

2003



Report of the
**Auditor General
of Canada**
to the House of Commons

NOVEMBER

Chapter 9
Economic Development of First Nations Communities:
Institutional Arrangements

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The November 2003 Report of the Auditor General of Canada comprises ten chapters, Matters of Special Importance—2003, a Foreword, Main Points, and Appendices. The main table of contents is found at the end of this publication.

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Cat. No. FA1-2003/2-14E
ISBN 0-662-35307-2



Chapter

9

**Economic Development
of First Nations Communities**
Institutional Arrangements

All of the study work in this chapter was conducted in accordance with the policies of the Office of the Auditor General for studies. The policies draw on the standards and practices of various disciplines. The Office used various methodologies and techniques in the development and presentation of the studies' findings.

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Economic Development of First Nations Communities

Institutional Arrangements

Main Points

9.1 There are substantial gaps in key economic indicators such as employment and income between Aboriginal and non-Aboriginal people in Canada. Closing these gaps would help reduce poverty among Aboriginal people, resulting in lower social and financial costs. However, First Nations told us they face barriers to accessing natural resources and capital, to accessing federal business support programs, and to benefiting from federal institutional development programs. These barriers increase their costs of doing business and impede their economic development.

9.2 The First Nations we visited for the study use several good practices in their institutional arrangements to help overcome the barriers. These practices include developing a vision to guide economic development, establishing institutional arrangements to ensure that development is sustainable, and partnering with others to benefit from economies of scale and expertise.

9.3 The federal government is a key contributor to First Nations economic development through its programs and its regulatory functions. These programs have assisted many successful First Nations businesses and have helped develop some institutional arrangements.

9.4 However, federal support for institutional arrangements is not yet sufficient to help First Nations overcome barriers and take control of their economic development. Federal organizations need to

- consolidate the administrative requirements and improve the adaptability of business support programs,
- help First Nations identify and build consistent and fair institutional arrangements in a timely way, and
- use a more horizontal approach for economic development programming.

Background and other observations

9.5 Research shows that institutional arrangements make a significant difference between achieving sustained economic success or continuing in poverty. Our study examined the institutional arrangements for economic development of selected First Nations and the role of the federal government in supporting those arrangements. The institutional arrangements we examined were the organizations, rules, and practices that structure economic interaction for reserve-based First Nations.

9.6 The Auditor General is not the auditor of First Nations. Our study was not intended to provide a comprehensive review of First Nations institutional arrangements for economic development; however, we wanted to reflect their perspectives. We sought the assistance of 13 First Nations and 4 tribal councils and governments in 5 provinces and they agreed to participate in the study.

9.7 The study also proposes criteria to test federal economic development programs.

The government has responded. The government agrees with the recommendations in the study. Its responses, included in the chapter, describe the actions it is taking and intends to take.

Introduction

First Nations need economic development

9.8 The 1996 *Royal Commission on Aboriginal Peoples* documented substantial gaps between Aboriginal and non-Aboriginal people in Canada in key economic indicators, such as employment and income. On average these gaps are closing only slowly and progress is complicated by high rates of Aboriginal population growth. Data from the 2001 census indicate that many First Nations endure high unemployment, low incomes, and reliance on transfer payments, though others have achieved levels of community income, individual income, and employment approaching non-Aboriginal society.

9.9 Closing these gaps would help Aboriginal people meet certain goals: making a decent living, gaining independence, and achieving freedom from the debilitating effects of poverty. As well, social and financial costs will continue to increase if First Nations' economies remain underdeveloped.

Institutional arrangements are important to sustained economic development

9.10 The economic circumstances of First Nations are diverse. Of First Nations communities, 61 percent have fewer than 500 people, and 21 percent are located in remote and isolated areas.

9.11 While size, remoteness, and proximity to resources can influence First Nations' ability to develop economically, academic research shows that institutional arrangements make a significant difference between achieving sustained economic success or continuing in poverty. Economic activity cannot thrive where there is uncertainty, and well-functioning institutional arrangements provide stability and security (Exhibit 9.1).

9.12 We define institutional arrangements as the formal and informal organizations and functions that structure economic interaction. In this context, institutional arrangements consist of the following:

- **Organizations or structures.** These include political bodies (the chief and council of a First Nation), governmental bodies (economic development departments), business management organizations (development corporations), and less formal structures such as partnerships or negotiating forums.
- **Rules.** These include treaties, agreements, laws, regulations, and policies.
- **Practices and procedures.** These include staffing or planning procedures, and the outputs of procedures—strategies, plans, and certifications.

9.13 These institutional arrangements set the framework for economic development. They are also interrelated. Organizations develop laws and procedures, rules establish what kinds of organizations and procedures are created, and practices describe how organizations are run and how rules are implemented.

A senior First Nation manager told us, "Economic development for First Nations is good for Canadian society as a whole. A group that has been marginalized should not continue to be so, and should be contributing to the gross domestic product of the country."

Exhibit 9.1 Why do institutional arrangements matter?

In the 1990s analysis of the economic development challenge facing developing countries concluded that ineffective institutional arrangements were at the heart of the problem. The strength of institutional arrangements affects the performance of the economy through production and transaction costs. For example, if officials can change the terms of leases or royalties at will, then businesses will avoid their jurisdiction, or pay additional costs to buy extra leases or resources in case access is restricted.

Institutional arrangements reduce costs by establishing stable structures around economic interactions. These findings have led to significant changes in intervention strategies. For example, the World Bank now focusses on strengthening institutional arrangements rather than supporting businesses or infrastructure.

In 1987, researchers in the United States established the Harvard Project on American Indian Economic Development. The project has researched and collected a wealth of case studies on a range of American Indian nations and, in recent years, has begun research in Canada.

The three main findings of the Harvard Project are that First Nations prospects for economic success are increased when

- they make their own decisions on the use of their resources and on their strategies for economic development;
- they have capable institutional arrangements, that is stable political structures, a fair dispute resolution mechanism, the separation of business from politics, a competent bureaucracy, and a strategic orientation; and
- their institutional arrangements fit their cultural identity and unique way of doing things.

Source: World Bank and the Harvard Project on American Indian Economic Development

9.14 Institutional arrangements can be formal and documented, or informal. However, there are benefits to formalizing many of the arrangements in economic development: economic relationships often cross cultural boundaries where concepts of what is just and fair, for example, may differ between the cultures. Formal arrangements define those concepts.

Focus of the study

9.15 This is the second study undertaken as part of the Auditor General's focus area on Aboriginal issues. The first study examined reporting requirements. This study examined the institutional arrangements for economic development within selected First Nations and the role of the federal government in supporting those arrangements.

9.16 Studies differ from audits by being more exploratory in nature. This study followed the same systematic and evidence-based approach as an audit, but its objectives aim to obtain more descriptive information, and we did not identify criteria in advance. From this study we have developed criteria that we will use to evaluate federal Aboriginal economic development programs.

9.17 The objectives of this study were to describe and analyze

- how the institutional arrangements for economic development of selected First Nations contribute to their economic development and their need for federal support, and
- how the federal government provides support for First Nations institutional arrangements for economic development.

9.18 Thirteen First Nations and four tribal councils and governments, located in five provinces, offered to assist us. Tribal councils are voluntary groupings of First Nations that provide advisory and program services to member Nations. The First Nations who assisted us are generally considered to be well-governed and proactive about their economic development. Their experiences helped to identify some good practices in institutional development, but also shed light on the barriers to economic development that First Nations face across Canada.

9.19 We examined two federal departments that provide programs targeted at First Nations economic development. As well, we examined the programs of Fisheries and Oceans Canada that provide economic opportunities for First Nations by providing access to commercial fisheries (see Appendix A for programs). We also met with three regional departments and agencies, two Crown corporations, and one special operating agency that provide assistance and economic development support to First Nations.

9.20 Further details on the study are at the end of the chapter in **About the Study**.

Observations and Recommendations

The federal government's role

9.21 Under the *Indian Act*, the *Indian Oil and Gas Act*, the *First Nations Land Management Act*, and other legislation, federal organizations have responsibilities in many areas important to First Nations economic development. These include governance, management of land and resources on reserve lands, taxation, and management of revenues from the exploitation of resources on reserve lands. As well, in its 1997 Aboriginal action plan, *Gathering Strength*, the federal government made a commitment to “expand opportunities for economic development and reduce obstacles.”

9.22 It has repeated this commitment in subsequent policy statements, including in the 2001 and 2002 speeches from the throne.

9.23 The federal government supports reserve-based First Nations economic development through

- programs to assist First Nations economic development;
- programs with broader mandates that can nonetheless assist First Nations economic development (for example, fisheries management programs that provide economic opportunities for First Nations, or

regional economic development programs that are not targeted specifically to Aboriginal peoples); and

- its regulatory responsibilities under the *Indian Act* and other acts.

9.24 The departments of Indian and Northern Affairs Canada and Industry Canada deliver 10 programs intended to assist First Nations economic development. Fisheries and Oceans Canada provides economic opportunities to Aboriginal groups through two programs (Appendix A).

9.25 Indian and Northern Affairs is also responsible for most of the regulations that have an impact on reserve-based resources. These regulations are applied by several management regimes that involve First Nations to varying degrees (see Appendix B for regimes).

9.26 Generally, the regional development agencies do not deliver programs aimed specifically at Aboriginal peoples. However, they support individual projects, often in collaboration with Indian and Northern Affairs, Industry, and Fisheries and Oceans.

9.27 The federal government's economic development programs provide two kinds of support to First Nations economic development.

- **Support for businesses.** Assistance to businesses to establish, improve, or expand their operations.
- **Support for institutional arrangements that facilitate First Nations economic development.** Creating or strengthening organizations, rules, or procedures that establish appropriate frameworks for economic development.

9.28 Most programs provide both types of support to some degree. Each federal organization has its own program authorities, and the programs have their own criteria, application processes, and reporting requirements. Most of the programs respond to specific project proposals developed by First Nations and provide support for only one or two years.

9.29 While the focus of this study is institutional arrangements that contribute to First Nations economic development, we also looked at the business support programs.

Barriers to economic development

9.30 The First Nations we visited explained that, in pursuing economic development opportunities, they faced several barriers that increased their costs of doing business. These barriers are of three kinds:

- barriers to accessing economic development resources,
- barriers to accessing federal business support programs, and
- barriers resulting from federal management and institutional development approaches.

First Nations' perspective on barriers to accessing economic development resources

9.31 **First Nations told us their access to natural resources is restricted.** The First Nations we visited consider access to natural resources an important source of economic development.

9.32 Generally, the lands that neighbour First Nations reserves are the responsibility of the provinces. The First Nations we visited often consider these lands their traditional territories, and in many cases those lands are subject to claims by the First Nations. The First Nations told us that, despite this, development of the lands continues—without their participation—while negotiations are underway. The First Nations noted also that exploitation of resources in these territories can disrupt their traditional economic activities, such as hunting and fishing.

The head of one prominent First Nation organization told us, “Underdevelopment is not simply the natural state of First Nations economies. It is happening because market forces are not operating properly on First Nation lands.”

9.33 Several First Nations noted that certain provincial policies had helped them obtain greater access to lands and resources in recent years. In particular, they cited the policies of the governments of British Columbia and Saskatchewan to involve First Nations in forest management, and Saskatchewan’s policies that encourage corporations to involve northerners in their business activities.

9.34 First Nations told us they have difficulty accessing capital. Investing in economic development activities requires capital. Most of the First Nations we visited do not have large investment funds and, under the provisions of the *Indian Act* and other agreements, they cannot use reserve land, often their most valuable resource, as collateral for loans.

9.35 The First Nations told us they seek capital from such sources as

- banks,
- other non-Aboriginal sources of private capital,
- a network of federally supported Aboriginal capital corporations and community futures development corporations that provide small loans, and
- other government programs.

9.36 Several First Nations told us that their biggest problems in accessing capital from these sources include uncertainty about how to secure loans and about the legal status of First Nations organizations. Also, the sources have a limited understanding of the circumstances of reserves. For example, one First Nation noted that both a major chartered bank and a local financial co-operative questioned whether the First Nation’s economic development organizations could legally borrow money. The First Nations noted that non-Aboriginal financial organizations rarely locate on reserves and therefore do not have working relationships with the communities.

9.37 The First Nations further noted that, when they receive moneys through land settlements or other agreements, private sector financial organizations and government officials often expect those funds to be available for investment in businesses—even when the funds are intended to meet other critical community needs, such as improving infrastructure. Also, some First Nations commented that support from Aboriginal capital corporations or community futures development corporations is costly because their interest rates are high compared to banks’.

9.38 Some First Nations pointed out that once they build a relationship with private sector financial organizations, those organizations can become very helpful.

First Nations' perspective on barriers to accessing federal business support

9.39 **First Nations told us that keeping track of the requirements of different programs is a substantial burden.** Because of their small size and limited resources, several of the First Nations we visited have only one economic development officer. Several economic development officers told us they spend much of their time preparing funding proposals, sustaining businesses, and helping entrepreneurs fulfill the reporting requirements of successful applications. They also told us that they have difficulty keeping updated on the details of the numerous federal, provincial, and local programs that are available, despite the communication efforts of federal organizations.

9.40 **First Nations told us that federal officials, when reviewing projects, are reluctant to take risks.** Some First Nations we visited noted that the departments of Indian and Northern Affairs and Industry report that the failure rates for Aboriginal start-ups they support are lower than for other Canadian start-ups. Department officials consider this an indicator of the success of their programs. However, First Nations argue that it is an indicator that federal officials are reluctant to take risks. The First Nations commented that the low tolerance for risk results in program managers conducting lengthy reviews of project proposals, which can cause delays in processing.

9.41 **First Nations told us that project approval processes do not move at the speed of business.** Several First Nations we visited told us that delays can result in lost opportunities, increased cost, or increased risk to the project. They felt that federal organizations, generally, did not take a client-centred approach to project approval. For example, one First Nation told us that they had a narrow window in which to purchase a successful non-Aboriginal business located on-reserve, and that Indian and Northern Affairs was unable to approve the application in time to provide support.

9.42 In another case, a First Nation told us that Indian and Northern Affairs took more than 13 months to approve an equity contribution for a project. The delay stemmed in part from federal officials inconsistently applying program criteria to the project. The result: additional costs to the First Nation.

9.43 **First Nations told us that program criteria are difficult to adapt to large-scale, complex economic development projects.** The priorities, criteria, and funding limits of federal programs mean that sometimes they can fund only a small portion of larger, multi-dimensional projects. Therefore, some First Nations told us, they pursue funding from several organizations and programs, but each program may require a separate application process. Each may also require the project to be adjusted to meet the program terms. As well, each participating federal organization may require the First Nation

to file separate progress reports. First Nations referred to this time-consuming process as trying to “fit a square peg into a round hole.”

First Nations’ perspective on barriers resulting from federal management and institutional development approaches

9.44 First Nations told us that the *Indian Act* processes are burdensome.

Some of the processes required by the resource management regimes (Appendix B) are complex. For example, payments from resource development on reserve lands, such as rents and royalties, are not made to the First Nation. Instead, the payments are made to Indian and Northern Affairs and placed into trust accounts. To access the funds, the First Nation must make a request to the Minister and support it with a band council resolution and plans detailing how the money will be spent. The Department then reviews the application, and the Minister decides whether to release funds. Such processes derive from the *Indian Act* and other legislation, and ensure that the federal government meets its fiduciary obligations toward First Nations. The courts have confirmed these obligations, which require the Department to ensure that resources and funds are managed in the best interests of the First Nation. Failure to fulfil these obligations correctly can lead to costly lawsuits.

9.45 Some of the First Nations we visited regard Indian and Northern Affairs’ role in the management of on-reserve natural and financial resources as an important safeguard. However, several First Nations consider the Department’s approach too slow, too short term, and on some occasions, poorly administered.

9.46 For example, the Department’s procedures for the leasing and designation of land lengthened the project approval process significantly for one First Nation we visited (Exhibit 9.2).

9.47 Another First Nation described how a range of legal and administrative problems has restricted use of its reserve lands. For one, the *Indian Act* does not specify how interests in land shall be transferred to multiple owners. Also, over the past 50 years, Indian and Northern Affairs has changed its filing systems for registering lands and introduced errors into the First Nation’s registrations. It has also changed policies that affected interests in the land. As a result, many lots on the First Nation’s lands have no road access or have several owners who must agree on the use of the land; some of whom cannot be identified or located readily. As well, with applications to subdivide lots growing, the large backlog of surveys likely will increase.

9.48 In this case, the federal government and the First Nation have recognized these problems for several years. The parties need to collaborate to establish a mechanism and a timetable to resolve the issues.

9.49 First Nations told us that resources are lacking to build institutional arrangements in a timely way. Some First Nations we visited told us that the federal government offers little support for institutional arrangements in the early stages of economic development. Because their own resources are

limited, First Nations often can put appropriate institutional arrangements in place only after significant development has occurred.

9.50 For example, one First Nation told us that leases covering a substantial proportion of the community's reserve land were negotiated on a case-by-case basis by Indian and Northern Affairs. At the time, there were no institutional arrangements in place for planning, tax assessment, or dispute resolution. With no consistent rules, the First Nation has become involved in costly

Exhibit 9.2 The investment approval process is a barrier to doing business on reserves

In 1999, the Indian Taxation Advisory Board and Indian and Northern Affairs Canada commissioned a study by Fiscal Realities Economists, a British Columbia research firm, on the barriers to doing business on reserves. The study compared the investment approval process for four First Nations projects with similar projects in adjacent, non-Aboriginal jurisdictions.

In each case, the study reported that it took significantly longer to approve the project on First Nations lands. There was some variation in the causes, but there were a number of consistent issues:

- implementation of Indian and Northern Affairs Canada's fiduciary obligations, resulting in risk-averse decision-making and lengthy approval times,
- jurisdictional conflicts and differences in regulation in adjacent jurisdictions,
- a lack of administrative capacity within First Nations,
- incomplete separation of politics and administration,
- physical infrastructure unable to meet the needs of business,
- First Nations' uncertainty about public revenues and access to capital,
- inadequate information for investors about opportunities, and
- poor connections between First Nations and business communities.

One example was a property development that occurred in the early 1990s on the lands of one of the First Nations we visited. The study provided a timeline of the development on the First Nation's reserve compared with a neighbouring non-Aboriginal community.*

Project phase	Off-reserve development (months)	First Nation development (months)
Project initiation	7.3	3.0
Designation	5.2	18.0
Leasing	5.7	18.0
Financing	2.0	12.0
Service agreements	2.4	0.0
Construction	7.8	12.0
Total	30.4	63.0

*We did not reconfirm the analysis of the project undertaken by Fiscal Realities Economists.

Source: Fiscal Realities Economists, *Expanding Commercial Activity on First Nation Lands: Lowering the Costs of Doing Business on Reserve*, November 1999.

disputes with leaseholders. As money becomes available from lease payments, the First Nation builds institutional arrangements that enable it to plan the location of buildings, to develop the necessary infrastructure (such as water, sewer, and power), to manage the leases, to assess and collect property taxes, and to manage issues that may arise with leaseholders or tenants.

9.51 The First Nations acknowledged that they need to use some of their own revenues to establish and uphold institutional arrangements that support their economic development. However, they noted that they require assistance particularly to manage the early stages of development. The First Nations were also concerned that they not be penalized for achieving economic success by losing federal funding as their own revenues begin to grow.

Good institutional practices

9.52 The First Nations we visited told us that institutional arrangements reduced barriers to their economic development and provided greater certainty for investors. They have developed several good practices that help them to identify and implement appropriate institutional arrangements that increase stability and reduce costs in their economic activities.

A clear vision

9.53 Each First Nation we visited has a clear vision of its economic development. Some are formally written; others are expressed verbally by the First Nation's leaders.

9.54 The First Nations' visions guide their decisions on which economic opportunities to pursue. The First Nations help entrepreneurs establish private businesses, but they also pursue economic development on behalf of the entire First Nation by establishing community-owned enterprises. Government support helps them do so.

9.55 The First Nations pursue opportunities on- and off-reserve, and consequently are involved in a wide range of industries, including forestry, oil and gas, fishing, tourism, agriculture, gaming, communications, new technologies, construction, trucking, retail, and aviation.

Separating political processes from government administration and business management

9.56 The First Nations we visited recognized that politics, government administration, and business management must have a degree of insulation from each other to provide the necessary stability for economic development. For them, the role of political organizations and processes is to set strategic direction. The role of government or the public service is to develop, regulate, and enforce a framework for economic activity that encourages investment and sustainable businesses. The role of business management is to grow businesses within that framework.

9.57 Achieving appropriate separations among business, administration, and politics is a particular challenge for First Nations because they often have a limited leadership pool due to their small population, and because they

often pursue economic opportunity through collective means, such as community-owned businesses. The First Nations we talked to have developed a range of mechanisms that establish such separation. For example:

- Documented roles and responsibilities that separate strategic and political roles from day-to-day government administration and business management.
- Procedures to identify and manage possible conflicts of interest.
- Procedures to hire and promote staff based on merit and qualifications.
- Agreements to keep existing management in place for several years when purchasing businesses.
- Boards that include members other than the Chief or councillors of the First Nation. These members may be elected, or they may be other members of the First Nation, or non-Aboriginals with business experience. The board's voting procedures may ensure that the non-political members have a significant voice.

Focussing on sustaining businesses

9.58 When First Nations own businesses, there is often an internal tension over using income from the business to reinvest and grow the business, or returning it to the First Nation to support other critical needs, such as housing or social services. Several of the First Nations we visited addressed this problem by establishing policies on how business income or other investments are to be managed. These policies usually state that income or profits from businesses and investment must be used first to sustain the business. Income from the business is returned to the First Nation for other needs only once sustainability of the business is assured.

Measuring progress toward goals

9.59 One First Nation's long-term strategic plan documents its goals and performance measures to gauge progress toward those goals. Another is beginning to develop a comprehensive framework that will measure community performance, which might include income and employment levels.

Partnering to develop institutional arrangements

9.60 Some of the First Nations we visited partnered with other communities to establish institutional arrangements that serve their economic development. In several cases, either the tribal council or regional government managed the institutional arrangements on behalf of the member First Nations. In another instance, several First Nations established a joint organization that was separate from the regional political structure to undertake particular economic development roles. Some First Nations also reached agreements with non-Aboriginal organizations operating in neighbouring communities to extend their responsibilities to include the economic activities of the First Nations.

9.61 While these partnerships must balance economies of scale with meeting the different objectives and interests of individual First Nations, communities we visited saw several benefits from working together. The benefits included

- shared costs, which in some cases permit First Nations to operate institutional arrangements that they could not afford otherwise;
- improved access to expertise;
- the ability to benefit from the experience of others;
- access to larger pools of capital; and
- the ability to identify and pursue larger-scale opportunities, often off-reserve.

Managing economic development through institutional arrangements

9.62 The First Nations we visited have developed many institutional arrangements that make use of the good practices described above. The following paragraphs describe the institutional arrangements that two First Nations have adopted to manage their different economic opportunities, provide certainty, and reduce the impact of barriers.

9.63 One First Nation established a comprehensive set of institutional arrangements for economic development through its self-government arrangements. Its major economic development activities are in natural resources. The First Nation created laws and regulations governing land, forest resources, fisheries, and wildlife. The First Nation government created departments to manage each of these resource areas. The departments include planning, and where appropriate, issuing permits and licences. Administration staff are hired and managed according to written policies. Co-management committees with provincial and federal governments tend to the broader management of resources. The First Nation administration also operates an economic development department that helps member communities and individuals access business support programs to establish and operate businesses. An independent tribunal reviews decisions made by the administration.

9.64 The major economic activities of another First Nation are agriculture, property development, and community-owned businesses, many of which are located off-reserve. The First Nation and several neighbouring First Nations jointly own some of the businesses through a development corporation established by the tribal council. The First Nation owns others directly. First Nation-appointed managers run those businesses. The corporations report to the economic development department of the First Nation administration, which reports in turn to the economic development commission, headed by the Chief. The economic development department also provides financial assistance and advisory services to individual band members. The First Nation's public service commission hires and manages staff according to written policies. The First Nation has its own vision statement, but the tribal council developed the economic development plan. The tribal council also supplies economic development and sectoral advisory services to the First Nation.

Important successes**Business support programs have assisted many successful enterprises**

9.65 Several First Nations we visited described examples of successful economic activities and businesses that had been started with, expanded, or otherwise assisted by funds from the federal government's business support programs. The First Nations stated that the program funding was essential to their economic development.

9.66 The businesses ranged from individual owner-operator businesses that received a few thousand dollars to major businesses in which federal organizations invested \$500,000 or more. The First Nations added to those federal contributions and then used the funds to leverage bank loans of several million dollars. The larger federal contributions allowed the First Nations to acquire businesses with revenues in the tens of millions of dollars. Such businesses hold out the prospect of sustainable jobs and substantial profits, some of which could be returned to the First Nations to support other activities.

Federal organizations provide some support for First Nations institutional arrangements

9.67 To some degree, federal organizations have recognized the importance and value of institutional arrangements in sustaining economic development. The establishment of the Community Economic Development Program in 1989 to provide stable annual funding to First Nations was an initial step toward institutional development, rather than exclusively project-based, funding. First Nations indicated that the community economic development organizations funded by the program are important for achieving economic development and for supporting community development more broadly.

9.68 More recently, federal organizations, on a sectoral basis, have recognized that they can reduce the burden imposed by the federal management of First Nations resources by helping the First Nations to develop institutional arrangements through which they can manage resources themselves. Properly designed institutional arrangements can overcome concerns about transparency, accountability, or potential misallocation of resources. These sectoral initiatives include the following:

- The Aboriginal Fisheries Strategy through which Fisheries and Oceans Canada has facilitated, since 1992, the development of institutional arrangements by supporting Aboriginal participation in co-operative management of the fisheries in which they participate.
- The *First Nations Land Management Act*, enacted in 1999, which enables First Nations to opt to take responsibility for managing reserve land, rather than having it managed by Indian and Northern Affairs under the *Indian Act*.
- Mechanisms being developed by Indian and Northern Affairs to enable First Nations with substantial oil and gas development opportunities on-reserve to opt to manage those developments directly.

Opportunities to improve support

A more consolidated approach to business support is needed

9.69 The 1989 Canadian Aboriginal Economic Development Strategy remains the authority for many of the business support programs of the departments of Indian and Northern Affairs and Industry. The strategy sought to consolidate support for Aboriginal economic development into fewer programs that could be applied more broadly and would have standardized terms and conditions to improve clarity and reduce duplication.

9.70 We audited the Strategy in 1993. Our 1993 Report, Chapter 11, Canadian Aboriginal Economic Development Strategy, found a need for leadership to develop partnerships within the federal government and between the federal government and Aboriginal stakeholders. It also found that there was a lack of appropriate performance information and that the departments of Indian and Northern Affairs, Industry, and (then) Employment and Immigration could not demonstrate that their funding methods and amounts were appropriate. In response to the audit, the departments agreed to review their approach, while emphasizing the need for local control by their Aboriginal clients, in order to respond to local needs.

9.71 Instead of consolidating, as envisaged by the Strategy, programs with a business support component have increased from 3 to 10 since 1989. This expansion of programs was not undertaken in a strategic and co-ordinated manner, nor did it deliver control to the First Nations. The results are an administrative burden for First Nations and federal agencies, risks of inconsistent treatment, including service standards that are not monitored in all regions, and lost opportunities.

9.72 To manage these programs, officials in the regional offices of federal organizations developed mechanisms to enable them to work together to support large and complex projects. More recently, Indian and Northern Affairs has begun to manage three of its programs under one set of guidelines, forms, and administrative procedures. As well, officials told us that Indian and Northern Affairs and Industry have discussed consolidating some of their business support programming.

9.73 While they represent steps in the right direction, these initiatives do not yet fully reflect the goals of the Canadian Aboriginal Economic Development Strategy, which are to deliver fewer programs with broader applications.

9.74 Recommendation. Indian and Northern Affairs Canada, Industry Canada, and regional federal organizations should consolidate the administrative requirements and improve the adaptability of their business support programs for First Nations so that they can respond to large, complex, multi-purpose projects.

Departments' response. Indian and Northern Affairs Canada will consolidate its economic development programs and improve their adaptability. Indian and Northern Affairs Canada and Industry Canada will harmonize the administrative requirements in their small business support programs to simplify business development in First Nations communities. To

address the needs of large, complex, multi-purpose projects, Indian and Northern Affairs Canada, Industry Canada and federal regional economic development agencies will develop, on a regional basis, measures to harmonize administration requirements and to improve adaptability to needs.

A more proactive approach to institutional development is needed

9.75 As First Nations found ways to develop, they encouraged federal organizations to find ways to support more flexible and appropriate institutional arrangements. For example:

- The *First Nations Land Management Act* resulted from 14 initial signatory First Nations working to strengthen control over their land.
- The initiative to modify oil and gas resource management came from some First Nations with significant deposits developing mechanisms to bypass the restrictions imposed by the *Indian Oil and Gas Act*.
- Institutional development identified by First Nations for regional or resource-based economic opportunities obtained support on a project basis from Indian and Northern Affairs Canada's Resource Access Negotiations Program, Resources Partnership Program, or Regional Partnerships Fund.

9.76 However, gaps remain, particularly in the basic institutional arrangements that serve as a springboard for First Nations to access institutional arrangements by sector. We noted earlier that First Nations benefit when they can pursue a coherent economic development vision, identify and establish appropriate institutional arrangements in advance of development, and identify opportunities for which they can then apply to the federal government's project-based economic development programs.

9.77 These steps require planning. However, resources for planning are fragmented. Individual federal programs include resources for planning only for their sector. The Community Economic Development Program was intended to help First Nations with overall development planning, but it also has several other objectives, including providing advisory services and support for employment, business development, and resource development. Because funding under the program is based on population, smaller First Nations find it difficult to implement all the program's objectives. Short-term demands to develop funding proposals or negotiate agreements can be the priority. These problems can be mitigated somewhat when First Nations partner with each other to develop institutional arrangements (Exhibit 9.3).

9.78 Much of the funding for basic institutional development is based on formulas that reflect historical circumstances rather than a First Nation's plans or future needs. For example, funding for land management is based on the number of past transactions and some institutional development funding is based on formulas that were established in the late 1980s. Moreover, Indian and Northern Affairs froze funding levels in the mid-1990s, and has only begun recently to increase them.

Exhibit 9.3 National Aboriginal organizations assist First Nations economic development

Our study focusses mainly on institutional arrangements at the local and regional level. However, there are a number of national Aboriginal organizations that assist First Nations economic development, for example, the National Aboriginal Capital Corporation Association. Many of these organizations have been established or supported by federal government funding.

The head of one national organization explained the benefits of such organizations to First Nations and to the federal government.

- They allow First Nations to develop consensus on national standards for administrative practices and regulation, which reduces the possibility of creating additional barriers to economic development.
- They improve certainty and equity of treatment among First Nations.
- They improve communications and the flow of information among First Nations and between First Nations, the federal government, and investors.
- They foster the development of specific types of expertise that can be used by all First Nations.

At the time of our study, the Minister of Indian and Northern Affairs tabled an act to create four new national Aboriginal organizations (First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority, and First Nations Statistical Institute). Developed in co-operation with First Nations, the act aims to “provide needed tools for economic development and improving the quality of life on reserves.”

9.79 Other funding is available only on a short-term basis and does not provide sufficient stability for effective institution-building.

9.80 Federal policy allows for extra funding for institution-building once a self-government agreement is negotiated. However, the need for institutional arrangements can arise from economic opportunities that emerge before self-government agreements are completed.

9.81 Given the need for economic development, the importance of appropriate institutional arrangements to effective economic development, the interest of First Nations in developing those arrangements, and the governmental nature of institutional arrangements, the federal government needs to take a more proactive approach to developing these arrangements.

9.82 Recommendation. The federal government should support First Nations in identifying, planning, and implementing institutional arrangements that take advantage of economies of scale where possible, and that are appropriate to the First Nations’ economic development circumstances and visions.

Departments’ response. Indian and Northern Affairs Canada will redesign its Community Economic Development Program to support First Nations to identify, plan, and implement economic development organizations that take advantage of economies of scale where possible and that are appropriate to the First Nations’ economic development circumstances and visions. It will

evaluate the Resource Access Negotiations Program and the Resource Partnership Program to determine ways in which these programs could strengthen institutional arrangements of First Nations.

Fisheries and Oceans Canada announced the Aboriginal Aquatic Resource and Oceans Management Program on 9 October 2003. This program may provide funding to Aboriginal groups that come together on a watershed or ecosystem basis to establish an aquatic resource management body. The program will enable these bodies to obtain access to skilled personnel and related support that will allow them to participate effectively in decision-making and advisory processes used for aquatic resource and oceans management. The Aboriginal Aquatic Resource and Oceans Management Program uses a differentiated, community-driven approach recognizing that different groups are at different stages of development and that needs and priorities vary from group to group. The program will be available in areas where Fisheries and Oceans Canada manages the fishery.

A more horizontal, First Nations approach to performance information is needed

9.83 Supporting First Nations institutional arrangements for economic development is a horizontal policy issue: it is a government-wide priority. It spans departmental mandates, and no department has all the levers, resources, and expertise to manage it alone. However, strategic co-ordination of economic development programming has long been a challenge. This is reflected in the proliferation of programs and performance information, and in the comments of senior officials.

9.84 Federal organizations can strengthen the horizontal management of their First Nations economic development programs through improved performance information. In our December 2000 Report, Chapter 20, Managing Departments for Results and Managing Horizontal Issues for Results, we proposed a framework for managing horizontal issues. Four of the five elements of the framework related to the development and use of performance information. Federal organizations need to

- agree on common objectives, results, and strategies;
- measure results to track performance;
- use information to improve performance; and
- effectively report performance.

9.85 **Performance information is not focussed on outcomes in the community.** As we reported in our December 2002 Report, Chapter 1, Streamlining First Nations Reporting to Federal Organizations, federal organizations collect large quantities of data from First Nations on the operations of their economic development programs. However, an important disconnect exists between the types of performance information that the First Nations we visited indicated is important to them, and the kinds of data that federal organizations collect. In general, First Nations are interested in outcomes-based information. They are concerned with measures of the well-being of their First Nations, including their socio-economic

circumstances compared with surrounding, non-Aboriginal communities, and the sustainability of jobs. Federal organizations, in contrast, generally collect activity- and output-based information, such as the number of projects supported or business plans submitted. One consequence, argue the First Nations, is that the federal government does not help sustain businesses started with federal assistance.

9.86 Federal government policy recognizes that it is not enough to help Aboriginal individuals improve their circumstances, but that there is a need also to improve the economic circumstances of First Nations as communities. To develop a performance reporting system that meets this policy and the criteria proposed in our 2002 Report, federal organizations need to work with First Nations to establish appropriate objectives and measures.

9.87 **Current review processes offer opportunities to improve performance information.** At the time of this study, federal organizations were conducting reviews of their economic development programs to meet the requirements of the Treasury Board's policy on transfer payments. Several of the reviews included consultations with First Nations. Through the review processes, federal organizations were obtaining improved and up-to-date information about the effectiveness of programs. However, some of the reviews completed at the time of our study noted weaknesses in federal organizations' performance management systems for economic development programs. The results of the reviews may assist with the Treasury Board's renewal of the terms and conditions of the programs, including the redesign of results-based management and accountability frameworks.

9.88 The review and renewal process is an opportunity to improve horizontal management of economic development programs by developing common performance information frameworks. Chapter 20 of our 2000 Report recognized that developing common performance information across organizations takes time and effort. However, the renewal process is an opportune time to make such an investment. Focussing on the performance information that First Nations consider useful may assist federal organizations in finding common ground. Federal organizations need to avoid recreating the current structure of stove-pipe programs, each with its own authorities, priorities, terms, conditions, and performance information.

9.89 Indian and Northern Affairs Canada is the lead agency in the federal government for First Nations economic development. It took the opportunity afforded by the review and renewal process to redesign its entire departmental results framework. The new framework realigns its objectives and activities and identifies several results areas, including economic development. The Department also recognized the benefits to identifying performance measures for this framework that are meaningful to First Nations and that are integrated with other federal organizations. At the time of the study, senior management had approved the framework; however, the Department had not yet discussed appropriate performance information with First Nations and other federal organizations.

9.90 Recommendation. Under the leadership of Indian and Northern Affairs Canada, federal organizations should develop horizontal performance information for economic development programming that is outcome-focussed and relevant to the performance information needs of First Nations.

Departments' response. Federal organizations agree to the need for horizontal performance information for economic development programming that is outcome-based and relevant to the performance information needs of First Nations. However, the need for this information should not add to the response burden related to federal programming already imposed on First Nations. Furthermore, it should not preclude federal departments from obtaining information needed to assess the performance of specific programs in order to fulfil their mandates and report to Parliament.

Parliament is currently considering the establishment of the First Nation Statistical Institute to provide information on, and analysis of, the fiscal, economic, and social conditions of First Nations. The federal government expects the Institute will produce economic performance information that is outcome-focussed and relevant to the performance needs of First Nations.

Indian and Northern Affairs Canada will review reporting requirements under all programs, including horizontal reporting requirements under the Community Economic Development Program, with a view to simplifying and reducing First Nations reporting.

A way forward

First Nations have a major responsibility

9.91 The major responsibility for their economic development rests with First Nations. The First Nations we visited have a vision of their development and have begun to build the institutional arrangements that can sustain their economic activities. They also have been willing to invest their own resources in pursuing that vision and developing such arrangements. Theirs is a responsible approach that recognizes that economic development must be sustainable over the long term and will be so only with consistent and fair rules.

9.92 The First Nations we visited have tended to be outward-looking. In addition to maximizing the economic development opportunities that are available on-reserve, they created partnerships, pursued resources, and joined forces with public and private sectors outside the First Nations.

Federal organizations can provide important help

9.93 Because of its constitutional and legislative responsibilities for First Nations, the federal government will remain a key contributor to their economic development. However, federal organizations need to fulfill their responsibilities in ways that support First Nations taking control of their economic development. There are three approaches they can take—some are already in use, but need more emphasis:

- Support First Nations in managing their own economic affairs through appropriate institutional arrangements. This requires an approach that both creates incentives for and assists First Nations to work together to

develop organizations, rules, and practices that take advantage of economies of scale and that enable them to manage their resources and economic development.

- Build institutional arrangements in a timely way to play a part in the management of resources and to establish consistent and fair rules in advance of economic development opportunities.
- Use an approach that varies according to circumstances for economic development programming. The framework needs to recognize the diversity of First Nations and move away from “one size fits all” programming, funding, and performance information. The framework needs an adaptable approach that responds to needs and priorities as determined by the First Nations.

9.94 Based on these three approaches, we developed the following criteria to test economic development programs. Federal support for First Nations economic development needs to

- be consistent with federal government objectives, priorities, and policies;
- support needs identified by First Nations;
- be developed in consultation with First Nations and be useful to them in managing their own affairs;
- be comprehensive and integrated;
- be managed horizontally both within and outside the federal government;
- be delivered in a timely and efficient manner, using reasonable and agreed-upon service standards;
- support sustainable activities;
- be based on results; and
- ensure accountability to First Nations and to the federal government.

Other sectors can also help

9.95 The First Nations we visited explained that several policies pursued by provincial governments have helped their economic development. The First Nations also emphasized the benefits they received from positive relationships with the private sector. Joint ventures were valuable as they resulted in the transfer of substantial expertise to First Nations.

9.96 However, First Nations felt the need for a further change in attitude from those groups. They want the provinces and private sector to recognize that First Nations are a continuing presence in local and regional economies, with whom they should engage more regularly and over the longer term.

Conclusion

9.97 This study explored the institutional arrangements that selected First Nations use to promote and manage their economic development and some key elements of the support that federal organizations provide. First Nations need economic development but face barriers that increase their costs of doing business and impede their development.

9.98 While each is unique in many ways, the First Nations visited for this study are considered to be well-governed and proactive. They use several good practices in their institutional arrangements to help overcome these barriers.

9.99 The federal government is a key contributor to First Nations economic development through its programs and regulatory functions. However, some federal practices contribute to the barriers, and other federal support for First Nations institutional arrangements that support economic development is not yet sufficient. Federal organizations need to rethink how they support First Nations in overcoming barriers and taking control of their economic development. In particular, federal organizations need to consolidate the administration of business support programs and make them more adaptable, help First Nations identify and build institutional arrangements in a timely way, and use a more horizontal approach for economic development programming.

9.100 To assist federal organizations in rethinking their approach, the study proposes some criteria for assessing federal economic development programs.

About the Study

Objectives

The objectives of the study were to describe and analyze

- how the institutional arrangements for economic development of selected First Nations contribute to their economic development and their need for federal support, and
- how the federal government provides support for First Nations institutional arrangements for economic development.

Scope and approach

The Auditor General is not the auditor of First Nations. Our mandate is to audit federal departments, agencies, and Crown corporations that support First Nations. In this study we needed the co-operation of First Nations to learn about their institutional arrangements for economic development, the role of those arrangements, and their relationship to the federal government.

To carry out our study, we sought the assistance of 13 First Nations and 4 tribal councils and governments in 5 provinces. Of these, 3 First Nations were self-governing and 5 were in self-government negotiations. We examined their institutional arrangements for economic development and the support provided by the federal government.

The federal organizations included in the study were

- Indian and Northern Affairs Canada,
- Industry Canada,
- Fisheries and Oceans Canada,
- Western Economic Diversification Canada,
- Canada Economic Development for Quebec Regions,
- Atlantic Canada Opportunities Agency,
- Enterprise Cape Breton Corporation,
- Cape Breton Growth Fund Corporation, and
- Indian Oil and Gas Canada.

The study is not intended to provide a comprehensive review of First Nations institutional arrangements for economic development. We did not include provincial governments, the private sector, and Aboriginal organizations that operate off-reserve. Other federal agencies, such as Human Resources Development Canada, that also play a role were excluded.

We developed the following lines of inquiry for the study:

- identify the institutional arrangements for economic development in the selected First Nations,
- explore how the institutional arrangements assist the economic development of the selected First Nations, and
- explore how the federal government provides support to First Nations institutional arrangements.

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Appendix A Federal Aboriginal economic development and fisheries management programs included in the study

Economic development programs				2003-04 Budget (\$ millions)	Description
Department	Program	Type of support			
		Business	Institutional		
Indian and Northern Affairs Canada	Community Economic Development Program		✓	47.8	Provides funding for staffing and overhead costs of community economic development organizations that are the delivery agents within First Nations for Indian and Northern Affairs Canada, Industry Canada, and Human Resources Development Canada programming. As well, program funding can be used to provide equity for businesses, employment, and job related training. Its goal is to generate long-term employment and business development opportunities for First Nations by enhancing their ability to manage skill development programs, institutional arrangements for economic development, and business enterprises.
Indian and Northern Affairs Canada	Economic Development Opportunity Fund	✓		10.0	Provides equity funding to enable First Nations, Innu, and Inuit businesses to leverage conventional debt financing for business start-up or expansion on- and off-reserve. The funding is to complete the financing package with an equity contribution where no other financing can be obtained. The Department's contribution cannot exceed \$500,000 or the amount contributed by the applicant.
Indian and Northern Affairs Canada	Resource Partnerships Program	✓	✓	11.0	Provides financial support to First Nations, Innu, and Inuit governments, organizations, and businesses to form partnerships with provincial/territorial governments and/or the private sector to participate in the planning of, and obtain economic benefits from, major regional resource development projects. The projects must be large-scale and multi-party in nature to qualify. Activities are focussed on natural resources, but can also include human resource development. The program also supports the design, development, and ongoing operation of multi-party economic development partnerships that include First Nations. Total federal government funding cannot exceed 50 percent of the total cost of eligible activities, with the exception of early strategic planning (which may be funded up to 90 percent).
Indian and Northern Affairs Canada	Resource Access Negotiations Program		✓	10.0	Assists First Nation and Inuit communities to obtain technical expertise to carry out negotiations leading to agreements that enhance employment, business, and other economic benefits from major resource-based opportunities on- or off-reserve. Maximum departmental funding is limited to a proportion of project costs related to the benefit accruing to First Nations.

Economic development programs (continued)

Department	Program	Type of support		2003-04 Budget (\$ millions)	Description
		Business	Institutional		
Indian and Northern Affairs Canada	Resources Acquisition Initiative	✓	✓	3.0	Provides equity funding to help First Nations, Innu, and Inuit businesses to pursue resource-based and related projects on- and off-reserve, as well as funding activities such as acquiring licences or permits granting access to resources. The objective is to enable the proponent to leverage conventional debt financing for the project. The funding is to complete the financing package with an equity contribution where no other financing can be obtained.
Indian and Northern Affairs Canada	Major Business Projects Program	✓		10.0	Provides First Nation, Innu, and Inuit businesses with equity funding to allow them to leverage conventional debt financing for start-up or expansion of major industrial, commercial, or resource-based projects, costing over \$2 million, on- or off-reserve. The Department's contribution must be between \$500,000 and \$3 million and may not exceed the proponent's equity contribution.
Indian and Northern Affairs Canada	Regional Partnerships Fund	✓	✓	19.0	Designed to secure First Nation and Inuit participation in, and expand economic benefits from, major regional economic infrastructure projects. Partnerships must include non-federal partners with a preference for private sector participation. Priority is given to regional projects with benefits for two or more First Nations. The Department's contribution will not exceed 66 percent of total project value.
Indian and Northern Affairs Canada Industry Canada	First Nations Component of the Infrastructure Canada Program	✓		21.6 (31.0 over 3 years 2001-04)	Provides cost-shared funding for physical capital infrastructure projects on-reserve (and in the Yukon). Half the funds are targeted at "green" infrastructure projects that include improving the quality of water and wastewater systems, solid waste management, and flood control. Secondary priorities include other infrastructure projects that meet such needs as better local transportation and tourism development. Some of these activities support economic development. For green projects, First Nations are normally required to provide at least one sixth of the project cost. One third would come from Infrastructure Canada, and up to 50 percent from Indian and Northern Affairs Canada. For other projects, First Nations are normally required to provide at least one third of the project cost. One third would come from Infrastructure Canada, and one third from Indian and Northern Affairs funding.

Economic development programs (continued)

Department	Program	Type of support		2003-04 Budget (\$ millions)	Description
		Business	Institutional		
Industry Canada	Aboriginal Business Canada	✓		38.2	Supports innovation, trade and market expansion, tourism, youth entrepreneurship development, and strengthening Aboriginal financial and business development organizations. Provides financial assistance, information, resource materials, and referrals to other possible sources of financing or business support to new and existing entities, including Aboriginal Capital Corporations and Youth Business Initiatives. The maximum federal contribution varies from 40 percent to 75 percent of project costs.
Indian and Northern Affairs Canada	Marshall Response Initiative	✓	✓	30.3	In 2001, the federal government launched its long-term response to the Marshall decision. The Department's portion of the Marshall Response Initiative addresses broader issues relating to Aboriginal fishing that cannot be dealt with in the Fisheries and Oceans Canada response. In addition to funding a Mi'kmaq and Maliseet Treaty Commission and research and negotiation for the First Nations, the Department also funds land additions to reserves, co-operative management structures for parks and environment, and economic development/diversification projects (such as recreational fishing lodges, eco-tourism initiatives, and acquisition of retail fish outlets), and related capacity building.

Fisheries management programs

Department	Program	Type of support		Budget (\$ millions)	Description
		Business	Institutional		
Fisheries and Oceans Canada	Aboriginal Fisheries Strategy	✓	✓	35.2 (2003-04)	<p>Provides management and regulation of fishing by Aboriginal communities through negotiation of mutually acceptable and time-limited fisheries agreements between the Department and Aboriginal groups. On average, approximately 125 agreements are signed annually covering 235 Aboriginal communities. The program applies where the Department manages the fishery and where land claim settlements are not in place.</p> <p>The strategy consists of a number of activities:</p> <ul style="list-style-type: none"> • Fisheries agreements related in particular to food, social, and ceremonial fisheries, which include negotiated, time-limited harvest plans that are fished under a communal licence. Strategy agreements may also contain co-operative arrangements for the management of the Aboriginal fishery by the group and Fisheries and Oceans Canada, such as stock assessments and fish habitat enhancement projects. The agreements may also provide for access to commercial fisheries under the Allocation Transfer Program. • Allocation Transfer Program, which facilitates voluntary retirement of existing commercial licences and the issuance of communal commercial licences to eligible Aboriginal groups in a manner that does not add to existing effort on the resource.
Fisheries and Oceans Canada	Marshall Response Initiative	✓	✓	325.2 (total for 1999-00 to 2004-05).	<p>In response to the Supreme Court's judgement in <i>R. v. Marshall</i>, Fisheries and Oceans Canada launched the Marshall Response Initiative. Under the Initiative, Fisheries and Oceans Canada negotiates agreements with affected First Nations to increase their access to the fisheries; develop their fishing capacity; and build a new framework for management of First Nation fishing, working together with the communities. The agreements may include</p> <ul style="list-style-type: none"> • access through a voluntary licence retirement program; • purchase/construction of vessels and gear; • training in navigation, seamanship, and sustainable fishing; • start-up assistance for harbour and resource management; and • wharf and fishing infrastructure construction. <p>The Initiative is time-limited. Affected First Nations have until 31 March 2004 to sign agreements. Delivery of the Initiative ends on 31 March 2006.</p>

Appendix B Federal management regimes for First Nations resources

Resource	Regime	Description
Land	Land management (Indian and Northern Affairs Canada)	<p>Under various sections of the <i>Indian Act</i>, the Minister of Indian and Northern Affairs has authority to make regulations, policies, and practices and to enforce those regulations related to reserve land administration and management. The Minister's duties include</p> <ul style="list-style-type: none"> • preparing reserve surrenders, designations, and expropriations transactions; • managing proposed additions to reserve; • reviewing and approving land transactions and individual land holding allotments within First Nations; • negotiating, preparing, executing, and monitoring leases, licences, and permits to non-Indians on reserve; • providing advisory services, and managing and distributing funding to organizations that deliver land management transactions on behalf of the Minister; • co-ordinating, developing, and funding land management training; and • co-ordinating federal initiatives that relate to land management. <p>The Minister seeks the consent of First Nations in all transactions. All proceeds from land transactions are received, retained, and managed by the Minister in trust for the First Nation.</p>
	Regional Lands Administration Program	<p>Under this regime, First Nations staff participate in the delivery of land management and administration with Indian and Northern Affairs staff. Although First Nations staff are trained in land management and to administer transactions, there is no delegation of authority and accountability remains with the Minister. Under this program, First Nations staff may</p> <ul style="list-style-type: none"> • negotiate, monitor, and ensure compliance of the use and occupancy of reserve lands under lease or permit; • prepare and process individual land holding or interest transactions; and • maintain records of transactions.
	Land Management Delegation Program (sections 53 and 60 of the <i>Indian Act</i>)	<p>Under sections 53 and 60 of the <i>Indian Act</i>, a band may opt to exercise control and management over reserve lands. The band may approve allotments and other transactions among band members and sign leases and other agreements on behalf of the Minister. Under section 81(1), bands have authority to make by-laws on the survey and allotment of reserve lands for both common and individual band member use to the extent granted under section 60. However, under this delegation, all federal legislation, regulations, and departmental policies continue to apply, including the requirements for environmental assessment when applicable. Band councils have regulatory and taxing powers over designated lands that have been leased for development purposes.</p>
	<i>First Nations Land Management Act</i>	<p>Under the <i>First Nations Land Management Act</i>, authority over reserve land and associated natural resources and revenues is transferred to the First Nation. The First Nation must first adopt a comprehensive land code and agreement with the federal government, ratified by a vote by the First Nation. Under the transfer, the First Nation must have mechanisms to properly manage the lands as well as several good governance arrangements in place, including conflict of interest rules, alternate dispute resolution mechanisms, environmental assessment and protection regimes, and rules and procedures relating to matrimonial real property. The transfer empowers the First Nation to enact and enforce its own laws. The transfer also enables the First Nation to develop land use and management plans to suit its development priorities. Under the regime, First Nations do not have authority to sell reserve land but land exchanges are possible. Where there is inconsistency or conflict between the Act and other federal laws, the Act prevails. All decisions of band councils are subject to judicial review under the <i>Federal Court Act</i>.</p>

Resource	Regime	Description
Oil and gas	<i>Indian Oil and Gas Act</i> and Regulations	<p>Established in 1987, Indian Oil and Gas Canada operates under the <i>Indian Oil and Gas Act</i> and Regulations and reports to the Assistant Deputy Minister, Lands and Trust Services of Indian and Northern Affairs. It manages and administers the exploration, development, and production of oil and gas on reserve through a regulatory regime last updated in 1995. Working with First Nations, it provides technical information, advice, and such services as</p> <ul style="list-style-type: none"> • verifying title ownership, • determining hydrocarbon potential, • ensuring that environmental assessments take place, • negotiating the lease of surface and subsurface rights, • documenting and administering contracts, • making assessments for lease continuance or expiry, and • enforcing reservoir production compliance and royalty collection. <p>The regulatory regime provides for employment of First Nation residents for oil and gas exploration and development activities on reserve, where practicable and reasonably efficient, safe, and economical to do so. The regulations also ensure greater First Nations involvement in the management of oil and gas resources on reserves.</p>
Forests	Indian forestry regulations	<p>The Indian Timber Regulations and the Indian Timber Harvesting Regulations are enacted under the <i>Indian Act</i> to control and manage the timber resource on reserves and to enforce the laws, regulations, and policies that apply to it. Under the regulations, the Minister controls the granting of licences and permits (with band consent), the imposition of fees, ground rents and deposits, the obligations for record keeping, fire protection and conservation, and the exercise of seizure and imposition of penalties.</p>
Sub-surface resources	<i>Indian Act</i> and Indian Mining Regulations	<p>The <i>Indian Act</i> and Indian Mining Regulations provide the Minister of Indian and Northern Affairs with authority to control, manage, and enforce the exploitation of sub-surface resources on reserve. This includes the granting of leases and permits and their terms, imposition of rents, deposits and royalties, the requirements for assessment work, and the imposition of penalties and sanctions.</p>
Fisheries	Aboriginal Fisheries Strategy and Marshall Response Initiative programs	<p>To provide for effective management and regulation of fishing by Aboriginal communities, Fisheries and Oceans Canada has undertaken the Aboriginal Fisheries Strategy and the Marshall Response Initiative. Under the Strategy, the Department negotiates mutually acceptable and time-limited fisheries agreements with Aboriginal groups. The fisheries agreements are related in particular to food, social, and ceremonial fisheries, and include negotiated, time limited harvest plans that are fished under a communal licence. Strategy agreements may also contain arrangements for the co-operative management of the Aboriginal fishery by the Department and the Aboriginal group, for example, stock assessments and fish habitat enhancement projects. The agreements may also provide for access to commercial fisheries.</p> <p>Under the Marshall Response Initiative, Fisheries and Oceans Canada negotiates agreements with affected First Nations to increase their access to the fisheries, develop their fishing capacity, and build a new framework for management of First Nations fishing, working together with the communities.</p>

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