

**ROYAL COMMISSION ON
ABORIGINAL PEOPLES**

**MAKING FINANCE FIT:
FUNDING ARRANGEMENTS
for
ABORIGINAL GOVERNMENTS**

by

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and

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* This paper evolved from workshop discussions on the topic. For their contributions we wish to thank Frances Abele, Katherine Graham, David Hawkes, Dwight Herperger, Alex Ker, and Donovan Young. We also thank three external referees for their comments and suggestions.

Executive Summary

As new forms of Aboriginal government emerge and evolve there is a growing need to consider the types of financial arrangements which might most effectively support them. To this end, this paper addresses the nature of the fiscal regimes which might provide the best "fit" for particular forms of Aboriginal governments.

The discussion begins with an examination of government forms. Three primary types of Aboriginal government have been articulated by the Royal Commission on Aboriginal peoples in its work in the area of governance. These are Nation-Based models, Public Government models, and Community of Interest models. While these models are not intended to preclude the existence, evolution, or emergence of different types of Aboriginal government, the variations possible within these three broad categories cover many of the forms of Aboriginal government likely to be functioning in the foreseeable future.

Nation-Based government models derive from the existence of Aboriginal "nations" with well defined land bases. These governments exercise broad powers flowing from their peoples' inherent right of self-government. Public Government models provide for the realization of the right of self-determination through Aboriginal-controlled governments representing all residents of a particular region or territory, whether Aboriginal or not. Finally, Community of Interest models are primarily defined not by nationhood or territory, but by the voluntary association of Aboriginal people with common needs and interests arising out of their Aboriginality. Community of Interest models might encompass single purpose governments, non-profit agencies performing one or more governmental functions, and institutions involved in the provision of services to non-land-based and/or urban Aboriginal peoples.

The paper then provides a discussion of guiding principles for financing Aboriginal government. More specifically, the discussion revolves around how the principles of equity, accountability and democratic control, and efficiency and growth might shape the design of financial arrangements to meet the needs of particular Aboriginal governments.

The separate discussions of models and principles are then married in a discussion of how particular sources of funding - own-source revenues, transfers, and funding from treaties and land claims - and the funding instruments which comprise them, might combine to form a fiscal regime compatible with a government form. For own-source revenues, the focus is primarily on the feasibility and practicality of particular instruments. For transfers and funding from treaties and land claims, the discussion is more focused on the compatibility of particular funding arrangements with each of the three model types.

This approach leads to a number of general observations. These are generalizations and do not purport to take into account the myriad of possible exceptions and variations based on the individual circumstances of individual governments.

The analysis concludes that for Nation-Based models of Aboriginal government, all three sources of funding are compatible. Any or all of the financial instruments discussed could conceivably make up a compatible fiscal regime; the possible designs for financial arrangements are therefore numerous and varied. In general, we might expect unconditional transfers to comprise the major element of the fiscal regime, given likely limits on the levels of own-source revenues that could be generated, at least in the short term, and assuming that many Nation-Based models would not be eligible for funding from treaties and land claim

settlements. Unconditional transfers are more compatible with the source and scope of Nation-Based government authority than are conditional transfers.

For Public Governments there would also be a broad range of funding sources and instruments available. Unlike the Nation-Based models, however, they do not have the potential to receive funding from treaties and land claims, generally because they do not constitute an Aboriginal-exclusive government. For Public Government models a fiscal regime would likely be most compatible with funding from transfers and own-source revenues. Unconditional transfers, property taxes and income taxes might be particularly relevant instruments, though the potential for different funding instruments to yield significant revenues would need to be determined on a case by case basis.

Finally, for Community of Interest models the potential elements comprising a fiscal regime are more limited. Depending on particular circumstances, there might be fewer viable own sources of funding, transfers would more likely be conditional, and funding from treaties and land claims would rarely be an option. A compatible fiscal regime for Community of Interest models would likely rely in most cases on program-conditional transfers, supplemented perhaps by some own-source revenue generated, for instance, from user fees.

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I. INTRODUCTION

A major issue in the establishment of autonomous Aboriginal governments is the design of financial arrangements to support them. Canadian governments currently spend substantial sums to provide services and support to Aboriginal communities and individuals, and it is clear that expenditures of this order of magnitude will continue for the foreseeable future. However, as new forms of Aboriginal governments emerge, the structure of these expenditures will have to change. The purpose of this paper is to examine what these new arrangements might be, that is, to discuss how Aboriginal government can best be financed. The focus of this paper is entirely on the structure of financial arrangements; it does not deal with the actual cost of these arrangements.

It is our thesis that financial arrangements appropriate to each form of Aboriginal government are essential to its success. The fiscal regimes must support the intent of the government models if the governments that emerge are to be up to the tasks for which they are designed. In other words, it is not only the amounts of money, but also how these resources become available to Aboriginal governments, that will determine their success.

In the remainder of this introductory section we briefly outline general principles of public finance which may be applicable to the context of Aboriginal government finance. The

next section sketches generic models of Aboriginal government for which financial arrangements need to be developed. In the third section we return to government finance and develop principles that are more specific to and focused on Aboriginal governments. Sources of funding and their applicability to the government models are developed in the fourth section of the paper. The final section brings together the bundles of financial arrangements that might apply to each government form and draws some general concluding observations.

The two overarching principles of public finance on which financing arrangements are based are efficiency and equity.¹ These principles apply both to funding that governments raise themselves (own-source revenues) and to resources that are transferred from one order of government to another.

In the case of own-source revenues (e.g., taxation, user fees) there is a narrow and a broad sense in which efficiency is important. Narrowly constructed, concern with efficiency is about minimizing the costs incurred to raise revenues. Costs of tax administration (incurred by governments to collect and enforce the tax) and of compliance (costs incurred by taxpayers) eat up a large portion of the revenues collected if the tax is poorly designed, poorly administered, or levied by a government that is ill positioned to collect it.

In the broader sense (which subsumes the narrow construction) efficiency is about the effect of the tax on the behaviour of taxpayers (firms and individuals). Virtually all practical forms of taxation will, to greater or lesser extents, affect the incentives facing individuals (and firms), and will thereby alter their economic behaviour, either in their roles as income earners (producers) or as spenders (purchasers of commodities and hirers of labour). Sometimes this effect on behaviour will be inimical to efficiency if the (equilibrium) allocation of resources in

the absence of a tax is efficient. The goal should then be to minimize disturbances resulting from the imposition of the tax. In other circumstances, the tax-induced change in behaviour may promote efficiency and the goal should then be to establish the tax to optimize this desirable change. The efficiency objective affects considerations of tax structure, tax rates, and the determination of the appropriate government or authority to levy and administer the tax.

Efficiency also is a consideration in the design of inter-governmental transfers. In traditional public finance writing, three categories of efficiency considerations are discussed. First, as implied above, if established according to efficiency criteria, the allocation of taxing powers may not correspond to the allocation of expenditure responsibilities between orders of government. There would then be a general requirement for inter-governmental transfers to offset this deliberate mismatch of revenues and expenditure requirements. Efficiency considerations suggest that such a transfer should be entirely unconditional to provide the recipient government maximum flexibility to allocate the money to meet local spending requirements.

A second transfer type is that paid to governments of less well off regions. The Canadian federal-provincial fiscal equalization program is of course, a prime example of this. This transfer program is largely motivated by equity considerations (which we address below). Again, in the theoretical case where this transfer is purely to address regional differences in fiscal capacity, efficiency considerations dictate that these transfers should be unconditional to the recipients.

The final category of efficiency consideration relates to transfers paid to governments to accommodate inter-regional externalities or spillovers, or because of the existence of broader

objectives (national standards) in a particular spending field. In this instance, a conditional transfer would promote efficiency if it induces the recipient government to adjust its spending to take into account the externality or broader policy objectives.

The second overarching principle is equity. While inter-personal equity is of primary concern, policy may also be devised to address inter-regional inequities. This has certainly been true of Canada.

With respect to own sources of revenue, there are two dimensions of equity that are usually invoked. The first, known as the "ability-to-pay" principle, argues that tax equity is to be found in the treatment of individuals according to some comprehensive measure of economic capacity such that people with the same capacity are treated equally by the tax system and people with different capacities are treated appropriately differently.² The second dimension, the "benefit" principle, argues that equity, in some instances, involves individuals being taxed in relation to the public service benefits they enjoy. (It should be obvious that this latter principle closely relates to the efficiency objective.)

Inter-governmental transfers usually pursue equity cast in terms of inter-regional equity or equity between groups of peoples rather than in interpersonal terms. Thus, the government representing a particular people or the government of a region that is relatively poor may receive transfers from the peoples or regions that are relatively well off. This transfer may take place directly between regions (e.g., province to province) or indirectly (e.g., federal government to "poor" provinces). If the objective of these transfers is purely to redress an interregional or inter-group inequity, the transfers should be unrestricted as to the use

governments make of them. It would be inconsistent to make an equity-motivated transfer conditional on particular spending decisions by the recipient governments.

With this very brief overview of some necessary public finance principles, we now proceed to examine potential forms of Aboriginal government, and then how these principles might be used to guide the design of appropriate financial arrangements.

II. MODELS OF ABORIGINAL GOVERNMENT

Self-evidently, Aboriginal government may take many forms, and it is not the intention of this paper to impose limits on the possibilities. Diverse forms of Aboriginal government have and will continue to emerge, based on the unique profiles of individual Aboriginal communities, including their location, capacities and priorities.

This being said, it is exceedingly difficult to discuss generally financial arrangements for Aboriginal governments in any meaningful way unless we place some parameters around the concept of Aboriginal government. To this end, the use of models enables us to address financial arrangements in a manner which makes the discussion both more realistic and more understandable.

The Royal Commission on Aboriginal Peoples, based on its extensive consultations as well as its own internal discussions, has developed three primary models of Aboriginal government, within which a number of possible government forms may be realized. These three models are the Nation-Based Government Model, the Public Government Model, and the Community of Interest Model.³ There are, of course, many variations possible within each model, and collectively, they represent a broad range of possible forms of Aboriginal

government. While they may not account for all possibilities, it is hoped that discussion of financial arrangements in the context of these models can be adapted, as appropriate, to apply to whatever forms of Aboriginal government emerge in the future.

One final remark on the nature of the models is required. The models represent general visions of what Aboriginal governments might look like in the future. They are not, however, intended as "ideals" which might preclude the design and development of other forms of government. In fact, as Aboriginal governments evolve over time in response to the needs and priorities of particular communities, new visions might emerge which challenge our current thinking with respect to the possible "forms" of Aboriginal government.

What follows is a brief overview of the key features which define these three models of Aboriginal government. Generally speaking, these models differ from each other in terms of the origin and scope of their authority, their internal structure and operations, and the ways in which they relate to other governments, whether Aboriginal or non-Aboriginal.

Nation-Based Government Models

The first of the three models of Aboriginal government - the Nation-Based Model - envisions Aboriginal governments being organized on the basis of "nations". There are many ways in which Aboriginal peoples may identify themselves as "nations"; they might define their nation based on historical treaty relations, culture and language, the nature of the land base, or demographics. The different possible bases of nationhood explain the diversity between such "nations" as the Metis Nation of western Canada, the Inuit "nation" with its strong regional alliances, and such Indian "nations" as the Gitksan, Siksika-Blackfoot, Huron, Cree, Mi'kmaq, and Dene nations.

The Nation-Based model of Aboriginal government is fundamentally rooted in the inherent right of self-determination expressed through an Aboriginal-exclusive form of self-government. While many of the features of Nation-Based governments may vary, their key defining feature is their status as "nations". This status is based on a well-defined land base, and government is established on the basis of the inherent right of self-government.

The jurisdiction of Nation-Based models of government extends over an identifiable land base comprised of both exclusively held lands and resources as well as traditional and treaty territories which might be shared with other governments. While full jurisdiction applies to those who are recognized as citizens within the nation as a whole, there might also be memberships or affiliations with particular communities within the nation as part of this model.

Nation-Based models are also distinguished from other models by the nature of government structures, functions and procedures. Under these models, for instance, there is the possibility of one or more government orders or levels within the nation, organized as unitary, federal or confederal nations. These models also provide for the exercise of one or more of legislative, executive (administrative) and judicial functions of government, perhaps at different levels of government within the nation. Internal government procedures may vary considerably between nations.

Intergovernmental relations under Nation-Based models are based on the recognition of inherent Aboriginal government powers and authorities (i.e., law making, law interpretation and enforcement, and administration) by other governments, both Aboriginal and non-Aboriginal. These models conceive of formal nation-to-nation relationships with Canada, either through treaty or through other instruments used to denote an international agreement. They would have

a day-to-day working relationship with Canada, which might take a variety of forms, including contracted service delivery and co-management of traditional lands and resources. Nation-Based models also provide for the possibility of relationships with other Aboriginal governments.

Public (Aboriginal-Controlled) Government Models

The right of self-determination might also be exercised through governing relationships which do not take as their starting point the need for an Aboriginal-exclusive form of government. The Inuit and representatives of the Metis from the northern provincial regions, for instance, have envisioned public governments which would represent all residents of a particular region or territory.

When we speak of these Public Government models, we refer to the leadership and control of a public government by Aboriginal peoples in regions or territories where they constitute a majority of residents. Aboriginal-controlled public governments may also be characterized by many features that would not be found in an equivalent non-Aboriginal controlled public government.

Like Nation-Based models, Public Government models are rooted in Aboriginal peoples' right of self-determination, but this right is expressed through Aboriginal-controlled government rather than Aboriginal-exclusive government. The establishment of public government is viewed not as an act of Aboriginal sovereignty but as an expression of the right of Aboriginal peoples to a government which is accessible, culturally appropriate and responsive to their needs, without relinquishing their ability to establish Nation-Based governments at some point in the future. Public governments may be mandated either by the

federal government (these would include public governments in the Yukon and Northwest Territories), or by the provincial governments (these would encompass public governments established in any of the provinces).

The nature of the lands and citizens over which public governments would preside distinguishes them from other models of Aboriginal government. Aboriginal-controlled public governments are conceived of as territorial-based governments, at the local or regional level, which are determined on the basis of an existing government territorial jurisdiction, or a comprehensive land claims agreement. Citizenship is generally based on residency, including persons of both Aboriginal and non-Aboriginal heritage, with the possibility of certain rights being restricted to those who are Aboriginal and/or those who have resided in the territory for a defined period of time.

In terms of the governments' internal structure and operations, these models assume the presence of one or more orders or levels of public government, with various possibilities for defining the relationship between these governments, and the establishment of legislative, executive and/or judicial branches of government. The use of internal government processes and procedures are similar to those of other governments, with some possible adaptations to respond to the specific governance needs of the citizens. It should be emphasized, however, that the powers and authorities of public governments include legislative capacities beyond those normally associated with non-Aboriginal municipal governments. Furthermore, a regional public government within a province or territory may have jurisdiction over matters normally under the jurisdiction of a provincial or territorial government.

Aboriginal-controlled public governments also differ from Nation-Based governments in the ways in which they relate to other governments. The consent of another Canadian government, for instance, would be required in order to establish a public government, through agreements and enabling legislation, given that the constitution and operation of a public government is not an act of Aboriginal sovereignty. In these types of models, there is also the possibility that public governments might operate alongside or in the same territorial district as Aboriginal-exclusive forms of government.

Community of Interest Models

The third model of Aboriginal government is not specific to a particular nation, but based instead on an Aboriginal constituency or "community of interest", which may be expressed through a variety of self-governing institutions. In other words, Aboriginal people who share common needs and interests arising out of their Aboriginality, may voluntarily associate for the purposes of self-government.

Community of Interest forms of government might evolve from existing institutions currently involved in the provision of services to primarily non-land-based Aboriginal peoples. While service delivery may be an important function, these governments and their associated structures, institutions and processes may also gradually assume a broader range of government features and functions. There are a variety of government forms possible, including single purpose governments such as independent school boards, and non-profit agencies performing one or more governmental functions.

Community of interest models of Aboriginal government are based on the right of self-determination, expressed through an Aboriginal-exclusive form of government by a group of

Aboriginal people who voluntarily associate with each other. The authority of community of interest governments might be established by authority delegated from federal, provincial, and/or other Aboriginal governments or, alternatively, by self-constitution. Unlike Nation-Based and Public Government models, Community of Interest models are connected to the right of self-government by virtue of the fact that these people associate, not as a nation, but as a community for realization of particular elements of their Aboriginality in the services they receive.

Community of Interest models of government are neither territorially nor land-based, although the acquisition of an "owned" land base for various purposes is not precluded. Citizenship or membership is comprised of individuals of different Aboriginal heritage who may or may not pursue affiliations with their home nations. Their powers and authorities may be limited to a narrow range of jurisdiction fields as delegated by Aboriginal and/or Canadian governments, but may grow and evolve as circumstances dictate.

In terms of their internal structure, functions and operations, Community of Interest models are generally likely to have executive rather than legislative and judicial branches of government, though this may change as governments evolve over time. There is also the possibility that these governments might act as a service delivery agency for other Aboriginal governments. In most cases, the internal structure of these models of government is characterized by a unitary form of government, with limited political and administrative "overhead", with government operations conducted through autonomous or integrated institutions.

Community of interest models of government might have both formalized and working, government-to-government, relationships with Canadian governments. These relationships might be defined through instruments such as accords, memoranda of understanding, charters and other intergovernmental agreements.

These three types of models - Nation-Based, Public Government, and Community of Interest - collectively offer many possibilities and scenarios for forms of Aboriginal government which are responsive to the needs of Aboriginal peoples in particular circumstances. The section which follows discusses the extent to which certain principles for financing Aboriginal government might be realized in the context of each of these three types of models.

III. PRINCIPLES FOR FINANCING ABORIGINAL GOVERNMENT

As stated earlier, the end goal is the development of a fiscal regime which is compatible with the models of Aboriginal government.⁴ For example, the broader the range of functions over which an Aboriginal government exercises jurisdiction, the more political autonomy it requires in its fiscal arrangements in order to have enough flexibility to be able to establish priorities in these areas. This ability is essential if Aboriginal governments are to be functioning governments with policy-making discretion, as distinct from service delivery or administrative agents.

While principles of equity and efficiency were discussed more generally earlier in the paper, here they are discussed (along with other principles) in the more specific context of Aboriginal government. The compatibility of financial arrangements with a particular government form or model can be expressed through these principles. For example, financial

arrangements should promote equity by ensuring that differences in socio-economic conditions are addressed, balanced with promoting incentives for Aboriginal governments to pursue economic development. The arrangements should support government structures and processes and promote their development in ways that create accountability on the part of Aboriginal governments for the management of their finances.

The three principles which have been advanced can be translated into a number of objectives to guide the development of financial arrangements for Aboriginal governments. The end goal of these principles and objectives is the establishment of a fiscal regime which is compatible with and supportive of the defining characteristics of a particular model. Each of the principles discussed below, therefore, might relate differently to each of the three models of Aboriginal government.

Equity

The principle of equitable treatment is fundamental to public policy in a democratic country.⁵ In general, several basic questions must be addressed to give operational meaning to the concept in the context of Aboriginal government. The first issue relates to the point(s) of comparison by which to determine whether equity has been achieved. Stated in other terms, what are the dimensions of equity that should be considered in designing financial arrangements? Inter-personal equity (whether between individual Aboriginals or between Aboriginals and non-Aboriginals), is one important dimension. Ultimately, it is in inter-personal terms that judgments about the achievement of equity in a society is most often reached. It is, however, difficult to discern how (non-Aboriginal) government to (Aboriginal) government grants or transfers can directly address this dimension of equity. For example,

federal transfers to the provinces in Canada relate to inter-personal equity only indirectly. The determination of inter-personal equity within a community is presumably one of the fundamental objectives of government, and, if Aboriginal self-government means anything, it must include (at least limited) authority to pursue equity within each community in light of its own societal norms and traditions. But, these concerns are not directly dealt with by government transfers to Aboriginal governments in contrast to transfers to individuals and family units.

Inter-group equity - either across Aboriginal nations or between Aboriginal peoples and non-Aboriginal Canadians - is more directly the focus of government-to-government fiscal arrangements. While Aboriginal people as a group are disadvantaged compared to non-Aboriginals by virtually any fiscal or economic measure, one cannot guarantee that movements towards inter-group equity will always be consistent with moves towards inter-personal equity, either within the recipient group or over society as a whole. The equity basis for transfers to Aboriginal governments (groups) must thus rest on an argument similar to the somewhat uneasy argument advanced in support of the federal to provincial transfers under the Fiscal Equalization Program. That is, the grants would bring the fiscal capacities of Aboriginal governments to provide services for their citizens more in line with the (superior) fiscal capacities of non-Aboriginal governments to deliver services to their citizens.

The second issue is the distinction between equalizing transfers in respect of a set of specified programs or services, and transfers in support of particular programs based on a desire to contribute to the retention of Aboriginality (e.g., language retention). The first rationale and transfer type relates to securing equity of economic and material well-being. The second is not based on redistribution, but on Aboriginal entitlement.

This second category of transfers pertains not to principles of equity, but to the continuing fiduciary obligation of the federal government. There may be some gray area between those services and programs which contribute to economic well-being and those which support Aboriginality. In the case of foster homes and child care, for example, a determination must be made as to the point at which such programs and services speak not to economic well-being but to the promotion and protection of Aboriginal culture.

The third issue concerns the model or formula that might serve as the basis for determining the equity related transfer in the financing of Aboriginal governments. The first resort in whatever brief references to this issue that exist in the literature, is to inter-governmental arrangements that already exist. Currently, there are a number of systems and policies for intergovernmental redistribution in operation. The federal/provincial fiscal equalization program is the cornerstone of this system and it has been a popular point of reference for Aboriginal equalization.

Beyond general statements of objectives (and broad parallels such as those drawn above), however, this formula might not be particularly adaptable to the situation of Aboriginal governments for a number of reasons. The fiscal equalization program is designed to address inequalities among the provinces, that is across jurisdictions of the same order of government. The primary equity issue in the Aboriginal case, as we have already noted, is between Aboriginal and non-Aboriginal peoples, or between Aboriginal governments and other Canadian (federal and provincial) governments. Further, the federal/provincial equalization formula makes no reference to the costs of providing services. Therefore, if applied in the current context, it would not take into account the great variations (relative to the variations between provinces) in the cost of providing services in Aboriginal communities.

The federal/provincial equalization formula is based on the existence of many sources of provincial own-revenues. This extensive array of own-source revenues is unlikely to be available to most, if not all, Aboriginal governments. Finally, the relative gaps in fiscal/economic capacity among Aboriginal communities are relatively greater in magnitude than the gaps between the provinces.

Therefore, while the equity principle remains a fundamental basis for calculating funding arrangements with Aboriginal governments, the federal/provincial equalization arrangements do not relate well to the Aboriginal government context. They provide only very general principles. Achieving equity in the context of Aboriginal government would have to take into account both the fiscal capacity of the community and/or government and the cost of service delivery. The principles involved in formula funding (e.g., those formulas established for financing territorial governments) might be more useful. These formulas take into account the cost of services and at least implicitly consider fiscal capacity through a commitment to renegotiate the arrangements every five years. What is required is the definition of some standard for "equalization" for Aboriginal governments, one that would rely on a relevant set of non-Aboriginal governments or government functions. Likely different formulae would be required for different government models. And to avoid perceptions of parallelism with the federal/provincial arrangements, perhaps another term should be used to describe these arrangements, for example, "the Aboriginal equity formula".

One potential difficulty in arriving at a workable equity formula is that raising Aboriginal peoples to some defined non-Aboriginal standard could create tensions among non-Aboriginals who also fall below the standard. To put the dilemma bluntly, will the dominant

society accept a set of arrangements that potentially addresses inequities relating to Aboriginal peoples to a greater degree than for non-Aboriginal people?

Accountability and Democratic Control

The principle of accountability is based on the legitimate control of finances. The criteria for legitimate control of finances, in turn, would require Aboriginal governments to be accountable to their own communities (electorates), rather than to Canada, for their public revenues and expenditures.

We have argued elsewhere⁶ that effective accountability of a government to its citizens is dependent on the community financing at least some of its collective activities through self-taxation. Self-financing of Aboriginal governments, to the extent feasible and practical given the economic circumstances of the Aboriginal community, creates an appreciation of the costs of providing services that would not exist if all funds for collective purposes were provided externally. Self-taxation will distill a sense of ownership among Aboriginal people for their governments that may well not exist otherwise. Self-financing is thus important to promote a sense of accountability on the part of the governors to the governed, and to promote strengthen the interest among the governed to hold their governors accountable.

Beyond self-generated finances, accountability concerns also arise with respect to grants from other governments. To promote accountability, a fiscal transfer should be both explicit and transparent. In the context of developing financial arrangements for Aboriginal governments, this principle translates into several objectives. As suggested above, primary accountability to the Minister must be replaced with accountability to the people within the jurisdiction of the government. While this may be a significant departure for Aboriginal

financial arrangements, it is not new to Canadian experience. Most of the funds transferred from the federal to the provincial governments do not involve accountability links back to the paying government. Rather, the implicit assumption is that the accountability links between a democratically elected recipient government and its electorate is sufficient to assure the prudent use of funds. In (large) part this accountability exists because these governments also derive revenues from taxation that they themselves levy. This reiterates and reinforces the argument for self-taxation as a condition for effective accountability.

Transparent accountability also requires that the structure of the fiscal transfers be clear. Conditions, if any, should be unambiguous, and what constitutes non-compliance with the conditions should be clear.

Government structures in general, and budgetary structures and processes in particular, are important factors in the attainment of effective accountability. As with the administration of justice, in public budgeting both fair process and the perception of fair process are important. Budgets must be perceived as being systematically and openly arrived at. However, specific budget process design issues to achieve these objectives are beyond the scope of this discussion paper.⁷ Efficiency and Growth While not fundamental to democratic sovereign government as are the first two principles, the principle of efficiency is nevertheless important.⁸ *Ceteris paribus*, it should be an objective of government to use limited resources efficiently, and governing structures and processes, especially those relating to finance, should be established to promote the attainment of efficiency. In part, efficient utilization of resources is promoted through providing sufficient budgetary discretion to allow/require governments to face real trade-offs in allocating resources among functions. Stated differently, efficiency is not served when too many external restrictions are placed in the way of allocating funds between different

functions or between current and capital spending, except, for example, when explicitly and deliberately done to address interjurisdictional spillovers. Efficiency is also promoted when, at least at the margin, governments must approach their citizens for money to spend on a particular function. This simply restates earlier comments about accountability in a more explicitly economics context.

The promotion of economic growth is similarly desirable, though not fundamental to democratic government. The transfers should incorporate incentives to promote economic growth by making it worthwhile for Aboriginal governments to develop their own revenue sources through the economic growth of their communities.

Conclusion

The relationships between fiscal principles for Aboriginal government and the goal of compatibility of fiscal regime with government form are summarized in Table 1.

By way of conclusion to this section it is worthwhile noting that the principles elaborated may not be fully compatible and decision makers will need to establish acceptable balances or trade-offs between them.⁹ Perhaps the clearest example of this relates to the two goals of equity and growth. The former argues that communities that are less well off should receive more generous treatment (to bring them to a predetermined standard) than communities that are better off. This implies a reduction in a community's fiscal transfer as it develops. That however, will create a disincentive for the community to pursue economic growth. Clearly some balance between these goals must be struck. For example, in this instance a balance could be achieved by (say) a 50-cent reduction of the fiscal transfer for every extra dollar of own-source revenue generated by the Aboriginal government.

IV. FINANCING ABORIGINAL GOVERNMENTS

Given our understanding of the models of Aboriginal government, and of the framework of principles and objectives which might guide the financing of Aboriginal governments in order to promote compatibility of fiscal regime with government form, we now consider the components which might comprise a fiscal regime under Aboriginal government. Three primary sources of financing might be envisioned, with a number of possible finance instruments contained within each source. A fiscal regime might be comprised of any combination of the following sources of funding: funding generated from within the community (i.e., own source revenues¹⁰); transfers from Canadian governments¹¹; and funding from treaties and land claims settlements. In Tables 2, 3, and 4 the relationships between these three funding sources, and the instruments which comprise them, are discussed in the context of the models of Aboriginal government and the compatibility of fiscal regime and government form discussed in earlier sections of this paper.

In Table 2, potential own-source revenues are reviewed in terms of their feasibility and practicality. As already argued, own-source revenues are important to Aboriginal governments because they promote greater legitimacy both in the eyes of non-Aboriginal governments and in their own communities. These instruments would also enhance independence and autonomy of Aboriginal governments and promote accountability links between the governments and their communities.

In principle, all of the own-source funding instruments are compatible with all models of Aboriginal government. In spite of this general compatibility, however, there are a number of

factors that affect these funding instruments in various circumstances. These factors are outlined in Table 2.

One must distinguish between deriving revenue from a tax levied on a particular population on the one hand, and administering the collection of the tax and/or determining a particular tax structure (including rates) on the other. All sources are compatible with all self-government models in the first sense. However, few Aboriginal governments are likely to be of a sufficient size or have the administrative capacity to administer most of the taxes listed in Table 2.

Similarly, for administrative and economic reasons most Aboriginal governments will not have much if any scope to determine tax structures and rates independently. The administrative reason for this constraint is that collection of a tax by the federal or a provincial government, or even by an agency established to serve several Aboriginal governments, is likely to require a common tax structure to function effectively and with acceptable administrative costs. The economic reason relates to the high levels of tax base mobility that Aboriginal governments will face with respect to most potential tax bases, particularly those pertaining to income or consumption. Tax structures and rates that would result in heavier effective tax burdens than prevalent in nearby or surrounding jurisdictions (e.g., a province or territory) are likely to prove impossible to sustain.

In addition, for the instruments to be feasible might require a certain level of income attainment among the citizens or residents, a certain level of economic activity, the presence of certain types of land or natural resources, and/or a minimum level of administrative technology. Because of these and other factors, the applicability of a particular funding instrument would

need to be assessed on a case-by-case basis.¹² In Table 3, each of the different forms of transfers from Canadian governments is reviewed according to its compatibility with the three models of Aboriginal government identified earlier. It should be noted that the source of transfers could be either the federal or provincial governments. Municipal governments might be involved, but this would likely only occur through contracts between the municipal government and an Aboriginal government.

The information presented in Table 3 also leads to two broad conclusions. First, for nation-based and public governments, while other forms of funding are compatible on an issue by issue basis, unconditional transfers must be the core source of funding. This is necessary to reflect the need for these governments - which exercise a wide range of jurisdictions and authorities - to exercise the discretion and flexibility they require to make self-government a reality.¹³ Second, for community of interest governments, conditional funding is appropriate, not so much because they require less discretion, but because they are likely to be primarily institutions delivering social programs in urban settings. As a result, one might expect externalities with the larger urban community to be extensive and pervasive. As a means of addressing these potential externalities, conditional funding would ensure compatibility (but not uniformity) with dominant community services. Furthermore, community of interest models are incompatible with unconditional transfers because they generally have neither a land base nor a highly developed administrative system. Therefore, tax revenue-sharing transfers might be inappropriate due to the lack of required administrative machinery, and resource revenue-sharing transfers might be incompatible because of the lack of authority of community of interest governments over a defined land and resource base. Finally, community of interest

models are likely to deliver programs in particular areas, and therefore, it is more likely that funding will be tied to those particular services.

In Table 4, possible sources of funding from treaty and land claim settlements, which might affect a community's fiscal capacity, are discussed. As with Table 3, each of these sources is considered in terms of its compatibility with the models of Aboriginal government.

It is obvious from this table that funding from treaties and lands claims settlements is compatible almost exclusively with nation-based models of government. Even in the case of these models, only treaty nations or nations with a valid land claim would be eligible for this type of funding, and further, settlements would have to be on a nation to nation basis rather than federal government transfers to individuals. The feasibility of securing funding from comprehensive land claims corporations is similarly limited to those instances in which corporations are established further to comprehensive land claims settlements. As a result, the feasibility of Aboriginal governments being financed from these source of funding will depend entirely on the circumstances of each community or government.

V. CONCLUDING OBSERVATIONS

Based on the discussion above, there are a number of general observations which can be made concerning the compatibility of particular models of government with particular funding arrangements. In the foregoing discussion and in Tables 2, 3 and 4, each of the three types of funding - own-source, transfers, and treaties and land claims settlements - were considered separately in the context of the government models. This section, in contrast, takes each of the three models of Aboriginal government and considers the different sources and instruments of funding in order to determine a fiscal "package" for each model of Aboriginal government.

In the case of nation-based models of Aboriginal government, we have observed that all three sources of funding are compatible, and any or all of the funding instruments reviewed could conceivably make up a fiscal regime. Given that compatibility of funding instrument offers little in the way of restriction, the possible combinations of funding instruments which comprise a nation-based model of Aboriginal government are varied and numerous.

In general terms, we might expect that in most cases of nation-based government, transfers would comprise the largest element of the financial regime. This conclusion is based on the assumptions that most nation-based governments will not have the type of land base and income levels required to generate high levels of own-source revenue and that not all nation-based governments will be eligible for funding from either treaties or land claims settlements. As discussed earlier, in the case of transfers, it is unconditional rather than conditional transfers which should form most of the funding given the source and scope of government authority under nation-based models.

Aboriginal-controlled public governments would have a similar range of funding sources and instruments available to them. Like nation-based models, public government models are compatible with the full spectrum of own-source revenue instruments and transfers. Unlike nation-based models, however, they do not have the same potential to receive funding from treaties and land claims settlements, generally because they do not constitute an Aboriginal-exclusive form of government. There is, however, the possibility of some indirect funding from treaties and land claims settlements should a public government generate revenue through corporations established within its jurisdiction to invest land claims settlement moneys.

Based on these options, the fiscal regime of an Aboriginal-controlled public government would be comprised largely of government transfers and own source revenues. As in the case of nation-based governments, unconditional transfers would be more compatible with the nature of public government. Additionally, while all of the own-source revenue instruments discussed in this paper are compatible with public government, those more likely to constitute a significant portion of government finances might include property taxes and corporate taxes. Others, while certainly feasible in some instances, might not be used or might be less productive, for instance, because of the administrative costs associated with the collection of the revenue. Additionally, other forms of own-source revenue, such as corporate revenue, gaming revenue or resource rents might be quite prominent in the fiscal regime of a particular public government, but the potential revenue is highly non-uniform and will depend on the circumstances of each government.

In the case of community of interest models, the possible elements of an Aboriginal government's fiscal regime are considerably more limited. Own source funding instruments are likely, in practice, to be much more limited than those available to either of the other two models. Transfers are generally conditional to avoid inequities and externalities between Aboriginal and non-Aboriginal services. In addition, unconditional forms imply a level of flexibility and discretion which is disproportionate to the authority of a community of interest model of government. Finally, it is unlikely that these models could be funded through treaties and land claims settlements, most obviously because these forms of funding will, for the most part, be linked to the existence of a land base. The fiscal regime of community of interest models, therefore, would rely largely on program-conditional transfers, with some possibility,

depending on circumstances, to supplement these transfers with own source revenue generated, for instance, from user fees.

In examining financial arrangements for Aboriginal governments, this paper has attempted to illustrate the relationships among models or forms of Aboriginal government, general principles of financial arrangements, and financial instruments which might fund Aboriginal governments. We see that for each model of Aboriginal government, principles might be applied to assess its compatibility with particular financial arrangements, and different financial instruments (and combinations thereof) might be available to achieve this compatibility.

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APPENDIX

TABLES

TABLE 1:
COMPATIBILITY OF FISCAL REGIME WITH GOVERNMENT FORM

COMPATIBILITY OF FISCAL REGIME WITH GOVERNMENT FORM	
PRINCIPLES	OBJECTIVES OF FINANCIAL ARRANGEMENTS
Equity	<ul style="list-style-type: none"> - equitable financing of public services & distribution of income - continued federal support for programs to support Aboriginality (fiduciary responsibility) - equalization arrangements which take into account:- costs of services - fiscal capacity of community/government
Accountability and Democratic Control	<ul style="list-style-type: none"> - accountability to community first - accountability to Canada second - accountability regimes which are explicit and transparent - recognition of government-to-government relationship - increased self-reliance - flexibility commensurate with range of powers
Efficiency & Growth	<ul style="list-style-type: none"> - efficient use of limited resources - development of long-term planning - improved economic conditions - flexibility commensurate with range of powers

TABLE 2:
THE COMPATIBILITY OF OWN SOURCE FUNDING WITH MODELS OF
ABORIGINAL GOVERNMENT

FUNDING INSTRUMENT	FEASIBILITY/PRACTICALITY
Personal Income Tax (citizens on and off reserve and non-citizen residents)	<ul style="list-style-type: none"> - depends on level of income and economic development and on tax agreements - only practical if administered at the national level; otherwise more would be spent on collection than would be collected - a separate national Aboriginal system of collecting personal income tax still expensive; still not enough volume, especially given that many Aboriginal people have lower incomes and are widely scattered, making average collection costs greater - raises possibility of personal income tax being collected by federal government and revenue collected from an Aboriginal community being returned to the Aboriginal government, perhaps less an administrative fee - a single administrator could collect for a number of governments
Land/Property Tax (lease fees)	<ul style="list-style-type: none"> - depends on the number of "private" leases on reserves and the extent of commercial property - likely source of revenue - easy to administer; some First Nation experience in administering property taxes already exists - possibility of a flat fee, or a tax which varies related to the type of structure and/or the type of use
User Fees/Licenses/Fines	<ul style="list-style-type: none"> - depends on provision of "excludable" services - requires collection mechanisms - raises equity concern in some forms - high feasibility, subject only to limitations based on the level of user fees, licenses and fines that residents will tolerate
Resource Rents	<ul style="list-style-type: none"> - depends on nature of tax agreements - highly non-uniform/unequally available to governments - high feasibility for those governments who have authority over lands with valuable resources - practical examples are in place

<p>Corporate Taxes (private businesses - Aboriginal and non-Aboriginal)</p>	<ul style="list-style-type: none"> - depends on nature of tax agreements (on administration and allocation of revenues) and level of economic development/activity - administration of a corporate income tax suffers from same economies of scale as personal income tax - a commercial property tax, administered by the community, might be more feasible (see land/property tax above)
<p>Gaming</p>	<ul style="list-style-type: none"> - depends on proximity to populated centres - non-uniform/unequally available to governments - high feasibility for those communities located in close proximity to large populations - easy to administer
<p>Consumption Taxes (e.g., sales tax)</p>	<ul style="list-style-type: none"> - depends on nature of tax agreements and on level and nature of economic activity (tourism related taxes may be of particular interest in some cases) - would require a tax collection agreement, likely with the provincial government - feasibility may be affected by future changes to GST - limited by provincial/territorial sales tax (i.e., a public government might use sales taxes, but if their sales tax exceeds that of the province or territory, consumers will purchase products outside of the Aboriginal government jurisdiction)
<p>Poll Tax</p>	<ul style="list-style-type: none"> - severe equity problems
<p>Corporate Revenue (Aboriginal government corporations - single or joint ventures, including nation-owned corporations)</p>	<ul style="list-style-type: none"> - depends on level and nature of economic activity - non-uniform/unequally available to governments - Aboriginal corporations a major vehicle in many circumstances (i.e., particularly those corporations formed as a result of land claims settlements) - for a public government, there would be potential for two types of corporations (public corporations and Aboriginal corporations) and both could generate revenue

TABLE 3:

THE COMPATIBILITY OF FUNDING FROM TRANSFERS FROM CANADIAN GOVERNMENTS WITH MODELS OF ABORIGINAL GOVERNMENT

FUNDING INSTRUMENT	MODEL OF ABORIGINAL GOVERNMENT	COMPATIBILITY OF FUNDING INSTRUMENTS WITH MODELS OF ABORIGINAL GOVERNMENT
Unconditional - Cash - Ongoing	Nation-Based	- compatible as source of core funding; adjusted for fiscal capacity and costs of service delivery while maintaining economic development incentives
	Public Government	- compatible as source of core funding; adjusted for fiscal capacity and costs of service delivery while maintaining economic development incentives
	Community of Interest	- compatible as small component of total finance (perhaps central overhead, etc)
Unconditional - Revenue-Sharing - Tax	Nation-Based	- compatible if reflects tax collection arrangements and in this sense, related to own-source revenues
	Public Government	- compatible if reflects tax collection arrangements and in this sense, related to own-source revenues
	Community of Interest	- not compatible
Unconditional - Revenue-Sharing - Resources	Nation-Based	- compatible if reflects tax collection arrangements and in this sense, related to own-source revenues
	Public Government	- compatible if reflects tax collection arrangements and in this sense, related to own-source revenues
	Community of Interest	- not compatible
Conditional - Programs	Nation-Based	- compatible when relating to programs with impacts beyond Aboriginal community
	Public Government	- compatible when relating to programs with impacts beyond government jurisdiction

	Community of Interest	- compatible as core funding for single function governments or those with limited powers
Conditional - Matching	Nation-Based	- compatible when relating to programs with impacts beyond Aboriginal community
	Public Government	- compatible when relating to programs with impacts beyond government jurisdiction
	Community of Interest	- compatible as core funding for single function governments or those with limited powers
Conditional - Special Purpose	Nation-Based	- ad hoc arrangements
	Public Government	- ad hoc arrangements
	Community of Interest	- ad hoc arrangements
Contract	Nation-Based	- ad hoc arrangements
	Public Government	- ad hoc arrangements
	Community of Interest	- ad hoc arrangements

TABLE 4:**THE COMPATIBILITY OF FUNDING FROM TREATIES AND LAND CLAIMS SETTLEMENTS WITH MODELS OF ABORIGINAL GOVERNMENT**

FUNDING SOURCES	MODEL OF ABORIGINAL GOVERNMENT	COMPATIBILITY OF FUNDING SOURCE WITH MODELS OF ABORIGINAL GOVERNMENT
Treaties/Specific Claims Settlements	Nation-Based	<ul style="list-style-type: none"> - compatibility/feasibility depends on existence, nature and amount of treaty entitlement or specific claims settlement - compatibility/feasibility depends on whether or not money is involved, and if so, whether or not money is owing to the First Nation as a collectivity (and therefore to the Aboriginal government) or whether it is owing to individual First Nation members (in which case, any funding for government from treaties would be indirect only - i.e., through increased economic activity, etc)
	Public Government	- not applicable/compatible
	Community of Interest	- not applicable/compatible
Comprehensive Land Claims Settlements	Nation-Based	<ul style="list-style-type: none"> - compatibility/feasibility depends on existence, nature and amount of comprehensive claims settlement - compatibility/feasibility depends on whether or not money is paid to the First Nation collectively (and therefore to the Aboriginal Government) as a result of the settlement of a land claim - e.g. for land and resource management
	Public Government	- not applicable/compatible
	Community of Interest	- not applicable/compatible
Comprehensive Land Claims Corporations	Nation-Based	- compatible if corporations established to invest moneys paid to Nations
	Public Government	- compatible if corporations established to invest moneys paid to First Nations as a result of the settlement of a land claim. Public governments might generate revenue through these corporations if the corporations are situated on land under the authority of the public government
	Community of Interest	- not applicable/compatible

NOTES

- ¹ For standard text references see, for example, Musgrave and Musgrave, or Boadway and Wildasin.
- ² In practice, determining equal economic capacity is not a trivial exercise. Most discussions equate economic capacity with a measure of real income that may include monetary and non-monetary components, and adjusts for cost of living differences.
- ³ The Royal Commission has also considered other models of Aboriginal government in particular aspects of its work, including a Legislated Government model and a number of urban government models. Readers are directed to the final report of the Royal Commission on Aboriginal Peoples for a more extensive discussion of models, and in particular, the Nation-Based, Public Government, and Community of Interest models.
- ⁴ The need for fiscal arrangements to be consistent and compatible with government form is also discussed in Hawkes & Maslove (p. 110-111).
- ⁵ For further discussion of the equity principle in the context of Aboriginal self-government, see also see Barham and Boadway, p. 5-6, 16-17 and 45-46; Cassidy and Bish p. 127-129; Hawkes and Maslove, p. 115-117; and Maslove and Dittburner, p. 147-148.
- ⁶ See Maslove and Dittburner.
- ⁷ For a discussion of budgeting in the context of Aboriginal self-government, see Maslove and Dittburner, p. 156-158.
- ⁸ For further discussion of the efficiency principle, see Barham and Boadway, p. 5-6, and 14-15.
- ⁹ The need for balances and trade-offs in the principles which guide financial arrangements is also noted in Hawkes and Maslove, p. 119, and Barham and Boadway, p. 6.

¹⁰ For further discussion on own source revenues, see also Barham and Boadway, p. 37-39 and 63-68; Hawkes and Maslove, p. 113-114; and Maslove and Dittburner, p. 150-155.

¹¹ The use of transfers to finance Aboriginal self-government is also discussed in Maslove and Dittburner, p. 145-150; and Barham and Boadway, p. 39-42.

¹² There is an emphasis in the literature on both the general limitations and the considerable variation between Aboriginal communities in their ability to generate own source revenues. See, for instance, Barham and Boadway, p. 10-12; Hawkes and Maslove, p. 105-106; Maslove and Dittburner, p. 150, 155. In addition, Frideres provides some discussion on the uneven distribution of natural resources between Aboriginal communities (p. 396-399).

¹³ Barham and Boadway also discuss the need for the level of unconditionality of transfers to be consistent with the decentralized and independent decision-making implied by self-government (Barham and Boadway, p. 10).