



CONGRESS OF ABORIGINAL PEOPLES

Background Paper for the Accountability for Results Round Table January 25&26, 2005

GENERAL BACKGROUND ON ACCOUNTABILITY ISSUES FROM THE PERSPECTIVE OF THE CONGRESS OF ABORIGINAL PEOPLES

This background paper will focus on issues of accountability of governments including Aboriginal governments. In terms of non-Aboriginal governments, we focus on the need to develop a national and/or international mechanism for ensuring and monitoring accountability to Aboriginal peoples. Such a mechanism would need a broad mandate and must be applicable to accountability issues in respect of all Aboriginal peoples in Canada. In terms of the federal government, we review the recently created Aboriginal chapter of *Canada's Performance* as a starting point of analysis as to what we regard as the necessary content that an Aboriginal Report Card should contain. In developing the criteria and measurements for such a report card, we do not lose sight of the need for processes of decision-making that are inclusive of all Aboriginal perspectives, including CAP's constituency.

In terms of Aboriginal governments' responsibilities, we examine some of the resource and capacity issues that prevent Aboriginal governments from employing effective and meaningful accountability practices. We examine some of the challenges that non-aboriginal government agencies and departments create by way of reporting demands we identify some areas for reform.

THE CONGRESS OF ABORIGINAL PEOPLES' KEY CONCERNS RELATING TO ACCOUNTABILITY

- The key priority for the Congress of Aboriginal Peoples is to work in partnership with the federal, provincial and territorial governments to improve the accountability relationships between governments and to the citizenry.
- That accountability and reporting mechanisms must be inclusive of all Aboriginal peoples, regardless of status or residence.

A PROPOSED SOLUTION

- A mechanism must be established to enable Aboriginal leaders to work together as partners with

federal, provincial, territorial to identify and resolve the issues and challenges that impact on accountability to both Aboriginal peoples and other Canadians.

- A process for the development of a comprehensive Aboriginal Report Card (ARC) must be inclusive of informed input from representatives of the broad range of Aboriginal peoples in order to ensure the ARC accommodates the interests and needs of all Aboriginal peoples, regardless of status and residency.
- Aboriginal communities and organizations need the financial and human resource capacity that is necessary to ensure that they can be effective in implementing accountability and reporting measures.
- The development and implementation of national and international mechanisms for monitoring Canada's accountability to Aboriginal peoples. Discussion in this regard could include review and consideration of previous recommendations, such as:
 - that made in 2000 by the Senate Committee on Aboriginal Peoples for the creation of a broadly mandated Aboriginal and Treaty rights commission,
 - the extensive plan for addressing Aboriginal needs for accountability from government and for improving Aboriginal governments' own record on accountability in the Royal Commission on Aboriginal peoples report.
 - the monitoring of Canada's performance under International Human Rights instruments, including reports to the Indigenous Peoples Permanent Forum.

A DISCUSSION OF THE ACCOUNTABILITY FOR RESULTS ROUNDTABLE ISSUES:

1. IMPROVING ACCOUNTABILITY RELATIONSHIPS IN AN ABORIGINAL CONTEXT

1.A. Accountability of the Federal, Provincial and Territorial Governments to Aboriginal Peoples and Other Canadians

1.A.i. Accountability for Implementation and /or Breach of Fiduciary Responsibility and Aboriginal Rights

- There is a need for an institution to hold governments (both Aboriginal and non-Aboriginal) accountable for decision-making that affects Aboriginal peoples and their interests and to address specific issues of alleged breaches or violations of Aboriginal interests.
- Various models for accountability institutions have been advocated from time to time. One example, is a model of accountability based on the principle of an Ombudsperson.
- There is a significant and growing literature that examines the principles that should be adopted in the development of institutions of accountability in the Aboriginal context. Independence, legitimacy (culturally and democratically) and the desire of binding authority are key among these principles.
- It is recognized that the courts are ill equipped to undertake such a role as they are expensive, time consuming and do not have the expertise in Aboriginal history and legal relations.
- Currently, the Indian Claims Commission is the only alternative, independent form of accountability mechanism available for Aboriginal peoples outside of the courts. Unfortunately,

there are many problems with this institution that prevents it from being viewed as an effective means of holding governments accountable,

- It is limited in scope and mandate and only addresses specific claims within a narrow range of circumstances.
 - It is exclusionary and does not include all of the Aboriginal peoples that would seek redress for past or present treaty or agreement violations. Specifically, it does not provide access to Métis¹, Inuit, non-status Indian and off-reserve Aboriginal communities.
- In 2000, the Senate Committee on Aboriginal Peoples studied the issue of Crown –Aboriginal relations and recommended the creation of a Treaty and Aboriginal Rights Implementation Review Commission (TARIRC) that would have a broad mandate to “oversee relationships in a manner which promotes, respects and upholds the Aboriginal and treaty rights of Aboriginal peoples, the honour of the Crown, and the spirit and intent, as well as the terms of treaties, self-government and legislation” (p.28-29).
 - CAP was an integral part of the Senate Committee study in 2000 and sat on the Roundtable with the Senators of the Committee and offered advice and recommendations for the Senate report. The Senate Committee recommended that the proposed Commission have three key roles:
 - Public Reporting and Education Role:
 - Investigative Role:
 - Facilitation Role:
 - The proposed TARIRC does however lack an important enforcement role (i.e. binding authority) and would need a mechanism to ensure that if informal processes do not work, coercion of the state can be relied upon to ensure ultimate compliance with its findings.

1.A.ii. Accountability for the Development and Implementation of Programs and Services

- There is a need to monitor and assess on a national level, the progress of Canada as it implements programs and services for Aboriginal peoples. This can be done through the federally proposed Aboriginal Report Card (ARC), developed with full and informed input from Aboriginal peoples.
- The ARC would need to go beyond the current reporting that is done in the Aboriginal chapter of *Canada's Performance*.
- For example, the ARC would need to address issues of decolonization, specifically in regard to the impact that colonization has had on the CAP constituency through the imposition of the discriminatory *Indian Act* and the definition of status Indian. To what extent does Canada respect fundamental principles of self-determination of peoples and the included right of a people to determine their own membership²? The *Corbière* case was an opportunity for positive reform on this divisive issue which never materialized in any significant reform. Hence, the rights of many of CAP's membership remain compromised. The implications of this understanding of identity for the proposed ARC is that any formula for accounting for funds must be based on the definition of Aboriginal peoples as determined by the Aboriginal communities themselves.

1.A.iii. Accountability for Government Expenditures on Aboriginal Peoples

- There is a need for full transparency with regard to government expenditures in relation to

¹ Métis: Used in the most inclusive sense (See CAP Resolution 37).

² This right of self-determination must also be respectful in turn of principles, such as, but not limited to, inclusivity, fairness, kinship ties and mobility.

Aboriginal peoples to ensure that it is possible to more easily and clearly identify and track what governments (and their departments) are actually spending on what and on whom.

1.B. Accountability of Aboriginal Communities and Organizations to Federal, Provincial and Territorial Governments and to Aboriginal Citizens

- Inter-governmental accountability by Aboriginal governments is an important and necessary task, however, there is no shortage of testimony from Aboriginal administrators and managers as to the overwhelming burden of reporting requirements to government agencies and departments.
- Important time and resources is spent on fulfilling the reporting requirements of different government agencies for program and service dollars- reporting requirements that often differ significantly from one agency to another.
- Much of the burden could be alleviated if fiscal arrangements between government departments were harmonized.
- Aboriginal governments are also often under trained and lack the capacity to ensure that principles of transparency and effective fiscal management are maintained.
- Considerable public attention has been focused on the abuses of existing Councils and other organizational leadership. Charges of unfair election practices, conflicts of interest, and financial mismanagement to name a few have been the subject of media coverage in recent years. These concerns, although often unfairly portrayed by the media, are real and serious.
- Aboriginal women are particularly vulnerable to these situations of abuse. Much healing has to occur in some Aboriginal communities before increased self-governance can ensure the safety of all members.
- Because Canada is founded on racism and gender discrimination, it is a necessity that any governance reforms include Aboriginal women as an integral part of the process. Their voices and concerns must be listened to in an environment that is free of fear and coercion.
- The Canadian government is justified in withholding recognition of increased self-governance powers in the interests of protecting Aboriginal women from violence or discriminatory actions of Aboriginal governments.
- In this regard, the Canadian government is acting in a diplomatic function not unlike an international human rights agency. It is not so much hindering the rightful exercise of the inherent right to self-government, as it is instead, exercising its ostensible authority to protect a vulnerable group entitled to basic human rights protections.

2. ESTABLISHING THE BASIS FOR WHAT CONSTITUTES GOOD REPORTING

2.A. Accountability of the Federal, Provincial and Territorial Governments to Aboriginal Peoples and Other Canadians

2.A.i. Accountability for Implementation and /or Breach of Fiduciary Responsibility and Aboriginal Rights

- Any national/international institution for monitoring Canada's accountability to Aboriginal

peoples that might be created would need to ensure that its own reporting practices are completely transparent and legitimate. At a minimum, it should be required to report to Parliament and to the Assemblies of each national Aboriginal organization.

- Within the recently released federal reporting document entitled “*Canada’s Performance*”, the current reporting structure focuses on equity issues from an individual human rights perspective (. education, employment and housing). There is a tendency to lose sight of the broader questions of accountability that must be addressed if a truly positive and respectful Aboriginal-Canadian relationship is to ever be achieved, such as:
 - How is Canada to be held accountable for the resolution of colonial injustices of the past?
 - How is Canada to be held accountable for its unilateral acquisition of territory where existing nations already possessed those territories?
 - How is Canada to be held accountable for its failure to recognize the treaties with Indigenous nations or Aboriginal national organizations recognized as international in nature?
 - How is Canada to be held accountable for its failure to recognize many of the existing treaties as nation-building documents of a constitutional order?
 - How is Canada to be held accountable for its failure to comply with human rights standards in not allowing Indigenous nations to determine their own citizenship?
- The document, “*Canada’s Performance*” is fundamentally flawed in its neglect of these broader issues of accountability.
- A possible means of rectifying this flaw is to identify the standards of Indigenous rights that are currently reflected in the Draft Declaration of Indigenous Rights and measure the extent to which Canada has complied with these minimum standards of human rights as they apply to Indigenous peoples within the area claimed by Canada.

2.A.ii. Accountability for the Development and Implementation of Programs and Services

- At a minimum, the ARC should include references to cultural and linguistic protection efforts.
- This should include the degree to which Aboriginal culture and language retention programs and services have been successful in fostering Aboriginal culture and language. Included within this framework is the objective of respect for Aboriginal traditions and customs.
- This includes the degree to which Canada respects Aboriginal institutions and processes of governance, such as incorporating respect for Aboriginal legal, health, and social systems.
- One means of measuring progress in terms of respect for Aboriginal knowledge is the degree to which Aboriginal knowledge in the areas of law, health and social systems are incorporated into mainstream educational institutions.

2.A.iii. Accountability for Government Expenditures on Aboriginal Peoples

- Efforts to improve transparency re government expenditures must include:
 - a detailed breakdown as to where and how much money is being spent on Aboriginal peoples based on the current legal categories such as status Indians, off-reserve Indians, Métis peoples, Inuit, etc.. Details need to include who specifically is receiving the funds and for what purpose? It is not acceptable to attribute expenditures to “Aboriginal peoples” or “First Nations” peoples, when the needs of only some Aboriginal (or First Nations) peoples are being met.
 - A breakdown of what the money is spent on – i.e., how much of the money is used to

support government administrative infrastructure and how much is actually spent on the program/service.

- If funds are spent on research, there should be a breakdown as to the degree to which such funds include the development of the capacity of Aboriginal peoples and for knowledge transfer. How much funds are going to Aboriginal researchers and students?

2.B. *Accountability of Aboriginal Communities and Organizations to Federal, Provincial and Territorial Governments and to Aboriginal Citizens*

- Relevant training in fiscal and government management skills and strategies must be made available to Aboriginal communities.
- Educational institutions need to develop curricula that meet the needs of Aboriginal communities in this area. There are good examples of institutions that have developed innovative programs to accomplish such objectives, but much more needs to be done. The new First Nations Governance Center is an opportunity to develop programs that would meet the needs of Aboriginal communities for training in this area.
- Reforms for improving Aboriginal government accountability that promote sound fiscal management and transparency can be promoted in ways that are not coercive or imposed. Incentive programs can be adopted such as, for example, a financial management accreditation program, to encourage Aboriginal authorities to adopt more accountable and transparent fiscal management practices. These types of incentives, with the necessary capacity training to support such developments, are likely to be more positively welcomed and thus achieve more significant reforms than imposing a system onto such communities unilaterally.
- Aboriginal communities must also come to terms with the issue of economies of scale. Regional and Tribal Councils or Aboriginal organizations that offer an opportunity for devolving management and fiscal reporting responsibilities to a more efficient level of organization. Aboriginal communities have an obligation to explore the positive aspects of uploading responsibilities to regional organizations and to amalgamate common governance areas across Aboriginal communities within a tribal region. Natural opportunities for including off-reserve communities and others that would not normally participate in Aboriginal governance directly should be explored. There are multi-level models of governance that currently exist and could be considered when exploring new options.

3. IMPROVING THE UTILITY OF THE REPORTING PROCESS

3.A. *Accountability of the Federal, Provincial and Territorial Governments to Aboriginal Peoples and Other Canadians*

- The process for developing indicators and methodology for an ARC must be developed and carried out in a manner that is inclusive of all Aboriginal peoples regardless of status and residency through partnerships with the broad range of representative organizations.
- New data collection methodologies must be developed and implemented that are inclusive of all Aboriginal peoples and based on ancestry as opposed to identity. Means must be found to take into account the marginalized Aboriginal peoples on whom data is rarely collected. The excuse for not doing so – that it is too hard to do – is no longer acceptable.

- Census data and the Aboriginal Peoples Survey (APS) – both of which must be commended for efforts to collect data on all categories of Aboriginal peoples, cannot be relied upon as a means of populating the ARC for a number of reasons:
 - The 10 year period between reporting is too long – if we relied on census and APS data, a new ARC would look no different than the structure for reporting on socio-economic circumstances that we have today.
 - The census and APS are surveys. CAP is concerned that surveys may not be the most effective manner to capture accurate data on marginalized populations – people who don't trust data collection processes and the promised privacy, people who are transitory, of no fixed address, or who live on the streets, youth, women and children living in abusive situations and/or extreme poverty, people who are illiterate, etc.
 - CAP also concerned that census questions that are used to identify Aboriginal ancestry are only in the long version of the census survey, and therefore asked of only one in five Canadians. Consideration could be given to other sampling techniques that are being used in other countries, such as New Zealand, to more effectively ensure appropriate and representative sample of Aboriginal peoples.

- Data collection methodologies that are developed to support the ARC and other reporting processes, need to provide for clear distinction between all of the legal categories of Aboriginal peoples – status Indians living on-reserve, status Indians living off-reserve, non-status Indians, Métis (all Métis) and Inuit. Use of the term “First Nation” is not appropriate for this purpose as it is used in manner different manners that provides no clear understanding of who is included. Also when collecting data on Métis people, it may be necessary to include a geographic breakdown to help distinguish between the Métis resident in the Métis homelands of Western Canada, those living in other parts of the country and mobility across all parts of Canada

- By not collecting data, or using data collection methodologies that are inclusive of all categories of Aboriginal people, governments are not able to show change in the circumstances of many Aboriginal peoples or demonstrate their accountability to them (this is particularly the case in respect of the CAP constituency, comprised of status Indians who do not reside on reserves, non-status Indians and Métis people, including those Métis who reside and/or originate outside of the Métis Homelands in western Canada).

- Governments might say that they provide programs and services to all Aboriginal peoples, however, there are currently no means of assessing the uptake or impact of those programs and services by the CAP constituency. Without measurement, no improvements can be discerned.

- There are similarities and confusion between the proposed ARC and *Canada's Report Card on the Implementation of "Gathering Strength, Canada's Action Plan for Aboriginal Peoples"* and the 2004 reporting document produced by the Government of Canada entitled "*Canada's Performance*".
 - "*Canada's Performance*" includes a chapter on Aboriginal peoples and references educational attainment, employment rates, median income, health status and housing. It is not clear what level of Aboriginal involvement, if any, was included in the design and preparation of this report.
 - The *Gathering Strength* report cards were issued at least twice and reported mainly on the government's progress in offering programs and services to "Aboriginal peoples". Upon closer examination of the programs and services described in the report card, it became apparent that the term Aboriginal peoples was used rather liberally, when in fact the majority of program/service criteria limited access to Status Indians living on-reserve, and Inuit living in Inuit communities. Very few programs/services were available to status Indians living off-reserve, non-status Indians and Métis. The report card did not measure uptake or impact of programs and services.

- The reporting structure used in *Canada's Performance* measures the degree to which Aboriginal

peoples look like other Canadians, but it does not necessarily measure or capture the realities of Aboriginal peoples and their lives and may not represent the best method of demonstrating improvements in the quality of Aboriginal peoples' lives.

- Little is identified within *Canada's Performance* that examines the degree to which Canada has addressed the fundamental and structural issues of decolonization. We need to include measures that demonstrate progress towards decolonization.
- The design of an ARC must include mechanisms for measuring the success of the implementation of Aboriginal rights and the fulfillment of Crown fiduciary obligations. The ARC must document those obligations and the degree to which compliance has been satisfied.
- As well, Canada must be held accountable with regard to Aboriginal and treaty rights beneficiaries who are non-status Indians and Métis, or who are status Indians living off-reserve and have been denied access to their rights. Aboriginal and treaty rights are not tied to status under the *Indian Act* and do not stop at the reserve boundary.

3.B. *Accountability of Aboriginal Communities and Organizations to Federal, Provincial and Territorial Governments and to Aboriginal Citizens*

- Reporting by Aboriginal communities and organizations can be improved through the harmonization and simplification of reporting requirements. Currently reporting requirements differ depending on who is being reported to. Aboriginal citizens may have different requirements than federal or provincial governments. These governments may have different requirements from each other and there may even be different requirements between funding programs within a single government department. The broad and inconsistent range of reporting methods places an undue burden on Aboriginal communities and organizations.
- True multi-year funding arrangements that support consistent cash flow can play a key role in substantially improving the accountability of Aboriginal communities and organizations. When contributions for the current fiscal year are still being negotiated in December and the cash flow actually occurs in mid-March, the focus tends to be on getting the money spent by March 31, rather than carrying out the project in a complete and responsible manner. Responsible fiscal management means that you don't spend the money until you have a firm commitment that it will in fact be available, therefore many communities and organizations wind up trying to carry out a year's worth of work and expenditures in three months or less. This situation, of necessity, can lead to creative accounting because no one, including the funding agency, wants the money to be returned as unspendable.
- Accountability and reporting within Aboriginal communities and organizations could also be substantially enhanced by the provision of specific on-going funding to support their capacity to do so. Many communities and organizations survive on project by project basis, with generally 10-15% of the project funds being allocated to administration. These administration dollars which can fluctuate drastically from year to year, depending on the number and financial value of the projects, are used to cover the cost of office rental, telephone, photocopies, support staff, etc., as well as accounting and reporting. The result is instability with respect to the financial and human resource capacity to ensure good accountability.
- Training in government management must also reflect Aboriginal approaches and principles. Although there is a general literature on principles of good governance and fiscal management, the analysis generally comes from a Western world view. Aboriginal perspectives differ. In this regard, the writings of Taiaiake Alfred are useful as they provide an Indigenous approach to promoting strong, fair and effective Aboriginal leadership based on Aboriginal culture, values and

perspectives. As an example of how there are differences; in an Aboriginal context, the principle of efficiency may have less priority than the principle of maintaining positive and balanced relationships.

4. THE PRINCIPLES AND PROCESS FOR MOVING FORWARD ON AN ABORIGINAL REPORT CARD

- Processes that are inclusive of all Aboriginal peoples and interests are essential.
- Processes must be developed in partnership with Aboriginal peoples.
- An Aboriginal Report Card must be broken down by Aboriginal group in measuring social and economic determinants. The ARC must include measures regarding treaty implementation and the maintenance of international standards of Indigenous Peoples rights. It must measure the degree to which government is facilitating the strengthening of Aboriginal culture and language. It must measure the degree to which self-government is being implemented and the degree to which land claims are being satisfactorily concluded.
- Methodologies for data collection and reporting must be developed which are inclusive of all Aboriginal peoples and which provide for clear distinction between all of the legal categories of Aboriginal peoples – status Indians living on-reserve, status Indians living off-reserve, non-status Indians Métis (all Métis) and Inuit.

BACKGROUND ON THE CONGRESS OF ABORIGINAL PEOPLES AND ITS CONSTITUENCY

The Congress of Aboriginal Peoples (CAP) was founded in 1971 as the Native Council of Canada (NCC). It was originally established to nationally represent the political interests of Metis and non-status Indians, a population that out-numbered all other native people combined. In essence, the principle of the NCC's organization at that time was to address the lack of recognition of Metis and non-status Indians as Aboriginal peoples and to challenge the exclusion of our constituency from federal responsibility.

In keeping with the significant Aboriginal political changes that have occurred over the years, such as the constitutional recognition of Aboriginal peoples, the passing and implementation of Bill C-31, the negotiation of land claims and self-government agreements, and the separation of Prairie Metis from affiliation with non-status Indians and other Metis in 1983, the NCC's name was changed to the Congress of Aboriginal Peoples (CAP) and its mandate has evolved to the representation nationally of the political interests of off-reserve Indian and Metis peoples regardless of status under the Indian Act and residency (for more information on CAP's historical background please visit the following page of the CAP website: www.abo-peoples.org/background/background.html).

CAP's constituency not only stretches across Canada from sea to sea to sea, but consists of a wide variety of Aboriginal peoples with very different historical backgrounds, and current environments. Most of these peoples share common problems in terms of exclusion from policies and programs for other Aboriginal peoples. As a result of their varying histories and circumstances, several of these peoples have different priorities in terms of achieving a solution to those common problems. These priorities provide one useful way by which CAP's constituency can be identified. They can be described in terms of:

- the Indian Act system and its consequences; particularly for those who are excluded from registration, band membership, residency on reserve, or related programs and benefits and want to address those concerns.
- the constituency's Aboriginal and/or treaty rights; particularly for those who live in comprehensive claims areas, those who have been excluded from treaty benefits, or who are pursuing modern treaty as a vehicle for addressing their rights.
- the population's socio-demographics; particularly for those who are seeking economic parity or equity of access to policies, programs and services designed to serve the Aboriginal population; and,
- the simplicity or complexity of the Tribal/Nationality identities within regional organizations; particularly for those organizations whose membership maintains tribal affiliations, or who includes different groups who are associated with different tribal groupings.

Each approach carries with it implications for the relations between CAP and the federal government, and each is valid in its own context.

**Aboriginal Ancestry Population*

Total Aboriginal Population

- 1.3 million (4.4% of Canadian population)
- 79% - **4 out of 5 live off reserve**

Registered (Status) Indian Population (a.k.a. “First Nations citizens”)

- 558,175
- **51% live off reserve**

Off Reserve Aboriginal Population

- 283,960 Off reserve Registered (Status) Indian
- 399,470 Non Status Indian
- 266,020 Métis
- **Total 949,450** (excluding Inuit)

(*Statistics Canada – 2001 Census)

***Aboriginal Ancestry Population Size
Canada, Province and Territory
2001 Census***

	Population Size	Percent OFF Reserve
Canada	1,319,890	78%
Nfld/Lab	28,065	98%
PEI	2,720	86%
NS	33,415	78%
NB	28,465	79%
Que	159,905	80%
Ont	308,105	87%
Man	160,250	68%
Sask	135,035	65%
Alta	199,015	81%
BC	216,110	80%
YK	6,990	72%
NWT	18,955	30%
NU	22,665	100%

Source: Statistics Canada 2001 Census

V.F. Valentine/CAP/01/27/03