNAA to close gaps in First Nations physical infrastructure, services, administrative and jurisdictional autonomy, and local capacities. The federal government and some provincial governments have committed to the principles of UNDRIP. The FNAA is the practical means to actualize this commitment.

Every First Nation government in Canada will have the option to participate, if they choose, in this pathway to self-determination and have their own FNAA. The federal government, and willing provincial/territorial governments, will contribute funds to each specific First Nation's FNAA to achieve fiscal reconciliation – which could be based on the reconciliation metrics discussed in the section “Four Gaps and Relevant Metrics.”

Why will the FNAA structure succeed when previous attempts at reconciliation have failed? First, clearly defined metrics will be used to evaluate progress on achieving fiscal reconciliation. These will be tracked initially and annually thereafter. Second, participating First Nations will pass and implement a FAL, which strengthens the financial governance and internal financial controls of the First Nations' administration. This reduces the risk of financial missteps and provides confidence to First Nations members and stakeholders that funds will be spent for the benefit of the community. Third, each First Nation will be directly involved in developing the reconciliation plan and will pass a corresponding expenditure law and budget. Having direct local involvement in setting priorities can strengthen local buy-in²⁶ and support for the reconciliation plan. Fourth, the federal government (and willing provincial/territorial governments) will have confidence that the funds are spent in an effective manner to close the fiscal and economic gaps.

Fiscal reconciliation is not just about mending past and current wrongs; it is about setting up First Nations for success in the future. Ensuring strengthened local capacities, quality physical infrastructure, services, and jurisdiction/administration autonomy will strengthen socioeconomic conditions for First Nations and facilitate economic growth. Greater economic opportunities will provide First Nations with more options as they pursue fiscal autonomy. Private businesses will be more willing to invest in First Nations jurisdictions when there are sufficient roads, water/sewer lines, and high-speed Internet utilities.²⁷ Improved roads will reduce the cost of transportation, improved water/sewer lines will enable a larger workforce within First Nations communities, and high-speed internet will allow businesses to stay connected and productive in a digital age. These are just a few examples of how improved infrastructure will draw in private investment

and economic development for First Nations. Also, skilled employees will be more willing to move to First Nations jurisdictions when public and social services enable a higher quality of life.

With a strengthened economic and business climate, there will be greater revenues available from the proposed FNRC, hunting and fishing user fees on traditional territories, tax revenues from the federal FACT sales and excise taxes, and revenues from provincial FACT sales tax-sharing agreements. Stronger economies provide greater opportunities for First Nations-controlled revenue sources, which is essential to self-determination. Fiscal reconciliation will enable fiscal autonomy to become a reality. As the four gaps are closed, First Nations will continue on the RoadMap towards self-determination.



Phase 3 – Fiscal Autonomy

Fiscal autonomy is critical to self-determination. Phase 1 lays the foundation for fiscal autonomy and Phase 2 bridges the gaps that restrict First Nations' socioeconomic progress. Phase 3 takes the crucial step where First Nations assume full control of their fiscal futures.

With the foundation laid and significant progress made on reconciling current socioeconomic gaps, First Nations will be in a strong position to negotiate a transfer of fiscal responsibilities. This would remove the federal government from setting priorities and conditions over First Nations fiscal activities. ISC would not play a role, as First Nations would control a larger portion of their own revenue sources, such as taxation, the FNRC, and profits from Nation-owned businesses, etc. First Nations would also receive an annual transfer directly from Finance Canada – free from any federal oversight.

Own-source revenue, as discussed in Phase 1, will become a larger portion of First Nations' total revenue. Phase 2 provides for a much stronger economic and business climate that will draw in new investment,

businesses, and in-community sales. This will boost First Nations revenues through their share of federal FACT sales and excise taxes, provincial sales taxes, the FNRC, and profits from Nation-owned businesses. Stronger economies lead to greater own-source revenue potential, which supports fiscal autonomy.

Another especially important shift will be the removal of ISC from First Nations fiscal operations. ISC's stated mandate is to "improve access to high-quality services, improve well-being in Indigenous communities...and support Indigenous peoples in assuming control of the delivery of services at the pace in the ways they choose."²⁸ Ceding greater control to First Nations governments is likewise a key feature of ISC's and CIRNA's departmental plans, as well as the Prime Minister's 2021 Letter to the Minister of ISC.



With Canada finally beginning to recognize First Nations' inherent right to self-determination, First Nations must also have the means to achieve greater self-determination. This means fiscal control. With direct transfers from Finance Canada, the federal government will have no influence over fiscal expenditures or priority setting. Decision-making will be up to First Nations governments, which will pass their own expenditure laws and budgets to ensure that government funds are efficiently spent for the benefit of their community and, as appropriate, other interested stakeholders.

The removal of ISC will be enabled through the FNAA framework, with each participating First Nation maintaining their own FNAA. This process empowers First Nations autonomy over their fiscal affairs and provides an Indigenous framework to ensure financial transparency. Expanded own-source revenues and FNAA transfers from Finance Canada would be allocated to each First Nation's FNAA to be spent according to the Nation's expenditure law.

Progress along the three phases to self-determination will result in First Nations making decisions for themselves. First Nations that choose this path will build a strong foundation that bolsters their financial governance, internal financial controls, and capacity to manage their own fiscal affairs. Stronger economies will result in greater own-source revenues that First Nations can control for the benefit of their community.

The federal government will have confidence that funds transferred directly from Finance Canada to First Nations governments will be spent for the benefit of First Nations communities. This confidence comes from the solid foundation that was laid in Phase 1, including: strengthened capacities for First Nations administrations, the passing of First Nations FALs that bolster financial governance and internal controls, and the passing of First Nations expenditures laws that outline how First Nations decide to budget and spend their own funds.

Each First Nations government, if they choose, would have the ability to negotiate a fiscal autonomy agreement under the FMA framework. This agreement would outline other possible tax jurisdictions that First Nations may seek to pursue, as well as formulas for how the transfer from Finance Canada will be calculated. These formulas could ensure comparability between Indigenous and non-Indigenous Canadians in level of services and infrastructure within their geographic regions. Any such agreements would require the consent of each First Nations government and would provide a pathway for First Nations to reach fiscal autonomy.

Table 2 summarizes these three phases to self-determination and paints the RoadMap for how First Nations can attain fiscal autonomy through the FMA framework.

Table 2: RoadMap to Self-Determination – Summary of Phases

New Revenue Sources	Legal Framework	FMA Capacity Supports and Risk Reduction
<ul style="list-style-type: none"> • New own-source revenues <ul style="list-style-type: none"> - First Nations Resource Charge (FNRC) - Hunting and fishing fees on traditional territories - First Nations payroll charge on reserve lands - Expanded gaming revenues - Federal FACT sales/ excise taxes sharing - Provincial sales and FACT tax sharing - First Nations goods and services tax - First Nations carbon tax • Establish a legal framework to achieve First Nations fiscal autonomy, including at the federal, provincial/ territorial, and First Nations level – including the establishment of the FNAA • The FMA institutions will support First Nations to advance their capacities in the following areas: <ul style="list-style-type: none"> - Developing expenditure laws and budgets - Passing FALs and implementing these through sound financial policies - Developing life-cycle plans, training for capital asset managers, and certifying capital projects 	<ul style="list-style-type: none"> • The need to close four deficits to attain fiscal reconciliation, along with metrics to track progress, including: <ul style="list-style-type: none"> - Local capacities and formal education - Physical infrastructure - Services - Administrative and jurisdictional autonomy • Role of the FNAA and why this framework will enable reconciliation: <ul style="list-style-type: none"> - Objective metrics will measure progress on closing gaps - Nations will pass FALs to ensure strong financial governance - Nations will develop their own reconciliation budget and expenditure law - First Nations members, the federal government, and other stakeholders will have confidence that funds are spent effectively to close fiscal gaps • Will establish a strong economic and business climate – setting up First Nations for long-term success 	<ul style="list-style-type: none"> • Fiscal autonomy is enabled by the foundations laid in Phase 1 and the strengthened economic climate in Phase 2 • Key shifts in revenue sources for First Nations: <ul style="list-style-type: none"> - First Nations have a much larger portion of own-source revenues - The removal of ISC – all federal transfers come directly from Finance Canada to First Nations governments, empowered by the FNAA framework • The expanded FMA framework will provide strong financial governance and confidence to First Nations members and stakeholders; the FNAA will be an effective Indigenous vehicle to achieve fiscal autonomy and strong financial oversight • First Nations are in control of their own fiscal priorities and futures



CONCLUSION

- Under the FMA framework, First Nations governments can choose a new path forward — a RoadMap to fiscal autonomy and self-determination.



FIRST NATIONS HAVE THE INHERENT RIGHT TO FISCAL SELF-DETERMINATION. This can become a reality when jurisdictional rights are clearly defined and fiscal capacity enables financial freedom for First Nations governments. Both jurisdictional rights and fiscal capacity empower First Nations governments to choose their own path forward. Fiscal means is about having the freedom and ability to choose what revenues will be collected to meet the First Nations' needs and the ability to spend these funds without interference from external forces. Underpinning all of this is a durable foundation where First Nations governments have the capacities and financial governance in place to effectively manage their own fiscal affairs.

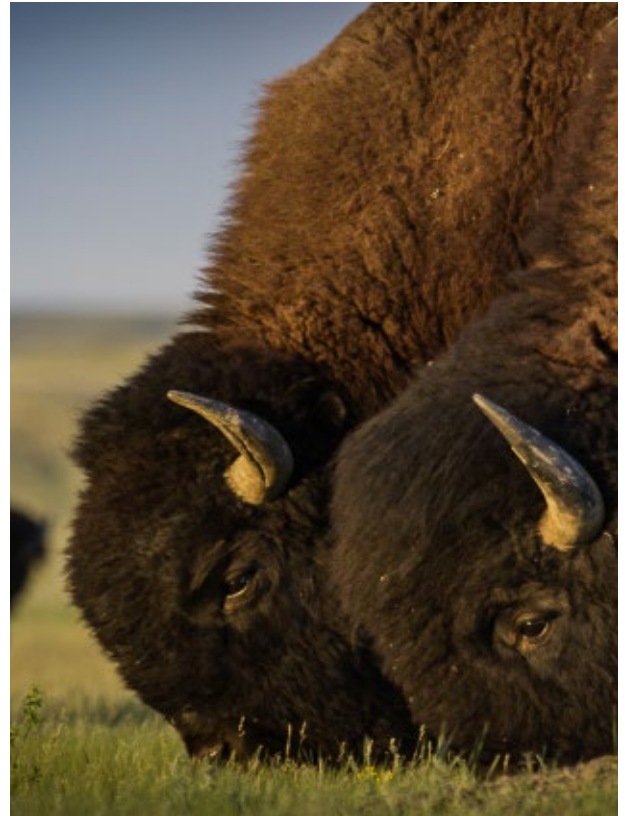
Under the FMA framework, First Nations governments can choose a new path forward – a RoadMap to fiscal autonomy and self-determination. This new vision lays the foundation for fiscal independence, advances First Nations economies for long-term success, and empowers First Nations fiscal autonomy.

This RoadMap offers many practical benefits, such as:

- **reducing the scope of federal government involvement in First Nations' lives**
- **enabling economic development and improved services**
- **reducing the overall cost of government**
- **supporting improved services, infrastructure, and quality of life**

The path forward begins with the development of new revenue options for First Nations. First Nations governments would have the choice to adopt, at their preference, among potential new revenue streams. These could include revenue sharing on the federal FACT sales tax and excise tax. Similar revenue-sharing agreements could be made with provincial and territorial governments. Another innovation is the FNRC, which would include a codified financial charge for projects and development on First Nations reserve lands and traditional territories. This would provide an important revenue source for First Nations governments and establish a more stable environment for future business development.

New revenue options can be adopted by using the already proven FMA framework. This framework utilizes a FAL and expenditures law. Each First Nation would have their own FNAA, with new revenues being allocated through this account. The First Nation's FAL would provide strong financial governance and internal financial controls, and the expenditures law would establish how the First Nations government would spend these funds. Decisions about how the funds are to be spent are made locally – a tenet of true fiscal autonomy.



The path forward begins with the development of new revenue options for First Nations. First Nations governments would have the choice to adopt, at their preference, among potential new revenue streams.



The FMA institutions can provide professional support and capacity development to support First Nations on their path to fiscal autonomy. The FMB and FNTC would provide supports as First Nations governments develop and implement their FALs and expenditures laws. FNII would provide capacity and planning supports for capital projects and long-term life-cycle capital plans. The FNFA maintains the expertise to provide financing and advisory services to First Nations that can benefit from its low-cost financing options. The FMA institutions know that strong local capacities are essential to First Nations success and are committed to building up these capacities in the long-term term.

The RoadMap to fiscal self-determination lays a strong foundation for First Nations success. This approach will enable fiscal reconciliation, which sets up First Nations for long-term success and lasting fiscal autonomy. One of the most important shifts to take place is the removal of ISC from First Nations' fiscal operations. Any funds received from the federal government would be a direct transfer from Finance Canada to First Nations governments. This establishes a new fiscal relationship - one that is Nation to Nation and free from interference. First Nations can finally be free from federal control over their fiscal operations. The FMA institutions invite all First Nations to join on this path to fiscal self-determination.



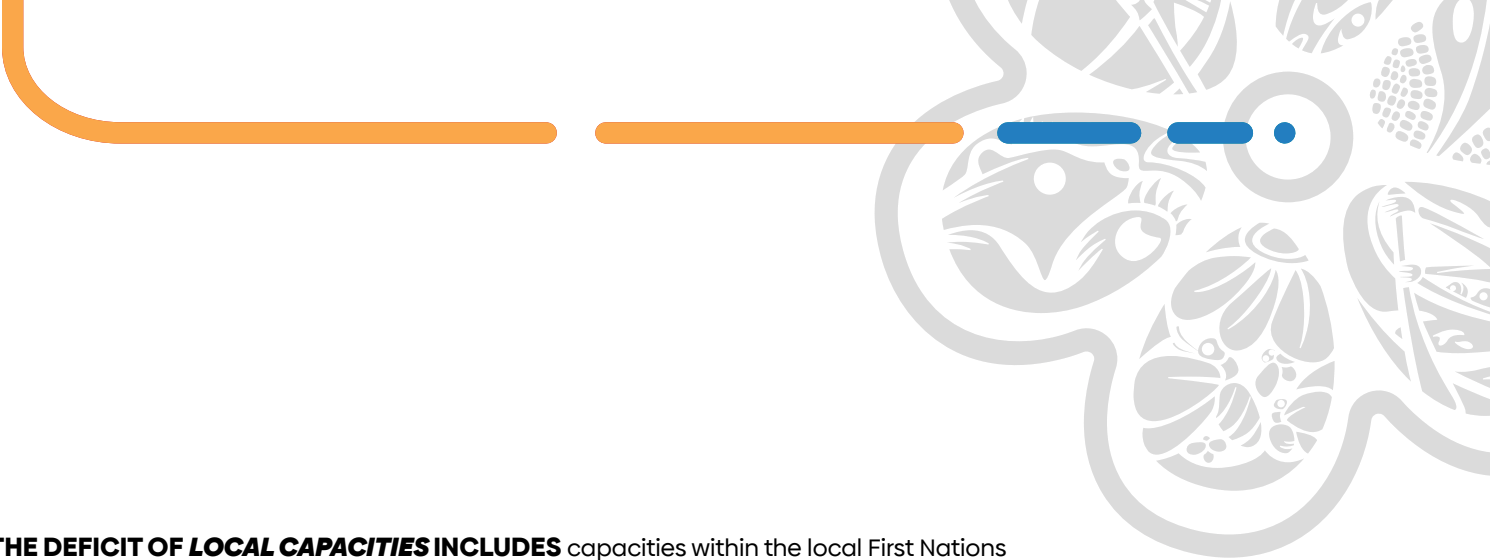
CONCLUSION





APPENDIX






THE DEFICIT OF LOCAL CAPACITIES INCLUDES capacities within the local First Nations government and general educational capacities in First Nations communities. The earlier section of Phase 1 – Fiscal Foundation discussed in detail the importance of local First Nations government capacities, and how these are needed to advance fiscal autonomy. A second component here is advancing the formal educational levels of First Nations communities.

Below are potential metrics for evaluating First Nations government capacities and formal education:

- **Metrics to evaluate First Nations government capacities:**
 - First Nation's achievement of a Financial Management Systems Certification through the FMB
 - Number of infrastructure projects of each First Nation that have received an infrastructure certification
 - First Nation's senior management:
 - Percentage who have earned relevant degrees, designations, or certifications
 - Years of work experience relevant to their current position
 - Years employed at the First Nations government and in their current position
- **Metric to evaluate the community's formal education levels: the Education Index (as defined by Statistics Canada) that measures average formal education levels in First Nations communities**

REFERENCES

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1. First Nations Tax Commission, "Backgrounder: First Nation Taxation, the First Nations Tax Commission, and the *First Nations Fiscal Management Act*. 1, https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/economic-development/learn-from-experts/webinars/2020-09-fnta/handout-fma_background-20200915.pdf
 2. *Ibid*, 1.
 3. *Ibid*, 1.
 4. *Ibid*, 1.
 5. *Ibid*, 1.
 6. *Ibid*, 2.
 7. Tulo Centre of Indigenous Economics, *Building a Competitive First Nation Investment Climate*, first edition. 2014. 150, <https://www.tulo.ca/textbook>.
 8. *Ibid*, 8.
 9. *Ibid*, 8.
 10. *Ibid*, 8.
 11. *Ibid*, 145.
 12. *Ibid*, 151.
 13. Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (RCAP): Volume 2 – Restructuring the Relationship. Ottawa; 1996.
 14. First Nations Financial Management Board, *First Nations Revenue Source Research*, final report. , 2020, 10, https://fnfmb.com/sites/default/files/2020-11/2020-10-16_fmb_first_nations_revenue_research_report_en.pdf.
 15. Section 91(24) *British North America Act*.
 16. Robert Fligg, Derek Robinson, "Reviewing First Nation Land Management Regimes in Canada and Exploring Their Relationship to Community Well-being," *Land Use Policy*, Vol. 90, 2020: 4.

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17. Canadian Association of Native Development Officers, Canadian Council for Aboriginal Business, Indigenous Works, National Aboriginal Capital Corporations Association, *National Indigenous Economic Development Board, National Indigenous Economic Strategy*, 2022, 24, https://niestrategy.ca/wp-content/uploads/2022/05/NIES_English_FullStrategy.pdf.
 18. Department of Justice Canada, *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act*, 2022, <https://www.justice.gc.ca/eng/declaration/index.html>.
 19. Tulo Centre, *Building a Competitive First Nation Investment Climate*, 37-68, <https://static1.squarespace.com/static/5f32d90f7ffc124f3a797d0f/t/5f516622f346266a51f0c555/1599170105892/tulotextbook.pdf>.
 20. First Nations Tax Commission, "Overview: Regulatory Frameworks," 2020, <https://fntc.ca/overview-section83-fma/>.
 21. First Nations Financial Management Board, "Services," First Nations Financial Management Board, 2022, <https://fnfmb.com/en/services>
 22. Tulo Centre of Indigenous Economics, "Home," Tulo Centre of Indigenous Economics, 2021, <https://www.tulo.ca/>
 23. Belayet Hossain, Laura Lamb, "Economic Wellbeing of Canada's Indigenous People," in Christopher Fleming, Matthew Manning (eds), *Handbook of Indigenous Wellbeing*, 2018, Abingdon, UK: Routledge Publishing.
 24. Steward Clatworthy, "Housing Needs in First Nations Communities," *Canadian Issues/Themes Canadiens*, Winter, 2009, 19-24.
 25. James Brown, Anthony Cookson, Rawley Heimer, "Growing Up Without Finance," *Journal of Financial Economics*, Vol. 134, 2019, 3, 591-616.
 26. Ian Peach, Merrillée Rasmussen, "Federalism and the First Nations: Making Space for First Nations' Self-Determination in the Federal Inherent Right Policy," *Commonwealth Law Bulletin*, Vol. 31, 2005, 1, 3-18.
 27. Tulo Centre, *Building a Competitive First Nation Investment Climate*, 177-206.
 28. Indigenous Services Canada, *Strategic Plan 2020 to 2025*.





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