



First Nations
**FINANCIAL
MANAGEMENT
BOARD**

THE ROADMAP PROJECT

**CHAPTER 1:
CREATING PATHS FOR INDIGENOUS
PROSPERITY**

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NOTE TO READERS

The RoadMap Project is a collaborative effort by the *First Nation Fiscal Management Act* (FMA) Institutions. The purpose of the project is to provide a potential pathway for Canada and First Nations to achieve greater First Nations self-governance, via a framework of First Nations-led institutions.

About the FMA Institutions

On April 1, 2006, the *First Nations Fiscal Management Act* (FMA) came into effect as optional First Nations legislation. This legislation was a First Nations-led initiative that provided First Nations governments with options to move beyond the *Indian Act*.

The FMA established three institutions: The First Nations Finance Authority (FNFA), the First Nations Tax Commission (FNTC), and the First Nations Financial Management Board (FMB). The FMA institutions support First Nations to pursue options for self-determination outside of the *Indian Act* through greater fiscal capacity and economic opportunity. The FMA institutions provide institutional support to First Nations governments in the areas of financial administration, financing, and taxation.



The FMA Institutions: Promoting Socioeconomic Development

The FMA institutions have enjoyed unprecedented success in establishing systems and tools to support First Nations self-governance outside of the *Indian Act*. The FMA is the most successful First Nations-led legislative initiative in Canadian history with more than 321 First Nations governments using parts or all the regulatory framework and institutional support.¹

¹ “About the *First Nations Fiscal Management Act* (FMA),” *First Nations Financial Management Board*, <https://fnfmb.com/en/about-fmb/about-first-nations-fiscal-management-act-fma>.

The work of the FMA institutions has empowered First Nations governments to carry out key functions of governance: implement a framework for accountable and transparent fiscal management through the First Nations Financial Management Board (FMB), access capital through the First Nations Finance Authority (FNFA), and exercise fiscal powers through the First Nations Tax Commission (FNTC).

The FMA framework and institutions have enabled First Nations to collectively secure an international investment-grade credit rating, and access over \$1.65 billion in private capital through the FNFA, creating over 17,000 new jobs in the process.² This platform has further empowered First Nations governments to generate over \$1 billion in tax revenues, empowered by the FNTC.³ The FMA institutions promote transparency and accountability from a First Nations government to its citizens, strong economies, and improved socioeconomic outcomes, including community services and infrastructure.

² “Stronger Together: 2020/21 Annual Report,” *FNFA*, 5, <https://www.fnfa.ca/wp-content/uploads/2021/07/FNFA-Annual-report-2020-21-English-Web.pdf>.

³ “Building a new path: 2020/2021 Annual Report,” *First Nations Tax Commission*, 14. https://fntc.ca/wp-content/uploads/ARs/FNTC_ANNUAL_REPORT_20-21_EN_WEB_july23.pdf.

EXECUTIVE SUMMARY

Building on the work of the First Nations Governance Project⁴, this is the introductory chapter of a RoadMap to an optional new fiscal relationship between First Nations governments and the Crown. It is a path that will present new options for participants to pursue freely, incrementally, and at their own pace. It is a path to support First Nations as they move from managing poverty to managing wealth.

The need

First Nations and First Nations organizations have made clear to the leaders of the FMA institutions their strong desire for progress in the implementation of Indigenous rights to self-government. Legal victories have codified and upheld these rights, but First Nations governments still require the tools, legal frameworks, institutional support, and capacity to exercise those rights. The FMA institutions have already supported Indigenous rights through the FMA framework; now, with the RoadMap Project, it is time to build on that framework to provide expanded options for First Nations governments to pursue self-government and economic development. **This RoadMap describes how the FMA institutions will support participating First Nations governments to develop the tools and capacity to exercise their Indigenous rights through the optional FMA framework.**

The new fiscal relationship

Participants in the FMA framework are looking for options beyond the one-size-fits all approach that continues to this day. In 2016, the Government of Canada announced they would be pursuing a new fiscal relationship with First Nations governments to address the socioeconomic disparities between Indigenous and non-Indigenous Canadians. The new fiscal relationship improves the transfer-based fiscal relationship through long-term funding arrangements and a reduced reporting burden; yet some First Nations governments wish to pursue options beyond a transfer-based system. They want more revenue-raising powers, more control over what they do with those revenues, and greater economic development in their communities.

This paper is a response to those desires, an option within the new fiscal relationship to support self-determination, with the ongoing engagement of Indigenous rightsholders.

⁴ “First Nations Governance Project,” *First Nations Financial Management Board*, <https://fnfmb.com/en/leadership/first-nations-governance-project>

“Ultimately a new relationship means a sharing of power between Canada and First Nations, and a transfer of wealth to First Nations. But First Nations wealth creation should not be based on fiscal transfers from Ottawa to First Nations, but rather through First Nations economic development and the sharing of revenues between Canada and First Nations, for the benefit of all Canadians.”

Harold Calla, Executive Chair, First Nations Financial Management Board

Despite judicial recognition of Indigenous rights and title, and Canada’s decision to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), many First Nations governments continue to lack the fiscal and administrative capacity to effectively achieve their governance and economic development objectives. Canada recognizes these challenges, as evidenced by the announcement of a new fiscal relationship to support the implementation of UNDRIP.

Ensuring accountability and transparency

Despite recognition of these capacity challenges and the intention to pursue a truly new fiscal relationship, federal government concerns about accountability and transparency have prevented a significant departure from the status quo. The federal government wants a new relationship to lead to success for First Nations. Further Canada has an ongoing interest in ensuring accountability and transparency in the Crown-Indigenous fiscal relationship. Until those concerns are addressed, they will act as a constraint on the development of a truly new fiscal relationship.

Section 35 of the Constitution explicitly recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples. The FMA institutions offer the legal framework and tools to support the practical implementation of s.35 rights through fiscal management, the use of jurisdiction and fiscal powers, and access to capital. The FMA framework for accountability and transparency is foundational to strong governance and stakeholder confidence, promoting an ecosystem for wealth generation and management. This Indigenous-led framework will breathe new life into the implementation of s.35 by ensuring the financial transparency and accountability that will give Canada the confidence to implement a truly new fiscal relationship. The FMA institutions offer an optional, risk-managed pathway to fulfilling those commitments, and an opportunity to co-develop that approach with experienced Indigenous thought-leaders.

Next steps

The optionality of this path is critical to its success. There is no self-determination when a First Nations government cannot freely choose its own path.

As part of this RoadMap, the FMA institutions seek government support for an optional pathway to support the implementation of s.35 rights and UNDRIP, by:

- Developing a framework for an optional path to a new fiscal relationship within the FMA
- Supporting the FMA institutions' initiatives
- Legislating changes to expand the mandate of the FMA institutions and ensure their long-term stability

Through the RoadMap, the FMA institutions will support the development of a new and improved fiscal relationship between First Nations governments and the Government of Canada by providing tools, resources, and frameworks that will support the capacity of First Nations governments to govern themselves. The FMA institutions propose to focus on the following key areas of support:

- Statistics and data
- Infrastructure
- Economic development
- Jurisdiction and expanded fiscal powers
- Strength through working together
- Governance

This introductory chapter provides an overview of the RoadMap and the rationale behind it, highlights the benefits of this optional pathway, and details what the FMA institutions need to make it a reality. In addition to explaining the RoadMap's value proposition, this chapter details how First Nations will be supported through the RoadMap and the legislative changes required to bring RoadMap to life.

Over the coming months, the FMA institutions will build on this introduction by producing additional chapters to provide guidance and inspire policy discussion on the key areas of support above. The FMA institutions look forward to the support of the Government of Canada in the development of Indigenous-led initiatives to promote the risk-managed implementation of UNDRIP and s.35 rights.

The FMA institutions believe that First Nations can move from managing poverty to managing wealth. Through the development of this RoadMap, the FMA institutions offer a pathway to what should be a new beginning in the relationship between First Nations and Canada.

Join us on this path.

INTRODUCTION: LESS RISK, MORE GROWTH

Imagine a remote, northern First Nations community called Moose Rapids. With an on-reserve population of 400 people, Moose Rapids First Nation has stewarded their land from time immemorial and is part of the Birchbark Tribal Council, which speaks Birchbark language.

Today, the fly-in community has a boil-water advisory and little economic development or opportunity. Its housing and community buildings are inadequate or unusable, and its *Indian Act* government struggles to find administrators and accountants to file its paperwork with Indigenous Services Canada (ISC). Year after year, Moose Rapids must ask ISC for funding and does not have the time or resources for long-term planning. Over the past decade, ISC has brought in a parade of costly third-party managers, infrastructure providers and consultants – and none have contributed to meaningful progress in the community.

Two years ago, Moose Rapids hired a pricey general manager from the south for the band development corporation. After spending thousands of dollars traveling the world to find clients for the Moose Rapids hunting lodge, he left to work for another Nation in the Tribal Council, promoting fly-in fishing and aurora viewing.

Moose Rapids has never had a CFO and accounting firms aren't interested in the work. The annual audit exhausts the finance staff and the financial statements are often delivered late. The community has little information on how the administration is doing, and there is a sense of hopelessness for the future.

Health and wellness consists of an old nursing station but no resident nurse. Similarly, it is hard to find teachers and harder still to see children flying out of community for high school. Elders worry that their language and culture is fading away.

The settler town of Fort McMaster, a former lumber boom town at the end of the highway, is over 200 kms away, and accessible by a poorly maintained forest service road. It has a small hospital, school, and road to the south, funded by the provincial government. The citizens of Moose Rapids look for a way forward to share in that prosperity. There is talk of valuable mineral resources, but the community will not benefit much from any mine, and so the Nation will not consent to any development in their territory.

Now, imagine the same community in 2050, after Roadmap is implemented. Moose Rapids has been transformed and is nearing economic and social development parity with Fort McMaster.

Moose Rapids First Nation now has a fiscal transfer agreement with Canada, modeled after the equalization transfers with the provinces, which created a base level of services that are comparable to nearby settler communities like Fort McMaster.

The Nation has used the transfer revenue to finance a health and wellness centre and a high school. The Nations of the Birchbark Tribal Council have worked together to create a housing, health, and water authority that provides those services and manages that infrastructure in the council's communities, regulated by an Indigenous quality regulator and an Indigenous financial regulator. In all these developments, the First Nations Infrastructure Institute advised council on best-in-class processes and procedures for building and operating the buildings, and the First Nations Finance Authority provided affordable long-term financing.

Mining exploration occurred with the Nation's consent and it revealed a large, rare mineral deposit. In 2035, after the exploration was complete, a mid-tier mining company began negotiations to purchase the property in partnership with Moose Rapids and other Birchbark Nations. This negotiation fulfilled requirements under UNDRIP, the company's Indigenous Reconciliation code and Canadian Sustainability Standards Board reporting standards. The First Nations Major Projects Coalition (MPC) provided free, impartial analysis of the environmental risks as well as the financial opportunities. The First Nations Financial Management Board Financial (FMB) Management System processes ensured that the community could make an informed decision under Free, Prior, and Informed Consent. The Nation conducted its own environmental assessment under its section 35 powers, funded by Canada and the developer, and in accordance with Birchbark Law. Meetings were held and reports were written in plain language in English and Birchbark. Although the community vote was not unanimous, Moose Rapids chose to go ahead with the development. Advice from the MPC led to a significant equity ownership opportunity for the Nation, contracts for its economic development corporation, and jobs for its members. Compliance with Environment, Social, Governance, and Indigenous (ESGI) principles ensured a lower cost of capital and a win-win for the mine operator and the Nation.

A revenue-sharing agreement with Canada and royalties from the nearby mine means the community is using the money to educate its youth and take care of the elders. It is also building long-term wealth, managed by the Caisse d'Autochtones, a world-class national Indigenous pension and asset manager owned by First Nations in Canada. The First Nations Statistical and Data Institute is measuring its growing economy, which helps the Nation to plan for service delivery and revenue sharing, and measure progress in social and development outcomes. The growth in Moose Rapids has led to significant economic development in neighbouring Fort McMaster through consumption and investment, and the town's tax revenues have increased sharply. With much goodwill, the mayor of Fort McMaster visits Moose Rapids for Treaty Days and the chief of Moose Rapids visits Fort McMaster for Reconciliation Day.

The FMA institutions' economic development initiative has provided advice and consulting on an economic development plan and tools for implementation. Moose Rapids has a number of Indigenous-owned businesses servicing the mine and the Nation is part-owner of the mine. Through training organized by the economic development initiative, and business education scholarships, the Nation is

developing both a generation of local entrepreneurs and a vanguard of finance and business professionals in corporate Canada.

The mine has an administrative office in Moose Rapids as well as warehouses and staging facilities, which pay property tax to the Nation through the First Nations Tax Commission's (FNTC) legislation. Through a joint venture with the Canada Infrastructure Bank and the mine, a public-private partnership, high-speed Internet and a road now connect the community to the outside world. Moose Rapids First Nation's members all around the world can access Moose Rapids culture and language education and interact with elders and the community. Children in the community have a top-rate education through a combination of local and remote learning. The community's beaded moose-hide mitts and porcupine quill jewelry, sold through the Birchbark Co-op, have become very popular around the world.

The Moose Rapids First Nations government has built the capacity to manage its financial affairs, first by using remote accounting services from the FMB, and later by training a local civil service with support from the First Nations Public Service Secretariat, and engineering capacity through the First Nations Infrastructure Institute. With its bureaucratic capacity growing, the Nation is asserting more of its section 35 rights, and taking over jurisdictions from the province, funded by fiscal transfers from the federal government.

At the request of the Nation, the FMB provides periodic assurance that Moose Rapids is following sound financial and administrative governance practices, including financial control, community consent for strategic plans, and the informed review of financial reports. Similarly, the First Nations Auditor General provides periodic audit of programs, and the First Nations Ombudsperson handles complaints from members. Nations in the Tribal Council are proud that they have fewer complaints or scandals than the settler communities, and the federal Ministry of Finance has confidence in the integrity of the fiscal transfer system.

The FMA institutions believe that this vision for a better future can become a reality for First Nations governments across Canada. The FMA framework for transparency and accountability will give Canada the confidence to implement a new fiscal relationship based on the sharing of power and the transfer of wealth to First Nations governments.

BACKGROUND

The right to self-government is recognized and affirmed by section 35 of the Constitution.⁵ It is also recognized in article 4 of UNDRIP, which states, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”⁶

In 2016, the Government of Canada expressed its intention to fully implement UNDRIP: “We intend nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution.... By adopting and implementing the Declaration, we are breathing life into section 35 and recognizing it as a full box of rights for Indigenous peoples. Canada believes that our constitutional obligations serve to fulfill all the principles of the Declaration, including ‘free, prior and informed consent.’”⁷

“The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) provides us with a roadmap to advance lasting reconciliation with Indigenous peoples. It shows us that further steps must be taken to respect, recognize and protect the human rights of Indigenous peoples and to address the wrongs of the past.”⁸

Department of Justice Canada

When Canada stated its intention to implement UNDRIP and pursue a new fiscal relationship for First Nations, Canada acknowledged that fiscal capacity is a challenge for First Nations governments. Enhanced fiscal management capacity will give First Nations governments the agency they need to determine their own futures.

The development and implementation of a new fiscal relationship in a manner consistent with s.35 rights and UNDRIP will require fiscal transparency and accountability. In the absence of a mechanism to ensure fiscal transparency and accountability, any significant departure from the status quo could be seen as a

⁵ “The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government,” *Government of Canada*, <https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>.

⁶ “United Nations Declaration on the Rights of Indigenous Peoples,” *United Nations*, September 13, 2007. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf 8.

⁷ Brenda L. Gunn, “Beyond *Van der Peet*: Bringing Together International, Indigenous, and Constitutional Law,” *Centre for International Governance Innovation, Special Report: UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws*, https://www.law.utoronto.ca/sites/default/files/documents/gunn-beyond_van_der_peet.pdf, 32.

⁸ “The Declaration explained,” *Government of Canada*, <https://www.justice.gc.ca/eng/declaration/what-quoi.html>.

risk by the federal government. If the federal government is to consider options outside of the current fiscal relationship, it will first need assurance that resources will be well managed.

Why the FMA institutions are uniquely positioned to solve this problem

The *First Nations Fiscal Management Act* (FMA) institutions have enjoyed unprecedented success in establishing systems and tools to support Indigenous self-governance outside of the *Indian Act*. The FMA is the most successful Indigenous-led legislative initiative in Canadian history, with more than 321 First Nations governments using parts or all of the regulatory framework and institutional support.⁹ That success is because the FMA:

- is optional and respects the right of self-determination of each First Nations government.
- is an effective path towards Indigenous jurisdiction through standards and institutional capacity support.
- provides tangible economic and fiscal benefits to participating Indigenous communities through access to capital, increased fiscal powers, and an improved investment climate.
- provides the benefits of institutional support to any participating First Nations government, whether small or large, rural, or urban.
- permits innovation by Indigenous-led institutions that advocate for novel solutions.

The work of the FMA institutions has empowered First Nations governments to carry out key functions of governance: implement a framework for accountable and transparent fiscal management through the First Nations Financial Management Board (FMB), access capital through the First Nations Finance Authority (FNFA), and exercise fiscal powers through the First Nations Tax Commission (FNTC). The FMA framework promotes transparency and accountability from a First Nations government to its citizens, as well as prompt and responsive community decision-making. The strong governance and fiscal management practices supported by the framework gives confidence to external stakeholders.

In the years following the *Constitution Act, 1982*, two distinct but interdependent strategies have driven the restoration of Indigenous self-governance: a rights and title strategy focused on the courts, the Constitution, and UNDRIP; and an institutional strategy focused on development of the legislative and institutional framework to implement the Indigenous right to self-governance. The passage of the FMA in 2005 led to the creation of the FMA institutions, a by First Nations, for-First Nations solution to support an improved fiscal relationship.

⁹ “About the *First Nations Fiscal Management Act* (FMA),” *First Nations Financial Management Board*, <https://fnfmb.com/en/about-fmb/about-first-nations-fiscal-management-act-fma>.

These FMA institutions have spearheaded the institutional strategy and their momentum has reached a critical mass. Since the passage of the FMA, over 321 First Nations have chosen the optional path of participation in the FMA — more than half of all *Indian Act* First Nations. The FMA institutions are Indigenous-led, trusted partners of First Nations governments throughout Canada, and their innovations have challenged the status quo to win the support of both Canada and their First Nations partners. The FMA framework and institutions have enabled First Nations to collectively secure an international, investment-grade credit rating, and access over \$1.5 billion in private capital through the FNFA, creating over 14,000 new jobs in the process.¹⁰ This platform has further empowered First Nations governments to generate over \$1 billion in tax revenues, empowered by the FNTC.¹² Stronger governments, flourishing economies, and secure revenues have supported the capacity of First Nations for self-determination, and led to improved socioeconomic outcomes, including community services and infrastructure.

An independent study of the FMA and its fiscal institutions was undertaken by Indigenous and Northern Affairs Canada to assess the progress of the FMA and the fiscal institutions, as well as to identify aspects of the system that might require attention in order to function more effectively.

The study concluded:

“The three organizations collectively are producing large and tangible impacts on First Nation communities, impacts in the form of new infrastructure, increased own source revenues, substantial economic development opportunities, increased independence from government, improved financial management and governance to name a few.”

“All three institutions are centres of innovation. They have developed and then implemented new approaches to taxation, access to capital markets, and regulation and have helped create solutions to deal with issues of scale. Their efforts at developing capacity among First Nations, capacity which is sustainable, is especially noteworthy. And they are currently involved in developing new approaches to resource development, taxation, economic development, infrastructure management, third party management and mechanisms for structuring a new fiscal relationship with the federal government.”

“These three institutions established by the Act are the most interesting innovation to occur over the past decade in First Nation country.”¹³

¹⁰ “Stronger Together: 2020/21 Annual Report,” *FNFA*, 5, <https://www.fnfa.ca/wp-content/uploads/2021/07/FNFA-Annual-report-2020-21-English-Web.pdf>.

¹¹ Lending and job creation numbers have since increase from the date of the report

¹² “Building a new path: 2020/2021 Annual Report,” *First Nations Tax Commission*, 14. https://fntc.ca/wp-content/uploads/ARs/FNTC_ANNUAL_REPORT_20-21_EN_WEB_july23.pdf.

¹³ “FMA First Nations and Institutions mark 10 years of progress,” *First Nations Tax Commission*, September 2, 2017. <https://fntc.ca/fma-first-nations-and-institutions-mark-10-years-of-progress-2/>.

These institutions have achieved success through legislative and institutional innovation, but must continue to evolve in their service to First Nations governments because Indigenous Peoples require additional pathways to pursue self-determination and institutional support for their capacity to govern. If there is to be a new fiscal relationship, the FMA institutions must play a fundamental role in the changing relationship between First Nations governments and the Crown.

VALUE PROPOSITION

The FMA institutions will breathe life into s.35 by providing a framework for financial transparency and accountability that will give Canada the assurance and confidence to implement a new fiscal relationship. Canada's stated intention to implement UNDRIP and devolve ISC offers all parties an opportunity to combine rights and title with the innovation of Indigenous institutions – to empower the implementation of Indigenous rights.

RoadMap proposes that the same standards of fiscal transparency and accountability that have underpinned \$1.65 billion in loans to First Nations governments can form the basis for an optional pathway to a new fiscal relationship. FMB's Financial Management System (FMS) Certification demonstrates that a First Nations has achieved international quality standards for financial control, accountability, and transparency. RoadMap will see FMS certifications renewed on a periodic basis, as robust oversight framework that supports accountability and transparency for each participating First Nations government. FMS Certification offers First Nations the opportunity to further develop and implement an Indigenous-led solution to address the monitoring and oversight vacuum that will be created by the devolution of ISC.

“The FMA institutions will breathe life into s.35 by providing a framework for financial transparency and accountability that will give Canada the confidence to implement a new fiscal relationship”

Unlike ISC's current oversight framework, FMS Certification provides confidence at the time of issuance, to all stakeholders:

- Community members can have confidence that their elected leaders are implementing sound fiscal management and administrative governance practices.
- Elected leaders can have confidence in the tools and framework to oversee a government administration and achieve community goals.
- Canada can have confidence in value for money, while implementing UNDRIP through a new fiscal relationship.

RoadMap proposes that First Nations can participate in a new fiscal relationship at their time of choosing and at their own pace. This new fiscal relationship would include expanded options as well as an FMS Certification with additional periodic assurance. This expanded FMS Certification and periodic assurance would be a pathway for First Nations governments to walk together with Canada to implement UNDRIP and realize s.35 rights in a new fiscal relationship.¹⁴

“Transferring control to Indigenous partners is the best way to improve services. Indigenous partners have expressed that they want ISC to recognize and support their inherent right to self-determination with flexible approaches that are inclusive and responsive to the diversity of Indigenous peoples.”¹⁴

- Indigenous Services Canada Strategic Plan 2020-2025

The optionality of this path will be critical to its success. Optionality, and the sharing of power, have not been features of the Crown-Indigenous relationship, which is more often characterized by top-down and paternalistic policy on Indigenous issues. From 1867-1927, the Crown legislated First Nations out of the Canadian economy and federation; RoadMap provides options for interested First Nations governments to legislate themselves back in. In the interests of social and economic reconciliation, there can be no one-size-fits-all approach to achieving self-determination. UNDRIP codifies and reflects the right to self-determination and the optionality of the FMA framework supports the implementation of this right.

With over 321 First Nations governments participating in the FMA, and over 50 FMS-certified First Nations, there is already a coalition that is ready for the next step. The First Nations governments that have already proven the benefits of this path will continue to lead the way for others to follow.

The FMA institutions will support First Nations governments to implement a new fiscal relationship with the Crown by providing tools, resources, and frameworks that will support their capacity to govern. For those who wish to exercise their right to self-governance within the FMA, the FMA institutions will empower them with the tools to manage their lands, grow their economies, exercise good governance and a duty of care, manage assets wisely, and provide services to their citizens.

As First Nations governments prepare themselves to enter a new fiscal relationship, the FMA institutions will focus on the following key areas of support:

- Statistics and data
- Infrastructure

¹⁴ “Indigenous Services Canada: Strategic Plan 2020 to 2025,” *Indigenous Services Canada*. <https://www.sac-isc.gc.ca/eng/1580929468793/1580929551018>.

- Economic development
- Jurisdiction and expanded fiscal powers
- Strength through working together
- Governance

“A governance accreditation system administered by an independent body would provide the federal government (and other levels of government) with a valid risk assessment on which to base long-term funding arrangements with fewer conditions and reporting burdens...Importantly, the assessment of risk would be taken out of the hands of the federal government, as would ongoing monitoring responsibilities. Periodic reaccreditation would provide assurances of continuing sound governance.”¹⁵

-*Enhancing Aboriginal Financial Readiness*, a report by the National Aboriginal Economic Development Board, 2015.

WHO WILL BENEFIT?

All Canadians

In 2016, the National Indigenous Economic Development Board reported that the economic gap between Indigenous and non-Indigenous peoples costs the Canadian economy \$27.7 billion annually.¹⁶ This economic gap stems from a flawed fiscal relationship based on transfers instead of revenue, promoting dependence instead of self-determination. Canada is pursuing the implementation of UNDRIP and a new fiscal relationship, in large part because the status quo is “punitive and counterproductive” and “prevents [the] planning and flexibility” necessary to effectively self-govern.¹⁷

Rather than continuing to shoulder a tax burden to support a failing Crown-Indigenous fiscal relationship, all Canadians will benefit from progress on these issues. A new fiscal relationship that empowers First Nations governments to determine their own futures and better serve their communities will contribute to Indigenous inclusion in the regional, national, and international economy.

¹⁵ “Enhancing Aboriginal Financial Readiness for Major Resource Projects,” *National Aboriginal Economic Development Board*, January 2015. <http://www.naedb-cndea.com/reports/enhancing-aboriginal-financial-readiness.pdf>. 10.

¹⁶ “2020-2023 Strategic Plan,” *The National Indigenous Economic Development Board*, <http://www.naedb-cndea.com/reports/EN%20-%20DRAFT%20STRATEGIC%20PLAN%202020-2023.pdf>.

¹⁷ “A New Fiscal Relationship,” *Government of Canada*, https://www.canada.ca/en/indigenous-services-canada/news/2018/01/a_new_fiscal_relationship.html.

Growing the Canadian economy through sharing and Indigenous self-determination, as was intended in the treaties, will lead to healthier communities, healing, and lower societal costs. Further, vital resources can be directed away from running the operations of ISC and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and be placed into enhancing First Nations economic participation. At present the annual administrative cost of operations alone for ISC and CIRNAC is a combined \$4.3 billion. The Indigenomics Institute estimates that, with the right investment and growth, Indigenous Canadians have the potential to add a \$100 billion boost to the national economy.¹⁸ This outcome will not only benefit Indigenous Canadians – it will benefit all Canadians.

In a recent example of the potential of the Indigenous economy, an MNP study found that the Indigenous economy in Alberta generated \$6.74 billion of GDP in 2019.¹⁹ In Alberta, the Indigenous economy is equal to the GDP generated by the agricultural sector, generating up to 14,000 jobs and annual tax revenues of up to \$600 million.²⁰ Imagine if the full potential of Indigenous economic development were unleashed.

Government

Canada endorsed UNDRIP in 2011 and stated its intention to implement a new fiscal relationship in 2016. In 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and immediately came into force.²¹ Despite the advancement of the rights outlined in s.35 and UNDRIP, much work remains for social and economic reconciliation. New measures are needed to build trust and advance the practical implementation of these rights.

With the momentum of UNDRIP, there will be mounting pressure for the Government of Canada to act with urgency on the implementation of these rights. The FMA institutions offer an optional, risk-managed pathway to fulfill those commitments, and an opportunity to co-develop this path with experienced Indigenous thought-leaders.

Over the past decade, uncertainty over Indigenous rights and title has limited the sustainable development of Canada's vast natural resources. With Parliament having just passed legislation that will enshrine UNDRIP into Canadian law, resource development projects will now require the free, prior, and informed consent of Indigenous Peoples.

Indigenous communities will be more likely to consent to projects on their traditional territories if they have the capacity to evaluate the merits of proposals and engage effectively with the private sector, the

¹⁸ "100 Billion," *Indigenomics Institute*, <https://indigenomicsinstitute.com/100-billion/>.

¹⁹ "Opening the Door to Opportunity," *MNP*, <https://www.mnp.ca/en/insights/directory/opening-the-door-to-opportunity>.

²⁰ *Ibid.*

²¹ "Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act," *Government of Canada*, <https://www.justice.gc.ca/eng/declaration/index.html>.

provinces, and the federal government through the meaningful implementation of the right to free, prior, and informed consent. This consent can only be granted when First Nations have the tools to evaluate the business opportunities, the systems that support processed-based decision making, and the governance structures to meaningfully engage their communities.

The FMA has already supported many First Nations governments to build such capacity and access the financing to meaningfully participate in resource development projects on their traditional territories. By creating an optional pathway to a new fiscal relationship through the FMA, in partnership with the FMA institutions, Canada will be investing in the capacity of First Nations governments to become partners in resource development.

First Nations governments

First Nations governments will benefit from the option to participate in a new fiscal relationship within an Indigenous-led framework that will support them with the fiscal capacity and tools to effectively govern themselves – a practical implementation of the rights outlined in UNDRIP and s.35 of the Constitution.

Scholarship in the field of international development has long established that good governance is the bedrock of economic prosperity for developing countries.²² FMB's framework for transparent and accountable fiscal management supports First Nations governments to govern themselves in a way that promotes certainty, which fosters business development and attracts private sector investment by reducing business risk. FMB's data has shown that First Nations governments that have received FMS certification have since gone on to accelerate the growth of their own-source revenues in subsequent years. Those revenues support stronger communities, diminish reliance on social services, and enhance self-determination.

Government transfers will never be enough to open the doors to Indigenous prosperity. Progress must be based on the development of a new fiscal relationship between Indigenous peoples and the Crown. The FMB framework can serve as a risk-managed foundation for that change. The FMB framework for transparent and accountable fiscal management will empower First Nations governments with the tools to pursue economic development, manage wealth, and exercise self-determination. The framework has the potential to facilitate the devolution of ISC and increase the willingness of government to transfer both revenue and decision-making power into Indigenous hands.

The tools of the FMA framework will support Indigenous capacity to implement UNDRIP in a practical way, including free, prior, and informed consent. First Nations governments can only meaningfully

²² Tim Raybould, "The Economics of First Nations Governance: Investment Capital, Money and Wealth Accumulation," *National Centre for First Nations Governance*, 2006, 15. https://fngovernance.org/wp-content/uploads/2020/09/tim_raybould.pdf.

participate in regional economies and resource development projects in their traditional territories if they have the capacity to evaluate and respond to development opportunities. A study by the National Aboriginal Economic Development Board found that First Nations governments that have the capacity to understand the full scope of impact, both environmental and socioeconomic, are better positioned to develop and execute plans that prepare their citizens for economic development, employment, and wealth generation.²³ By supporting capacity development, and collaboration among First Nations, the FMA institutions support the capacity for the effective implementation of the right to free, prior, and informed consent. Their work supports First Nations governments to engage from a position of strength with both government and the private sector on resource development projects.

The FMA framework also empowers the implementation of free, prior, and informed consent within First Nations governments by supporting transparency and accountability to citizens, which incentivizes good governance and builds internal support for the direction, goals, and initiatives of First Nations governments.

Many First Nations governments have already used the tools and frameworks provided by the FMA to free future generations from poverty and dependence. FMB research from 2014-2019 demonstrated that Financial Management System certified First Nations governments increased their own source revenue by an average of 64% during that time. The Opaskwayak Cree Nation, for example, was insolvent in 2016 when it began the FMS certification process. Only two years later, working with the FMB to improve internal financial operations/systems and through accessing low-rate FNFA loans which were leveraged into profitable economic development, it was able to erase a \$4 million deficit to post a \$15 million surplus, and now boasts several thriving businesses that employ and support their community members.²⁴

WHAT THE FMA INSTITUTIONS NEED GOING FORWARD

The unprecedented success of the FMA institutions in providing opportunities for self-governance outside of the confines of the Indian Act is an example of what can happen when government supports Indigenous leadership. The FMA institutions are examples of Indigenous initiatives driven by Indigenous thought leaders. Legislative changes and government support have been critical to their success. UNDRIP is about walking together – reconciliation through collaboration – on the path to Indigenous self-determination and empowerment.

²³ “Enhancing Aboriginal Financial Readiness for Major Resource Development Opportunities,” *National Aboriginal Economic Development Board*, January 2015, 15.

²⁴ Harold Calla, “A chance to forge a fiscal relationship with Indigenous peoples,” *Policy Options*, December 3, 2019. <https://policyoptions.irpp.org/magazines/december-2019/a-chance-to-forge-a-fiscal-relationship-with-indigenous-peoples/>.

To build on their success in supporting the capacity of First Nations governments to exercise self-government, the FMA institutions require the following support from Canada:

- Participation in the development of the framework for an optional path to a new fiscal relationship
- Funding for the initiatives outlined in the RoadMap
- Legislative changes to expand the mandate of the FMA institutions and ensure their long-term sustainability

Participation in the development of a framework for a new fiscal relationship

As previously mentioned, in the 2016 federal budget the Government of Canada announced it would develop a new fiscal relationship with First Nations, and engaged with the Assembly of First Nations (AFN) on a process and framework. The FMA institutions acknowledge and support the work underway to develop a new process and framework. The RoadMap is a parallel discussion that presents an optional alternative path to a new fiscal relationship within the framework of the FMA.

The current path to a new fiscal relationship is an improvement to the status quo. Backed by an FMB-approved Financial Administration Law and a financial performance assessment, First Nations governments can participate in the 10-Year Grant, an improved fiscal relationship with the following benefits:

- Increased monies
- Longer and more secure time frames for funding
- Reduced reporting requirements and conditions

Despite improvements to the status quo, a one-size-fits-all approach has undermined progress in a new fiscal relationship. Many FMA and self-governing First Nations are advocating for a revenue-based fiscal relationship, while Canada is advancing one that is based on transfers. This divide will limit the ability of First Nations governments to determine the future political and economic development of their governments.²⁵

Improved transfers are part of the solution, but transfers alone will not lead to Indigenous self-determination or prosperity; First Nations governments must have access to the tools needed to build their economies and exercise self-governance. **RoadMap proposes that a new fiscal relationship include more options for First Nations governments to create more revenue.**

²⁵ For more information on how transfers work see page 58 of “First Nations Governance Project,” *First Nations Financial Management Board*, <https://fnfmb.com/en/leadership/first-nations-governance-project>

An optional path to a new fiscal relationship

The FMB's robust framework for fiscal management, accountability, and transparency can support the federal government in creating the opportunity for a revenue-based fiscal relationship. Other levels of government in Canada already enjoy such fiscal relationships and have more autonomy as a result. A revenue-based option would reduce federal control and increase First Nations self-determination.

The fiscal foundation of sustainable governments is jurisdiction and taxation, which provides the means of building governance and public institutions that improve the health, education, innovation, and security of all citizens. The fair, accountable, and transparent application of a government's jurisdiction provides certainty to business, which leads to economic growth and the increase of government revenues.²⁶

First Nations governments are the most dependent governments in Canada. There is little clarity around jurisdiction or responsibility for services by respective governments, and the absence of independent revenue has inverted the accountability structure: **First Nations governments are made accountable to their funders instead of their citizens.** The result has been a lack of transparency and accountability, and services and infrastructure well below national standards. Improving the transfer structure will lead to an improved fiscal relationship, but without the option to exercise jurisdiction and taxation, it is not a new fiscal relationship – it is a familiar path with familiar outcomes.

Indigenous populations exercised jurisdiction before contact. Oral history supported by archaeology demonstrates that pre-contact Indigenous boundaries, hunting territories, and fee and tax collection systems were firmly established. Jurisdiction was the basis of the Royal Proclamation. There would be no requirement for treaties in areas where Indigenous populations did not have title and tax jurisdiction. It was the colonial government that legislated away Indigenous land and tax jurisdiction. The FMA institutions assert that any meaningful application of UNDRIP means Indigenous land and tax jurisdiction must be legislated back in. True self-governance means First Nations governments must have the option to exercise jurisdiction; set services priorities and provide services responsive to their citizens; pursue economic development; and raise independent revenue.

A new fiscal relationship based on revenue would be more effective than a transfer-based relationship. The FMA framework would ensure accountability of First Nations governments, both to their citizens and their funders. Transparency and accountability directly to community members also incentivizes improved financial management and use of funds. In addition to the system of grants and transfers from

²⁶ Raybould, 16.

other governments to First Nations governments²⁷, a revenue-based fiscal relationship would include the following:

- Service responsibility clarity among all levels of government
- Expanded options for taxation and revenue through a First Nations Goods and Services Tax (FNGST), First Nation tobacco tax, and First Nations Resource Charge
- Transfer formulas that ensure First Nations benefit from services and infrastructure comparable to other communities in their geographic regions
- Securitization of transfers and revenue
- Extension of jurisdiction beyond reserve boundaries
- Shared revenues through a First Nations revenue account and equalization formula

The elements of a new fiscal relationship as outlined here will support the meaningful implementation of UNDRIP and s.35 rights, offering a substantial improvement over the status quo. These elements provide the means to restore the jurisdictional foundations of government-to-government fiscal relationships and provide a path for interested participants to strengthen their governance and implement s.35 rights. This optional path would in no way diminish the obligations of the Government of Canada to fulfill its treaty obligations.

“First Nations should have the choice to either opt-in to any new arrangements made possible by a new fiscal relationship or remain under the current funding regime.”²⁸

- A new approach: Co-development of a new fiscal relationship between Canada and First Nations

HOW THE FMA INSTITUTIONS WILL SUPPORT INDIGENOUS GOVERNING BODIES

As First Nations governments advance toward a new fiscal relationship with the Crown, the FMA institutions will continue to present policy proposals and provide capacity support to those who wish to exercise their right to self-governance through the FMA. By providing laws, systems, training, and fiscal

²⁷ Again for more information on how transfers work see page 58 of “First Nations Governance Project,” *First Nations Financial Management Board*, <https://fnfmb.com/en/leadership/first-nations-governance-project>

²⁸ “A new approach: Co-development of a new fiscal relationship between Canada and First Nations,” *Government of Canada*, <https://www.sac-isc.gc.ca/eng/1516389497863/1613148302012>.

capacity that First Nations governments need to successfully implement jurisdictional authority, the FMA institutions have already forged an optional pathway to support the practical exercise of s.35 rights. The FMA institutions will continue to build on that success by supporting First Nations governments with the tools to develop new and improved fiscal relationships with the Crown, whether those relationships are defined by transfers or revenue.

The FMA institutions will support participating First Nations governments to implement jurisdiction, exercise good governance, manage assets wisely, provide services, and pursue economic development. This support will empower First Nations governments with the tools to manage their lands and grow their economies. To that end, the FMA institutions will focus on the following key areas of support:

- Statistics and data
- Infrastructure
- Economic development
- Jurisdiction and expanded fiscal powers
- Strength through working together
- Governance

Over the coming months, the FMA institutions will build on this introductory chapter by producing additional chapters to provide guidance and inspire policy discussion on these key areas of support.

Statistics and Data

The FMA institutions will address the need for readily available and trusted data regarding First Nations governments and communities, based on the First Nations principles of ownership, control, access, and possession.²⁹ The availability of reliable data will better inform policy decisions that affect the lives of Indigenous peoples, and will inform planning and business opportunity evaluation. Data and statistics will inform the direction and decisions of the FMA institutions.

FMB has identified numerous statistical gaps. Its publication of the First Nations Revenue Research Report in October 2020 proved that it is possible to collect reliable data on First Nations governments.³⁰ The FMA institutions will request a legislative mandate to resource and develop a statistics initiative, collaboratively supported, and housed within the FMB. The statistics initiative will serve the following objectives:

- Provide data validity and integrity that all levels of government can trust

²⁹ “The First Nations Principles of OCAP,” *First Nations Information Governance Centre*, <https://fnigc.ca/ocap-training/>.

³⁰ “First Nations Revenue Source Research,” *First Nations Financial Management Board*, https://fnfmb.com/sites/default/files/2020-11/2020-10-16_fmb_first_nations_revenue_research_report_en.pdf

- Develop a First Nations Financial Reporting Framework to create more comparability in tracking of key financial indicators
- Enable formula-based transfers and equalization frameworks
- Inform better policy decisions for all levels of government, including First Nations governments

Infrastructure

A 2016 report by the Canadian Council for Public-Private Partnerships estimated that it would cost \$25 to \$30 billion to close the infrastructure deficit that First Nations governments face.³¹ This gap contributes to the economic, social, health, and education disparities between the Indigenous and non-Indigenous populations in Canada. It has also created significant liabilities for the federal government. Compounding the problem, without institutional support it currently takes five times longer for an Indigenous infrastructure project to become shovel ready, compared to provincial systems.³²

The FMA institutions will support First Nations governments to overcome this problem through the development of the First Nations Infrastructure Institute (FNII).

FNII will support First Nations governments to plan and manage infrastructure assets by pursuing the following objectives:

- Standardize best practices
- Reduce time and costs to develop infrastructure
- Provide frameworks for infrastructure planning, procurement, and construction
- Provide frameworks for operations and maintenance of infrastructure assets
- Provide centre of excellence to increase Indigenous capacity and skills in infrastructure management

This initiative will support First Nations governments to maintain cost-effective, efficient, and sustainable infrastructure assets. The federal government could then build on this improvement by enabling the securitization of federal transfers for financing infrastructure.

Economic Development Support

First Nations governments must have access to the tools to grow their economies and manage wealth, as they evolve into a new fiscal relationship. The FMA institutions will support economic empowerment and the right to pursue economic development by building on the foundation of the FMA framework.

³¹ “P3’s: Bridging the First Nations Infrastructure Gap,” *The Canadian Council for Public-Private Partnerships*, https://www.pppcouncil.ca/web/P3_Knowledge_Centre/Research/P3_s__Bridging_the_First_Nations_Infrastructure_Gap.aspx?WebsiteKey=712ad751-6689-4d4a-aa17-e9f993740a89.

³² “Closing the Indigenous Systemic Gaps with a *First Nations Fiscal Management Act* (FMA) Indigenous Recovery Strategy,” *Fiscal Realities Economists*, November 2020, 3.

They will establish an Indigenous economic institution within the FMA, providing tools, resources, and networks to support First Nations governments in participating more fully in the Canadian economy.

Private sector investment represents 95% of investments in the Canadian economy, while government sources account for only 5%. For First Nations governments, these figures are reversed.³³ The tools and framework of the FMA create an ecosystem for economic development because good governance attracts private sector investment. Stable and predictable governments with fair and transparent jurisdictions, laws, policies, and processes reduce business risk for private sector investment.³⁴ The FMA institutions support this foundation for economic development in the following areas:

- Pooling borrowing capacity to secure credit rating and access to private capital
- Issuing standards that provide a framework for transparent and accountable fiscal management and good governance
- Issuing certifications to confirm a government's compliance to FMB standards
- Providing sample Financial Administration laws and policies
- Providing sample policies and training to support transparent and accountable fiscal management and administrative governance
- Supporting informed and fair decision-making processes
- Providing the framework for implementation of jurisdiction and taxation
- Capacity development and training

The FMA institutions will continue to build on this foundation for economic development by offering increased institutional support for Indigenous economic growth through an economic development initiative within the FMA. An economic development initiative will support the need to generate, manage, and invest wealth. It will provide the following supports to First Nations governments:

- Expanded financing options
- Evaluation of market opportunities
- Economic development thought-leadership, best practices, and strategies
- Evaluation of economic development investment opportunities
- Major project support
- Support for aggregate initiatives and procurement
- Support for participation in resource projects and value chains
- Investment management options
- Capacity development
- Advice on taxation frameworks to support private sector investment

³³ Raybould, 14.

³⁴ *Ibid*, 16.

Jurisdiction and expanded fiscal powers

First Nations governments have far less revenue-raising power than other governments and it is often unclear who is responsible for services and infrastructure. First Nations governments exercise less than 2% of the fiscal powers that other levels of government exercise.³⁵ The difference between the taxes currently collected by First Nations governments and the amount they could potentially contribute to services and infrastructure amounts to \$31.7 billion annually.³⁶ This gap contributes to substandard infrastructure, lower quality services, and economic and social disparities.

The FMA institutions will advocate for the following legislative changes to create more options for Indigenous jurisdiction and tax powers, and will develop support frameworks for interested participants to exercise expanded jurisdiction.

1. Expanded jurisdictions

The FMA institutions provide an optional and practical path to implementing jurisdictional responsibilities for First Nations governments. The FMA institutions will develop further legislative proposals to facilitate the orderly transition to expanded jurisdictional power for interested First Nations governments. This includes helping to bring clarity on the following issues:

- Service responsibility for all levels of government
- Geographic jurisdiction boundaries between federal, provincial, and First Nations governments
- Transfer formula consistency to ensure a comparable quality of services and infrastructure between Indigenous and non-Indigenous citizens

2. Limitations on the application of provincial laws

Provincial laws may apply on Indigenous lands as laws of general application pursuant to s.88 of the Indian Act. Where a First Nations government enacts its own laws, the application of provincial laws should be limited by Indigenous law paramountcy to give full effect to governance choices of First

³⁵ “Closing the Indigenous Systemic Gaps,” 3.

³⁶ Based on StatsCan data (table 36-10-0477-01), Canada’s federal, provincial, territorial, and local governments expect to collect about \$663.4B in taxes in 2020/21. Based on Census data (catalogue no. 98-404-X2016001), Canada’s Indigenous peoples represent about 4.86% of the overall population in Canada. Assuming the average contribution to government revenues among the Indigenous population could be equivalent to the average Canadian’s contribution, the potential fiscal contribution of Indigenous people is estimated to be about \$32.2B. Based on local revenue estimates from the FNTC, royalties from IOGC, FNGST from Finance Canada and self-government agreement First Nation tax estimates from Finance Canada, it is estimated that First Nations governments currently collect less than \$500M in taxes annually. Therefore, the Indigenous fiscal power gap is estimated to be about \$31.7B annually.

Nations. The FMA institutions will develop legislative proposals to support the recognition of First Nations jurisdictions and the transition of authority from one jurisdiction to another.

3. Expansion of Indigenous fiscal powers

Expansion of available fiscal powers under the FMA would allow First Nations governments to raise additional revenue. The FMA institutions will advocate for legislative changes to expand the optional fiscal powers of First Nations to include the following revenues:

- First Nations Goods and Services Tax
- First Nations Tobacco Tax
- Aboriginal Resource Tax
- First Nations Cannabis Tax
- Excise taxes or tax sharing arrangements on cannabis, tobacco, and alcohol
- Gaming

The FMA will advocate for these legislative changes to provide a completely optional path for interested First Nations governments to implement s.35 jurisdictions and a more sustainable revenue-based fiscal relationship.

Strength through Working Together

Many Indigenous communities are still building the governance, administrative, financial, and investment management capacity they need to achieve economic and social prosperity. By working together, First Nations governments have been able to combine their resources, reduce cost of governance, create economies of scale, and improve negotiating power. Working alone, many First Nations governments simply would not have the size and scale to manage programs or pursue economic opportunity. The FMA institutions will support opportunities for greater collaboration among like-minded communities that see the benefit of strength through working together.

With recent amendments to the FMA, the FMA institutions can now work with a wider range of organizations including Indigenous Not-for-Profit Organizations (NPOs) and Tribal Councils. The FMA institutions will support aggregation among First Nations governments for service delivery by Indigenous-led organizations in the following areas:

- Health
- Housing
- Education
- Water and wastewater management
- Child and family services
- Employment
- Tribal Councils

- Environmental management

The FMA institutions anticipate that the FMS Certification will become a proxy for oversight measures, providing government with the confidence to transfer funding and responsibility to Indigenous-led service providers. Periodic assurance of FMS Certification will pave the way for ISC's withdrawal by providing an Indigenous-led system of checks and balances and assuring transparency, accountability, and value for money.

This framework will empower Indigenous NPOs to seek Certification as proxy for oversight measures across various regions and sectors. The FMA institutions anticipate that this framework will incentivize First Nations governments to work together to provide services collectively, pooling resources and negotiating power. The success of the Atlantic First Nations Water Authority (AFNWA) is the latest example of strength through working together. In June 2020, ISC and the AFNWA signed a framework agreement that creates a pathway for the transfer of water and wastewater services for 15 First Nations communities from ISC to the AFNWA.

The FMA institutions will also actively support the aggregation of First Nations governments for economic development purposes:

- Regional or tribal development corporations (particularly for targeting government procurement and major projects)
- Evaluating, negotiating, and investing in resource development
- Evaluating, financing, and managing infrastructure

The FMA institutions have already demonstrated success in this regard through the development of the First Nations Major Projects Coalition (FNMPC) – an organization that started within FMB, but now operates independently. The FNMPC supports participating First Nations governments to close infrastructure and socio-economic gaps by moving beyond government programs in pursuit of major economic development opportunities. FNMPC creates pathways to reconciliation by advancing opportunities for First Nations to obtain ownership stakes in major projects that run through their traditional territories, thereby promoting meaningful change and the creation of Indigenous wealth. The FMA institutions will continue to support FNMPC and advocate for sustainable funding.

Case Study: Nova Scotia Mi'kmaq Purchase one of North America's Largest Seafood Companies



The Mi'kmaq Nations led by Membertou and Miawpukek, saw the **opportunity** to be major players in the seafood industry. Knowing there is **strength in numbers**, a coalition including the Sipekne'katik, We'koqma'q, Potlotek, Pictou Landing, and Paqtnekek First Nations was assembled. The First Nations worked with **the FMB** on capacity development and all gained certifications from FMB. The coalition recognized that fishing licences are valuable **assets**; the purchase of Canadian fishing licences allowed for a 50% equity share in Clearwater. The coalition **partnered** with B.C. company Premium Brands to bring in capital and expertise. The **FNFA** worked with the coalition so it could invest \$250 million for its share of the partnership that will be paid through a 30-year loan with FNFA.

Governance Support

To build sustainable, healthy, and wealthy societies, all governments must exercise stable, transparent, and fair authority within clearly defined processes and jurisdiction.³⁷ This foundation creates an ecosystem for success: strong governance attracts private sector investment, fosters economic development, and results in effective administration of wealth and services. By empowering First Nations governments with the frameworks and tools for strong governance, the FMA institutions will continue to support their capacity to exercise s.35 rights.

The FMB framework of transparency and accountability has provided the foundation for all FMA initiatives to support Indigenous self-governance outside of the *Indian Act*. FMB will build on that foundation to develop a periodically required FMS certificate that will become an oversight framework to enable the following optional initiatives:

- Formula-driven federal transfers
- Securitization of federal transfers for financing through the FNFA
- Transfer of service responsibilities and funding from federal and provincial governments to First Nations governments and entities
- Expanded jurisdiction for land management and taxation powers

³⁷ Raybould, 16.

- Improved tax coordination

The FMA institutions will also promote the capacity of First Nations governments to self-govern by providing the following tools and enhanced supports:

- Capacity support and training
- Standards and comprehensive processes to support accountability, transparency, duty of care, and effective governance for First Nations governments and organizations
- Advocacy for legislative changes to promote fiscal capacity and institutional support
- Thought leadership to support the implementation of UNDRIP
- Support for First Nations aggregations

“...Moving instead towards a model whereby First Nations-led organizations are empowered to support First Nations governments in assessing and, identifying governance capacity needs while the federal government focuses on providing access to funding to support capacity development.”³⁸

- A new approach: Co-development of a new fiscal relationship between Canada and First Nations

PROPOSED LEGISLATIVE CHANGES

The FMA framework is a platform that will support a new fiscal relationship based on increased and sustainable revenue for participating First Nations governments, and provide the tools and institutional support needed for self-governance. To that end, the FMA institutions will propose two sets of amendments during the next three years of parliament to provide more jurisdictional options, economic opportunities, and institutional support for interested First Nations governments.

These amendments will expand practical options for interested First Nations governments to exercise Indigenous rights. They will also give the FMA institutions a mandate to pursue the long-term objective of supporting First Nations governments to improve their capacity to govern. Statutory funding will increase the autonomy and strategic flexibility of the FMA institutions and provide financial visibility for long-term planning.

³⁸ “A new approach: Co-development of a new fiscal relationship between Canada and First Nations,” *Government of Canada*, <https://www.sac-isc.gc.ca/eng/1516389497863/1613148302012>.

Proposed amendments for 2022

The FMA institutions considered this first group of amendments an important step to implementing RoadMap. This proposal will include the following amendments:

- Expand the mandates of the FNFA, FMB, and FNTC to provide expanded services to a wider range of organizations including modern treaty First Nations, Tribal Councils, and Not-for-Profit Organizations
- Expand the FMA to include the First Nations Infrastructure Institute (FNII) to support more sustainable Indigenous infrastructure systems
- Provide a data and statistics mandate to the FNTC, FMB, and the proposed FNII for an improved fiscal relationship, and to include First Nations governments in Government Financial Statistics
- Provide options for FNGST and FACT (fuel, alcohol, cannabis, and tobacco) sales tax revenues and tax sharing agreements in the FMA to support greater revenue stability
- Ensure stable and flexible statutory funding for the FMA institutions
- Improve access to capital for more First Nations governments and organizations

Proposed amendments for 2022-2023

By 2022-2023, the FMA institutions will advance the additional proposed FMA amendments, building on the evolution of the FMA and innovation of the institutions:

- Further enhance FMA institutional services and capacity, including the provision of statutory funding to the institutions
- Establish the FMA institutions' economic development initiative under the FMA
- Create a government revenue account between First Nations independent revenues and expenditures, and support an improved fiscal relationship and revenue sharing among FMA participants
- Add new optional fiscal powers for resources, tobacco, cannabis, and excise tax sharing
- Enhance access to capital with general obligation debentures, as with other governments
- Improved Indigenous-driven director appointment process for FMB and FNTC

CONCLUSION

This initial chapter in the RoadMap Project has introduced a pathway to support First Nations governments in achieving better outcomes by providing the tools and capacity for them to exercise their rights. This pathway will provide a framework to allow increased revenue generation and greater economic development, backed by a system of transparency and accountability. It will promote more responsive First Nations governments and greater cooperation at the regional level. It will help to ensure that First Nations can feel confident in choosing to exercise control over their fiscal futures and will give

Canada confidence that public funds will be prudently and effectively managed. Most importantly, it will help ensure that First Nations have the tools to overcome the legacy of the colonial and paternalistic *Indian Act*.

The pathway is neither a quick fix to the challenges many communities face, nor is it a route that all First Nations will choose to take. Indeed, some First Nations may never choose this path or may only choose to take some of the steps down it over time; yet the pathway is a response to the needs and desires of many First Nations across Canada. This response is more than just an acknowledgement, it is a means of empowerment guided by the capacity of First Nations to govern themselves.

Over the coming months, the FMA institutions will build on this introduction by producing additional chapters to add to the RoadMap project. Each chapter will provide more detailed guidance and policy discussion on one of the key areas of support outlined below:

- Statistics and data
- Infrastructure
- Economic development
- Jurisdiction and expanded fiscal powers
- Strength through working together
- Governance

With each additional chapter, it will become clearer to both Canada and interested First Nations how the RoadMap can support the successful implementation of UNDRIP and s.35 rights. Just as this chapter has done, each chapter will both generate greater discussion on the issues raised and identify the actions that need to be taken so that the choices the RoadMap presents can become a reality.

The FMA institutions will use the conversations generated from this initial chapter to inform the work ahead on the RoadMap. They will actively seek the feedback of both the federal government and First Nations as they refine the details of new options that need to be made available to First Nations. The institutions also invite First Nations to see the RoadMap project as a dialogue that will benefit from their contributions and insights.

This project focuses on the role FMA institutions can play in supporting transparency and accountability. It also focuses on the tools required for First Nations to substantially increase their economic and fiscal capacity to expand their options beyond simply spending the limited funds Canada provides.

The RoadMap project will not address many of the human capacity, educational, and cultural elements that First Nations will want to build as they gain greater control over their own affairs. The FMA institutions welcome feedback from First Nations thought leaders on how these aspects could be

addressed, building on some of the tools the RoadMap project will make available. Self-governance is a tree with many branches; optionality and empowerment have always been central to the work of the FMA institutions and will be central to this project.

There is clearly a hunger out there for the kind of choices that the RoadMap Project provides – a hunger to bring First Nations’ aspirations to reality, a hunger for more freedom on the path to self-government, and a hunger to take meaningful steps forward with the support of Indigenous institutions under Indigenous control, replacing the old, failed institutions of colonizers. There is a hunger for a pathway to an entirely new fiscal relationship for First Nations inside of Canada; a pathway to wealth and growth on their own terms, a pathway to happiness and prosperity for both First Nations and Canada.

The FMA institutions look forward to the support of the Government of Canada in the development of Indigenous-led initiatives to promote the risk-managed implementation of a new fiscal relationship to advance implementation of UNDRIP and s.35 rights. They anticipate this paper, and upcoming chapters, will inform policy discussion and the creation of optionality within the new fiscal relationship.

Through the development of this RoadMap, the FMA institutions look forward to contributing to what should be a new beginning in the relationship between First Nations and Canada.

Let’s talk soon.



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