

The Gaping Holes in Ottawa's Indigenous Fiscal Policy

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AS PART OF OTTAWA'S PROPOSED Recognition and Implementation of Rights Framework, Prime Minister Justin Trudeau announced in February there would be “a new fiscal relationship” established with Indigenous peoples. The framework will be entrenched in legislation due to be released in the fall, just one piece of a landslide of changes that Ottawa promises will bring fundamental change to its relationship with Indigenous peoples.

The implementation framework is an urgent change that many First Nations have been cautiously awaiting. Reporting burdens for First Nations band administrations are notoriously onerous and time-consuming, as the Auditor General **has repeatedly noted**, and federal budget allocations never match actual community needs. First Nations are also seeking a restoration of legal jurisdiction over their lands, as they rebuild their economies.

But rather than address these fundamental issues, the federal government is prioritizing “fiscal capacity building” in an effort to prepare bands not for self-determination but for compliance with the self-government policy: a reserve-based jurisdiction that does not expand the decision-making powers or authority of First Nations to exercise economic rights over their broader traditional territories.

Furthermore, since the issue of underfunding has been deferred until next year, it is unclear that fiscal capacity building will mean much without sufficient funds to actually improve First Nations' quality of life.

BUILDING BRIDGES INTO DESERTS

The Liberal government established the **First Nations–Canada Joint Committee on the Fiscal Relationship** with the Assembly of First Nations (AFN) in July 2016, guided by a memorandum of understanding between the AFN and the government of Canada. Seventeen months later, the AFN and the Department of Indigenous Services Canada released a **joint report** announcing recommendations for a new fiscal policy framework.

The **original mandate** for the joint working group was “to develop options for consideration by Chiefs-in-Assembly and federal decision-makers for a new fiscal relationship to ensure sufficient, predictable and sustained funding for First Nations governments.” It set out more specifically to examine socio-economic gaps and the models

for new fiscal arrangements, identify cost drivers and evaluate progress on removing the 2 percent cap on First Nations spending in place since 1995.

There is some good news in the draft fiscal policy in the December report. The loathsome *First Nations Financial Transparency Act (FNFTA)* has essentially been repealed, and the predatory third-party management policy is being replaced with a “mutual accountability” approach.

The FNFTA, Bill C-27, came into effect under the Harper government in 2013. It forced First Nations to post their consolidated financial audits online. Commentators pointed out, however, that the *FNFTA* imposed standards that far exceeded those for municipal, provincial and federal authorities. In addition, band accounts are already fully disclosed to government agencies. Rather, the ongoing issue that has been pointed out by numerous reports and audits is a problem of overreporting for bands, which the *FNFTA* only aggravated.

Third-party management (TPM) is a policy that involves a hostile takeover of First Nations band funds by external accountants appointed by Indigenous Affairs. Its policy objective is to pull communities out of debt, but it has proved extremely costly and ineffective for many.

Few details are known about the repeal of TPM except that this transition will be managed largely by the First Nations Management Board. It is still unclear how the damage of TPM (and the slightly weaker controls of “co-management”) will be addressed, since it has for decades wreaked havoc on communities. With little oversight and almost complete impunity, managers based in far-off cities drove reserves deeper into infrastructure debt and decline.

Other improvements announced in the draft fiscal policy include new funding mechanisms. Bands will have the option of applying for 10-year grants to provide core funding, and programs and services dollars, instead of receiving short-term annual renewable contracts between Indigenous Affairs and Canada that limit their ability to undertake long-term planning for their communities.

However, once again, there are important questions to raise about the implementation of this new funding mechanism.

To be eligible for 10-year grants, First Nations must meet a set of benchmarks. They must pass a financial administration law in the community (the sample law provided is 54 pages long) and meet strict performance standards that stipulate fiscal growth rates and operating margin ratios, among other things. In many ways, these invasive accountability measures replicate the onerous transparency mechanisms of the *FNFTA*. It is also extremely likely that very few bands will qualify for the program.

These additional administrative burdens are not coupled with additional core operating funds to First Nations. As Indigenous Services Canada **has stated**, “It [the 10-year grant] does not change funding levels or provide increased funding to grant recipients.” Nor are there any substantive changes coming that promise to expand the land base of First Nations to support meaningful self-determination.

The 10-year grant serves a political purpose, as well. As outlined in a slide presentation by the AFN Chiefs Committee on the new fiscal relationship, the 10-year grant will ease the “transition to SGA [self-government agreement].”

The self-government policy is Canada’s preferred off-ramp from the *Indian Act*. It draws from the line linking the fiscal policy to the Recognition and Implementation of Rights Framework.

The fiscal policy prepares bands to manage their finances so they can enter into a self-government agreement with the necessary administrative experience to manage their own service delivery.

Though the “self-government” policy has been used by a number of bands as part of land claims settlements, it has been widely discredited as an approach to meaningful self-determination. Under the policy, jurisdiction remains narrowly focused for First Nations on “internal” matters, with provincial and federal governments retaining paramourty wherever conflicts over law arise.

DEVOLUTION BY ANY OTHER NAME?

The final decision on eligibility for the 10-year grants rests with the Department of Indigenous Services, though much of the work shepherding bands through the process will be done by the First Nations Management Board. The 2018 budget allocated \$189 million to help with the new fiscal arrangement, to be spent over the next five years on capacity building and data collection.

In addition to the AFN’s central role in these negotiations, four other institutions are tasked with undertaking this fiscal relations reform: the First Nations Tax Commission, the First Nations Finance Authority, the First Nations Management Board and the First Nations Statistical Institute. Collectively, these institutions are often referred to as the First Nations Financial Institutions. They hold a significant amount of power in the implementation of the new fiscal framework and will divide between them a significant share of money allocated for implementing the new fiscal relationship.

While these fiscal institutions are promoted by the government as “First Nations-led” organizations, the leadership of each of these fiscal institutions is appointed by cabinet.

Their work has also been criticized by the Chiefs-in-Assembly at AFN for its conservative positions on First Nations’ economic rights. For example, critics allege that these financial institutions have mimicked and reflected Indigenous Affairs’ positions on taxation, privatization of reserve lands and financing bonds on capital markets to access funding.

Our analysis at the [Yellowhead Institute](#) prioritizes land rights within the fiscal relations discussion. As the AFN stated in the [1983 Penner Report](#) on self-government: “The First Nations have already made a one-time-only contribution of resources to Canada sufficient to capitalize a fund for current payments.” But First Nations do not want to rely on these reparations as a sole source of income either. They seek to rebuild their economies through a restoration of jurisdiction over their lands.

While the First Nations fiscal institutions will help prepare First Nations to develop policies and tools to build fiscal capacity, this effort will ultimately move them toward policies designed to reduce the obligations the Crown owes First Nations. And while participation in these policies is on an opt-in basis, the new regime will quickly set standards and likely, over time, become the only option for First Nations.

Devolution has been a slow and steady process to download responsibilities from the federal government to Indian bands. As Veldon Coburn of Carleton University [concludes](#), “In the past three decades of Canadian fiscal federalism, devolution of programming and services has often been more burdensome than beneficial.” Introduced officially in the wake of austerity programs of the late 1980s, devolution policies have created new expectations for First Nations self-government, but the policies lack the funding that would enable them to be implemented.

DROPS IN THE BUCKET

While the new fiscal relationship would download much administrative responsibility onto band councils, it leaves untouched the central issue of underfunding. The next phase of co-development between Canada and First Nations on the fiscal policy is promised by April 1, 2019, and it will deal with the key issue of “sufficiency” in the funding formula.

In the meantime, issues of grave concern plague the Department of Indigenous Services. Despite Indigenous Services Minister Jane Philpott’s best intentions, the matter of sufficiency cannot be genuinely addressed without sorting out the disarray within the department.

As the Auditor General of Canada found in his [Spring 2018 report](#), Indigenous Services Canada has made an abysmal failure of collecting or making use of socio-economic data necessary for setting realistic benchmarks, establishing funding formulas or setting priorities for “closing the gap” in funding to First Nations. The analysis being done is currently so askew that the department was reporting an increase in high school graduation rates on reserves when in fact that number has been declining steadily for a decade.

It is true that the funding levels for First Nations issues in the Trudeau budgets have reached historic highs. But this surge in spending is directed toward devolving service delivery to First Nations in ways we fear will not be financially supported or that will not expand the underlying economic rights and land base of First Nations. Policies like self-government agreements remain stubbornly reserve-based and continue to attenuate First Nations’ jurisdiction on broader traditional territories.

We know the money is there to fix the gap, but the political will is still absent. As Cindy Blackstock of the First Nations Child and Family Caring Society of Canada [tweeted](#) on May 29, “Canada could have ended under-funding of First Nations education, water, early childhood programs, domestic violence shelters and ensured no sick child was air transported alone in Quebec and more. Instead...they bought a pipeline.”

There are important questions to be asked of Trudeau’s fiscal relations policy for First Nations. How much new funding is necessary to actually “close the gap” so that First Nations are managing the right amount of money to thrive, rather struggling to survive and manage their poverty? What are the processes that can be immediately put in place so that First Nations repossess their lands and build strong economic bases for self-determination? Shouldn’t we be working backwards from these goals toward understanding what kind of capacity needs to be built, according to First Nations?

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