



Indigenous and  
Northern Affairs Canada

Affaires autochtones  
et du Nord Canada

## ***Final Report***

# ***Impact Evaluation of Governance and Institutions of Government***

***Project Number: 1570-7/14080***

March 2017

Evaluation, Performance Measurement,  
and Review Branch  
Audit and Evaluation Sector



Canada 

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## Executive Summary

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This report constitutes the impact evaluation of Indigenous and Northern Affairs Canada's (INAC's) Governance and Institutions of Government Program in accordance with the Treasury Board *Policy on Results*. The evaluation addresses the program's relevance and performance from fiscal years 2009-10 to 2015-16 and constitutes coverage of the following Transfer Payment Program Authorities:

- *Grant for Band Support Funding;*
- *Contributions to supply public services in Indian government support and to build strong governance, administrative and accountability systems; and*
- *Contributions to support the basic organizational capacity of representative aboriginal organizations.*

Supporting evidence for the evaluation comes from a combination of the following: document, literature and administrative data review; key informant interviews with INAC staff, First Nations and First Nation institutions; and case studies with First Nations and tribal councils across six regions. The resulting findings are intended to inform First Nations, INAC senior management and other Canadians of program relevance and performance, and recommendations are designed to support program improvements.

The Governance and Institutions of Government Program is designed to support First Nations governments and Inuit organizations through a combination of:

- advice, guidance and policy review from INAC officials in the Governance Policy and Implementation Directorate of the Treaties and Aboriginal Government Sector;
- core funding for administration of band offices and tribal councils through Band Support Funding, Employee Benefits and Tribal Council Funding;
- funding for capacity-building through the Professional and Institutional Development program and support to Aboriginal Financial Officers Association of Canada; and
- support to the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority.

While the components of the Governance and Institutions of Government Program contribute to an ongoing need, the following directions for future design and delivery emerged from the evidence:

- An approach that aims to build capacity and provide a legislative, regulatory and institutional framework that allows First Nations to exercise self-determination, and which draws on innovative sectoral governance initiatives. INAC has made strong progress in this area through information sessions on bylaw-making and through legislative initiatives such as the *First Nations Elections Act*. There is an opportunity to further support First Nations by formalizing a network of legal resources that can be drawn upon for expertise in law-making.
- Delivering on INAC's core responsibilities requires proper costing of governance and administration at the local level to realistically support program and service delivery. In practice, this requires a more robust and flexible Band Support Funding formula, modern and competitive employee retention tools and effective support for tribal councils.

- Every community's path toward healing, self-sustainability and fiscal and financial strength is different and INAC's support tools must become more responsive to diverse needs. In practice, this means exploring broader eligibility criteria and administrative improvements for Professional and Institutional Development projects, better coordination between capacity-building programs and a fundamentally different approach to crisis intervention than the current Default Prevention and Management Policy. INAC staff and First Nations have also highlighted the importance of a dedicated source of funds for Comprehensive Community Planning.
- Sustainable governance flows not only from programs, but also from stable institutions. The *First Nations Fiscal Management Act* institutions, which support First Nations in establishing taxation regimes, achieving strong financial management policies and practices, and securing a source of affordable finance, have made a significant impact in First Nations over the evaluation period. Evaluators heard that the institutions have tremendous opportunities for growth and that the next phase in INAC's relationship with these institutions should include stable, multi-year funding and an exploration of changes to the *First Nations Fiscal Management Act*. Furthermore, low-capacity communities wishing to enter the regime could benefit from targeted and integrated support in order to do so.

"It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation and partnership."

-Prime Minister Justin Trudeau

In this context, the following recommendations are designed to support program improvements and better meet First Nations' needs:

1. Examine approaches to support First Nations' capacity-building related to law-making.
2. Engage First Nations to develop and implement a strategy to meet their governance needs that includes the costing of Band Support Funding, Employee Benefits and Tribal Council Funding.
3. Revise the Professional and Institutional Development program with consideration for improving the following:
  - a) Administrative elements, including timing of funding, flexibility of Terms and Conditions and reporting requirements;
  - b) The application process, including proactive work with communities on their proposals; and
  - c) Alignment with other capacity-building programs at INAC.
4. Explore opportunities, in collaboration with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority, to:
  - a) address the increasing demand for, and growth in, the regime
  - b) support low-capacity First Nations seeking to enter the regime.

# ***Management Response and Action Plan***

**Project Title:** Evaluation of the Governance and Institutions of Government program

**Project #:** 1570-7/14080

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
1. Examine approaches to support First Nations' capacity-building related to law-making.	We concur.	Director, Governance Policy and Implementation Directorate, Treaties and Aboriginal Government Sector	<i>Start Date:</i> Lands and Economic Development and Treaties and Aboriginal Government: April 1, 2017
	With the assistance of the Lands and Economic Development Sector, which has the primary relationship with the existing institutions that support First Nations law-making in various areas, the Treaties and Aboriginal Government Sector will discuss and explore possibilities of them providing some support to First Nations in closing the gaps in capacity related to the development and implementation of by-laws. Other ways of closing this capacity gap will be explored.  The Lands and Economic Development Sector will advance options for the proposed expansion and enhancement of the <i>First Nations Fiscal Management Act</i> regime, in order to provide support to more participating First Nations through the institutions created under the Act.		<i>Completion:</i> Treaties and Aboriginal Government: March 31, 2018  Lands and Economic Development: March 31, 2018  <i>Completed</i>
2. Engage First Nations to develop and implement a strategy to meet their governance needs that includes the costing of Band Support Funding, Employee Benefits and Tribal Council Funding.	We concur.	Director, Governance Capacity Directorate, Regional Operations Sector	<i>Start Date:</i> March 2017
	The Governance Capacity Directorate has started internal engagement with Regional staff and program sectors to determine how current funding levels of Band Support Funding affect the delivery of departmental programs.  Work with the Chief Financial Officer Sector as a member of the New Fiscal Relationship Technical Working Groups, and participate in any engagement process.  In 2016-2017, the Governance Capacity Directorate extended to include the option of Fixed funding to all recipients of the Employee Benefits Program.		<i>Completion:</i> June 2017  <i>Completed</i>  June 2017 (as per Chief Financial Officer)  <i>Completed</i>  August 2017  <i>Completed</i>

	The Governance Capacity Directorate will determine impacts and implement necessary changes as a result of the Canada Pension Plan Enhancements on the Employee Benefits Program.		2021-22
3. Revise the Professional and Institutional Development program with consideration for improving the following:  a) Administrative elements including timing of funding, flexibility of Terms and Conditions and reporting requirements  b) The application process, including proactive work with communities on their proposals  c) Alignment with other capacity-building programs at INAC	We concur.	Director, Governance Capacity Directorate, Regional Operations Sector	<i>Start Date:</i> March 2017
	The Governance Directorate and regions have begun working to review administrative improvements to the Indian Government Support Programs, including revising the Professional and Institutional Development Program with consideration for improving the administrative and application process.		<i>Completion:</i> March 2018  <i>Completed</i>
	Regional Operations -Headquarters, in collaboration with the regions and input from a First Nation Community Planners Advisory group, an Indigenous Community Development National Strategy has been drafted.		Director General Policy Committee (March 2017)  <i>Completed</i>
	Explore options to secure a stable source of funding for Comprehensive Community Planning in order to facilitate multi-year and longer-term community planning.		Strategic Operations Committee in (April 2017)  January 2017  <i>Completed</i>
4. Explore opportunities, in collaboration with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority, to:  a) address the increasing demand for, and growth in, the regime  b) support low-capacity First Nations seeking to enter the regime	We concur.	Director, Fiscal Policy and Investment Readiness Directorate, Lands and Economic Development Sector	<i>Start Date:</i> a) October 2016 b) April 1, 2017
	a) The Lands and Economic Development Sector will engage with the Chief Financial Officer Sector on proposals to establish stable, multi-year funding for the First Nations Tax Commission, First Nations Financial Management Board and First Nations Finance Authority that meets current demand and will allow for sustainable growth of the regime.  b) The Lands and Economic Development Sector will engage with the Chief Financial Officer, Regional Operations and other relevant sectors on ways to support low-capacity First Nations seeking to enter the regime based on expertise of <i>First Nations Fiscal Management Act</i> institutions and default prevention / capacity		<i>Completion:</i> a) March 31, 2018  <i>Completed</i>  b) September 30, 2018

	building pilot project outcomes.		
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**I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee**

*Original signed by:*

**Shannon Townsend  
A/Senior Director, Evaluation, Performance Measurement and Review Branch**

**I approve the above Management Response and Action Plan**

*Original signed by:*

**Joe Wild  
Senior Assistant Deputy Minister  
Treaties and Aboriginal Government Sector**

*Original signed by:*

**Lynda Clairmont  
Senior Assistant Deputy Minister  
Regional Operations Sector**

*Original signed by:*

**Sheilagh Murphy  
Assistant Deputy Minister  
Lands and Economic Development Sector**

# **1. Program Overview and Evaluation Methodology**

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This report constitutes the impact evaluation of Indigenous and Northern Affairs Canada's (INAC) Governance and Institutions of Government Program in accordance with the Treasury Board Policy on Results and constitutes coverage of the following Transfer Payment Program Authorities:

- *Grant for Band Support Funding*
- *Contributions to supply public services in Indian government support and to build strong governance, administrative and accountability systems*
- *Contributions to support the basic organizational capacity of representative aboriginal organizations*

The evaluation addresses the program's relevance and performance from fiscal years 2009-10 to 2015-16 with findings and recommendations to support program improvements. Evaluation Terms of Reference were approved by INAC's Evaluation, Performance Measurement and Review Committee on May 6, 2016. Field work was conducted between July and December 2016.

## **1.1 Program Description**

The Governance and Institutions of Governance Program, which is sub-activity 1.1 of INAC's 2015-2016 Program Alignment Architecture and is comprised of the following two sub-programs:

### *1.1.1 First Nations Governments and Inuit Organizations*

INAC's Regional Operations Sector manages the following components of the program:

- **Band Support Funding** - A grant given to each First Nation that assists band councils to meet the costs of local government and administration. Funding is based on a formula, which includes population, remoteness and weighting factors based on several core programs such as social programs, education, infrastructure and economic development programming.
- **Employee Benefits** - This program provides funding to eligible First Nation, Inuit or Innu employers to support the cost of the employer's share of contributions to pension plans for eligible employees. Funding is formula-based and delivered through contributions for which First Nations, Inuit, and Innu must apply.
- **The Professional and Institutional Development Program** – This proposal-based program funds governance capacity development projects for First Nations, Inuit and Indigenous Representative Organizations.



INAC's Treaties and Aboriginal Government Sector manages the following components of the program:

- Elections under the *Indian Act* and *First Nations Elections Act* – INAC staff administer the statutory and regulatory responsibilities of the Minister with respect to band council elections under the *Indian Act*, including appeals in the event of a dispute. Other duties include training and certifying electoral officers, developing manuals and forms to support the conduct of elections, and providing advice and support throughout the election process. In administering the Conversion to Community Election System, INAC staff support First Nations in the development of community-based election rules (custom codes) and carry out the statutory process to move First Nations from the *Indian Act* election system.
- Support to First Nation Governments in bylaw-making - The Governance Policy and Implementation Directorate provides support and guidance, including templates and workshops, to First Nation governments for the development of by-laws.
- Policy and Legislative Initiatives - The policy component of the program involves collaboration with First Nation governments to explore possibilities to modernize governance frameworks with a focus on developing legislative and policy options that support strong, capable and accountable First Nation governments.

#### *1.1.2 Aboriginal Governance Institutions and Organizations*

The Regional Operations Sector manages the following components of the program:

- Tribal Council Funding – INAC provides core operational funding to support tribal councils. This program component covers administration and management costs associated with delivery of aggregate services for member First Nations.
- Support to Aboriginal Financial Officers Association of Canada (AFOA Canada) - AFOA is a national organization that offers training and workshops to enhance financial capacity development of First Nation governments. AFOA Canada and its regional chapters provide a range of capacity development services to Aboriginal professionals and institutions – their mandate is to, “help Aboriginal people better manage and govern their communities and organizations through a focus on enhancing finance and management practices and skills.”<sup>1</sup> These services, workshops and training are provided for a fee.

The Lands and Economic Development Sector manages the following program component:

- Support to the *First Nations Fiscal Management Act* institutions - The opt-in *First Nations Fiscal Management Act* provides an innovative, First Nations-led legislative and institutional framework to enable First Nations to exercise jurisdiction over fiscal matters, including financial management, local revenue generation, and financing of needs such as infrastructure and economic development. The Act also provides the legislative framework for three institutions: the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority.

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<sup>1</sup> AFOA. (n.d.) “About Us” from *AFOA*. Retrieved 25 January, 2016 from <[https://www.afoa.ca/afoaen/About\\_Us/en/01\\_About/AboutUs.aspx](https://www.afoa.ca/afoaen/About_Us/en/01_About/AboutUs.aspx)>

Prior to April 2014, the components of the Governance and Institutions of Government Program were managed collectively under INAC's Governance Branch. In 2014, the Governance Branch was dissolved and as a result, the program is managed by three different groups: bylaws, policy and elections are managed under the Treaties and Aboriginal Government Sector; Band Support Funding, Employee Benefits, Tribal Council Funding, Professional and Institutional Development and support to AFOA Canada are managed under Regional Operations Sector; and the funding agreements with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority are managed under the Lands and Economic Development Sector.

## ***1.2 Program Resources***

The following two tables outline the expenditures in this program area from fiscal years 2010-11 through to 2014-15.<sup>2</sup>

	<b>Governance and Institutions of Government Funding– Main Estimates</b>					
<b>Vote</b>	<b>Year</b>					
	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>Total</b>
<b>Vote 1 – Operating Expenditures</b>	10,501,262	9,156,732	35,917,627	39,588,743	35,672,593	<b>130,836,957</b>
<b>Vote 10 – Grants and Contributions</b>	393,979,598	391,662,861	391,077,014	379,941,022	354,667,502	<b>1,911,327,997</b>
<b>Budget Statutory Vote</b>	0	0	0	0	0	<b>0</b>
<b>Employee Benefit Plans</b>	1,058,227	1,174,899	5,398,408	6,322,274	5,455,903	<b>19,409,712</b>
<b>Total</b>	<b>405,539,087</b>	<b>401,994,492</b>	<b>432,393,049</b>	<b>425,852,039</b>	<b>395,795,998</b>	<b>2,061,574,665</b>

Source: Chief Financial Officer Sector, February 12, 2016

Note: Does not include Vote 5

<sup>2</sup> To be updated with additional financial data when it becomes available.

<b>Governance and Institutions of Government Funding – Actuals</b>						
<b>Vote</b>	<b>Year</b>					
	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>Total</b>
<b>Vote 1 – Operating Expenditures</b>	24,976,731	43,412,279	39,389,519	37,331,131	38,398,506	<b>183,508,166</b>
<b>Vote 10 – Grants and Contributions</b>	397,827,038	391,611,467	388,971,100	391,162,042	378,401,037	<b>1,947,972,684</b>
<b>Budget Statutory Vote</b>	10,561	11,524	0	0	1,064	<b>23,149</b>
<b>Employee Benefit Plans</b>	3,901,961	6,208,725	5,873,211	5,466,770	5,425,984	<b>26,876,651</b>
<b>Total</b>	<b>426,716,291</b>	<b>441,243,995</b>	<b>434,233,830</b>	<b>433,959,943</b>	<b>422,226,591</b>	<b>2,158,380,650</b>

Source: CFO Sector, February 12, 2016

Note: Does not include Vote 5

### ***1.3 Evaluation Issues and Questions***

Aligned with the evaluation Terms of Reference and the Treasury Board *Policy on Results*, the evaluation focused on the following issues and questions. See Appendix A for details on where each question is specifically addressed throughout the report.

<b>Evaluation Area</b>	<b>Evaluation Question</b>
<b>Continued Need for the Program</b>	1. Do the programs and activities of the Governance and Institutions of Government Program address a demonstrable need of Indigenous communities, and to what extent are federal investments essential to meeting this need? Are they responsive to the needs of Indigenous communities?
<b>Alignment with Government Priorities and Federal Roles and Responsibilities</b>	2. Are the objectives and activities of the Governance and Institutions of Government Program consistent with the federal government's priorities and INAC's strategic outcomes?  3. To what extent do Governance and Institutions of Government program objectives align with the roles and the responsibilities of the federal government?
<b>Achievement of Expected Outcomes</b>	4. Is there duplication or overlap with other programs, policies or initiatives?  5. To what extent is progress being made towards the achievement Governance and Institutions of Government Program expected outcomes of (i) enhanced government capacity for First Nations governments; and (ii) governance institutions and organizations; and toward the ultimate outcome "Transparent and accountable First Nations Governments and Institutions"?  What factors hinder or drive success in these areas?  With respect to component programs, the following questions will be considered: 5.1 ( <b>Treaties and Governance</b> – Bylaws, Policy, and Elections): Has the component program been successful at (i) removing barriers to strong First Nations governance through policy and legislative developments; (ii) providing

	<p>direct community capacity support; and (iii) promoting “open and robust First Nations elections that support effective, accountable First Nations governments”?</p> <p>5.2 (<b>Regional Operations</b> – Professional &amp; Institutional Development, Employee Benefits, Band Support Funding) – Has the component program been successful at (i) responding to communities’ governance capacity needs and effective at (ii) ensuring First Nations governments have the capacity to govern or deliver programs and services, including sufficient human resources and core operational funding?</p> <p>5.3 (<b>Regional Operations</b> – Tribal Council Funding) – Has the component program been successful at supporting Tribal Councils to deliver services and develop the capacity of their member First Nations?</p> <p>5.4 (<b>Lands and Economic Development</b> – <i>First Nations Fiscal Management Act</i>, with Regional Operations – AFOA) – To what extent do First Nations have access to the tools and services of the <i>First Nations Fiscal Management Act</i> through <i>First Nations Fiscal Management Act</i> Institutions? To what extent has the Department been successful at supporting First Nations in developing financial management skills and accessing own-source revenue through AFOA and the <i>First Nations Fiscal Management Act</i> institutions?</p>
<b>Design and Delivery</b>	<p>6. How effective is the current Governance and Institutions of Government program delivery structure? (i) Are the division of roles and responsibilities clearly defined and understood between three responsible sectors? (ii) What impacts, if any, resulted from organizational change in the 2011-12?</p> <p>7. How effective is the Governance and Institutions of Government program’s Performance Measurement Strategy? Are there opportunities for improvements?</p>
<b>Demonstration of Efficiency and Economy</b>	<p>8. Are there alternative or more efficient ways of delivering Governance and Institutions of Government program components that would achieve similar or better results?</p> <p>9. Have simplified application formulas and reporting processes produced cost savings for First Nations or INAC?</p>
<b>Other Evaluation Issues</b>	<p>10. What are the lessons learned and best practices that emerged from implementation of Governance and Institutions of Government program components that might enhance its efficiency or effectiveness?</p>

## 1.4 Data Sources

The following lines of evidence inform the evaluation findings and recommendations:

- Literature review - A review of domestic and international literature was conducted to examine evaluation issues and questions with a specific focus on factors affecting the need for the program, alternative approaches to program delivery and best practices for ensuring good governance.

- Document review - A review of internal INAC documents was conducted as context for the evaluation issues and questions and to collect performance information. Governance-related documents reviewed include the following: internal and external audits and evaluation reports; Reports on Policy and Planning and Departmental Performance Reports; Treasury Board submissions; program Terms and Conditions; and internal presentations on program performance and design and delivery changes.
- Key informant interviews - Interviews were conducted to gain insight into program components' design, delivery and performance. The interviews were used to validate and contextualize information from other lines of evidence and included the following groups: INAC Headquarters staff (11); INAC regional staff (23); representatives of the *Fiscal Management Act* institutions (four); representatives of AFOA Canada (two); representatives from First Nation communities (seven); representatives from tribal councils (four); and representatives from a third-party management firm (six).
- Financial and Administrative data review - Data were reviewed to provide evidence of progress towards the expected outcomes of the program. Evaluators reviewed and analyzed program performance data as identified in the approved Performance Management Strategy between the fiscal years 2009-10 and 2015-16.
- Case Studies - Evaluators conducted six case studies, each comprised of several communities, in the following regions: British Columbia (two); Alberta (two); Saskatchewan (four); Manitoba (one); Ontario (one); and Atlantic (three). Communities were selected based on their changes in General Assessment scores<sup>3</sup> over the evaluation period. Interviews with two tribal councils also formed part of the case studies. Case studies explored the effectiveness of tribal councils, impacts of elections systems, opportunities provided by the *Fiscal Management Act* institutions and best practices in capacity-building.

### ***1.5 How to read this report***

This report is structured around governance themes. Chapter one explores leadership and law-making mechanisms, and includes the relevant and performance of the Elections and Bylaws components of the program. Chapter two discusses the cost of public service, and includes the Band Support Funding, Employee Benefits and Tribal Council Funding components of the program. Chapter three focuses on investments in capacity-building, and as such, it includes the Professional and Institutional Development Program, support to AFOA Canada and commentary on INAC's *Default Prevention and Management Policy*. Chapter four examines the fiscal and financial elements of government by discussing the First Nation-driven institutions of the *First Nations Fiscal Management Act*.

Given the new flexibility granted to evaluators through the Treasury Board's 2016 *Policy on Results*, the report is structured around these themes rather than the evaluation issues and questions outlined above. For purposes of evaluation coverage, Appendix A demonstrates where each evaluation question is addressed in the report.

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<sup>3</sup> The General Assessment is a tool INAC uses to assess the risk level of its funding recipients.

Finally, this report is designed to highlight the broader impacts of the Governance and Institutions of Government Program. One of the purposes of the Governance and Institutions of Government Program is to enable First Nations to deliver programs and services on behalf of INAC. As such, the broader success of the program can be seen in its influence on other INAC programs and services. Throughout this report, readers will see direct references to INAC's On-Reserve Housing Program. This has been done as an example to illustrate the ways in which the Governance and Institutions of Government Program can have an effect on INAC's other Grants and Contributions. On-Reserve Housing was chosen as an example to provide consistency throughout the report. However, evaluators heard that governance has an impact on a variety of program areas beyond just infrastructure. These examples are not intended to suggest that the Governance and Institutions of Government Program should be considered responsible for administrative costs and outcomes in program areas; rather, they are designed to illustrate that changes to the Governance and Institutions of Government Program have the potential for an impact on Grants and Contributions.

## 2. Elections and Bylaws

*Effective governance requires stable leadership with strong tools for law-making.*

***INAC is making progress toward supporting and providing guidance for communities with a variety of governance tools under the Indian Act and alternative tools such as the First Nations Elections Act. However, some challenges remain, such as the financial costs associated with law-making.***

Evaluators examined the two major aspects of governance that flow from the *Indian Act*: elections processes and bylaw-making abilities that are part of the Governance and Institutions of Government Program.

### *Elections*

Sections 74 – 80 of the *Indian Act* govern elections in approximately 200<sup>4</sup> First Nation communities.<sup>5</sup> These sections outline the process for electing Chief and Council, proceedings for council meetings and elections appeals processes. Of note is that Section 78(1) of the Act states that terms for Chief and Council must be two years in length. In the event of an appeal, INAC staff are available to investigate elections proceedings and issue a decision. According to data collected to support the performance measurement indicators of the program, over the evaluation period – 2009-10 to 2015-16 – roughly 700 elections took place under the *Indian Act*, of which only ten were set aside.<sup>6</sup> Elections that are not set aside are considered successful, according to the Governance Policy and Implementation Directorate in Treaties and Aboriginal Government Sector. Over the same period, a total of 82 appeals were made, and 53 (~65 percent) of those were resolved within 210 days of the election, which is the Department's current service standard. Two hundred and ten days is approximately seven months, which is a significant portion of a two-year election term. Though pace of election appeal resolutions could be improved, more broadly, elections under the *Indian Act* have been successful over the past six years. Of roughly 700 elections that took place under the *Indian Act* from 2009-10 to 2015-16, only ten were set aside due to appeals. This indicates that elections under the *Indian Act* are being conducted appropriately.

**"We need to ensure we breathe life into Section 35 [of the Constitution] and that we complete the unfinished business of Confederation. In doing so, we will have strong and appropriate governance in First Nation communities wherein they have moved beyond the *Indian Act*."  
-Minister of Justice Jody Wilson-Raybould (April 14, 2016. Emergency debate on suicide crisis in Attawapiskat)**

<sup>4</sup> First Nations operating under self-government agreements are not subject to the elections processes outlined in sections 74-80 of the *Indian Act*. First Nations holding their elections under the *First Nations Elections Act* and under their own community based elections rules (custom codes) are also exempt from these provisions as well.

<sup>5</sup> <http://laws-lois.justice.gc.ca/eng/acts/I-5/page-12.html#docCont>

<sup>6</sup> Under the *Indian Act*, appeals are directed towards the Minister of Indigenous and Northern Affairs who may conduct an investigation and report findings to the Governor in Council, and the Governor in Council may set aside the election on the report of the Minister. (<https://www.aadnc-aandc.gc.ca/eng/1323195944486/1323196005595>)

Headquarters and case study interviewees generally viewed the two-year terms for Chief and Council under the default *Indian Act* rules as a significant challenge, citing that Chief and Council often do not have the opportunity to learn how to govern before they are overturned. It was also commonly noted that in a two-year cycle, one year can be spent governing, but in effect, the second year is spent campaigning. In some cases, new Chiefs and Council may choose to cancel projects or replace band staff, which can affect program and service delivery in the community, though two-year election terms are not necessarily problematic. In fact, a number of communities choose to maintain a two-year election cycle in their own custom election code, citing that public disapproval of leadership can be more disruptive than the turnover due to elections.

Communities can, however, have longer terms of office and remove the involvement of the Minister of INAC in their elections by developing a community election system (often called a custom election code). The *Conversion to Community Election Systems Policy* outlines the necessary components and steps required for a First Nation to be removed from the application of sections 74 through 79 of the *Indian Act*.<sup>7</sup>

In this context, the majority of communities operating under the *Indian Act* hold their band council elections under their own community election system, whereby they are free to set their own election term lengths and electoral processes. While this was deemed to be preferable to the *Indian Act* rules and regulations by most interviewees, one Chief explained that conducting the necessary referendum process to enact a Community Election System is challenging within the two-year cycle of the *Indian Act*.

In an informal discussion, when asked how INAC could better advance a nation-to-nation relationship with First Nations using the tools of the Governance and Institutions of Government Program, one interviewee replied that this kind of relationship is impossible under the *Indian Act* as the Act prevents First Nations from having jurisdiction over important areas of authority such as fiscal or financial management.

The *First Nations Elections Act*, which came into force in 2014, provides an alternative option whereby First Nations can move to four-year election terms submitting a Band Council Resolution. To date, 40 First Nation communities have moved from holding their elections under the *Indian Act* to holding them under the *First Nations Elections Act*. At the time data were collected for this evaluation, fewer than 20 First Nations were operating under the Act and evaluators were fortunate to visit two of these communities. Several minor concerns were noted with the Act, for example, off-reserve members are required to request ballots under *First Nations Elections Act* rather than ballots being automatically sent. The communities visited noted that without thorough information campaigns, this could have resulted in lower voter participation. Meanwhile, interviewees from both communities noted the following beneficial impacts as a result of the Act:

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<sup>7</sup> “Conversion to Community Election System Policy”, URL: <http://www.aadnc-aandc.gc.ca/eng/1433166668652/1433166766343>



- *More time to govern* – both communities were optimistic that with a four-year term, there is now time to focus on longer-term goals such as multi-season capital projects or development of a land code for the First Nations Land Management regime.
- *Improved perceptions of stability* – both communities visited noted that they are now being proactively approached more often by business looking to partner with the community. With four-year terms, businesses in the area were less concerned about political turnover, and therefore instability of their investments.
- *Increased negotiating power* – one community suggested that the ability to align election dates with other communities that are part of the same Nation means that they could more effectively negotiate as a block representing the needs of the nation as a whole without worrying about turnover and change in political direction in one of the communities in the block.

Overall, then, realistic options exist for allowing communities to move out of the *Indian Act* electoral system. First Nations that choose to develop their own community election system do face the challenge of affording legal services to develop the written election rules and of affording the costs of conducting referendums. It should be noted that cost of running an election is to be covered by the First Nation, though elections are not specifically addressed in the Band Support Funding formula discussed in Section 2 of this report.<sup>8</sup>

### Bylaws

Chief and Council have the option to enact bylaws to regulate specific activities on-reserve such as residence, trespassing and taxation.<sup>9</sup> Sections 81 through 86 of the *Indian Act* provide the legislative framework. Until the

*Indian Act*, the *Amendment and Replacement Act* was passed in 2014, the Minister had the ability to disallow bylaws; since then, bylaws made by a First Nation cannot be disallowed and the courts are the only arbiter of whether a bylaw is legal and valid. Most interviewees felt that this is a positive step

toward creating conditions for First Nations to govern themselves by removing the role of the Minister. This is an example of a change deemed to be “consistent with the Government’s approach of taking concrete, but incremental, steps to create the conditions for healthier, more self-sufficient First Nations communities.”<sup>10</sup>

#### The Costs of First Nations Law Making

For the evaluation of Implementation and Enforcement Supports for the *Family Homes on Reserves and Matrimonial Rights or Interests Act*, evaluators visited a First Nation renowned for its governance practices. As such, the community enacted its own Matrimonial Real Property law to replace the federal provisional rules; the Act has significant implications for a community’s land and housing, and so the community felt it important to implement their own rules.

Throughout the process, the following costs were identified:

- Operation of the governance committee to draft the law;
- Contracting a lawyer to review the law and provide guidance;
- Conducting community engagement sessions; and
- Referendum costs, including hiring a company to conduct e-voting.

<sup>8</sup> “Funding of First Nations Basic Services: Cost Drivers Project – Indian Government Support Services”.

<sup>9</sup> <http://laws-lois.justice.gc.ca/eng/acts/I-5/page-12.html#docCont>

<sup>10</sup> “Changes to By-Laws” URL: <http://www.aadnc-aandc.gc.ca/eng/1421864597523/1421864622917>

Several of the communities visited noted that bylaws can be a useful governance tool. However, in some instances, Chief and Council felt they did not have enough knowledge on the bylaw-making process; one community praised the work of the Governance Policy and Implementation Directorate at INAC for the bylaw-making workshop, which the Directorate conducts when resources are available to visit communities directly. At the request of First Nations, program staff reviewed and provided comments on roughly 300 bylaws over the evaluation period. In communities where the bylaw support option was utilized, the supports are considered helpful.

However, it was also noted that bylaw-making is an area where access to legal services would be beneficial, but in many cases is cost-prohibitive for communities. Further, specific considerations have to be integrated to make sure a bylaw is enforceable. Several communities noted challenges with enforcement, either because police were unwilling to enforce bylaws or because the communities cannot afford to hire bylaw enforcement officers. Without enforcement and compliance of bylaws, they are largely ineffective. According to the Bylaw Training Manual produced by the Governance Policy and Implementation Directorate, an enforcement officer has the authority to monitor compliance with bylaws, provide information to Band Council, and lay charges under bylaws. However, a bylaw officer does not have the authority to apprehend persons, seize property, or enter certain properties without a warrant. Because of this, ensuring compliance of bylaws is difficult. Enforcement officers were not interviewed for this evaluation.

In several interviews with First Nations councillors and band staff, evaluators were told that areas of broader law-making have more of an impact than bylaws do. For example, one councillor argued that it is more useful in the long term to put effort into entering into the *First Nations Land Management Act* rather than to create a bylaw on trespassing. The value of broader legislation does not refute the value of bylaws in a community, as bylaws remain an important part of maintaining social mores and rules in most communities.

***Moving forward, there are opportunities for INAC to better leverage existing resources to support communities in governance and law-making.***

When asked what support communities need from INAC, First Nations and departmental staff responded that the Department should continue to advance two strategic directions: to help communities with current governance tools and also to ‘get out of the game.’

The Governance Policy and Implementation Directorate is well-placed to facilitate these two goals through its following roles:

- Continuing to provide workshops and guidance for those communities that wish to:
  - take full advantage of their bylaws making powers under the *Indian Act*, the duties of Chief and Council and other aspects of governance such as the role of an electoral officer;
  - continue to train and support electoral officers;
  - continue to support First Nation who wish to develop their own community election codes or move to the *First Nations Elections Act*;
  - continue to support First Nations government through the provision of tools and advice that allow them to work within the policy and legal frameworks of the *Indian Act*; and

- continue to provide workshops and guidance for those communities that wish to take full advantage of their by-law making powers under the *Indian Act*.
- Continuing to engage with First Nations on development of new policy and legislative frameworks that allow for stronger First Nations governments. The *First Nations Elections Act* and the *First Nations Fiscal Management Act* are two such examples developed in the past. Interviewees have noted that there are many areas of the *Indian Act* to explore. Several band staff who were interviewed state that the Directorate is well-versed and helpful when engaging with communities, developing legislation and proactively informing First Nations of legislative changes. Currently, the Directorate is exploring opportunities to develop a modern and effective legislative framework around First Nations law-making.

As discussed above, several communities stated that the cost required for law-making is not feasible with their current budgets; in this context any additional resources INAC could leverage would be beneficial. For example, the Centre of Excellence for Matrimonial Real Property is an institution INAC funds to educate communities on the provisions of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. The Centre of Excellence exists to support the implementation of *Family Homes on Reserves and Matrimonial Interests or Rights Act* and it “operates at arm’s length from the Government of Canada to support First Nations in developing their own matrimonial real property laws, effectively implement the provisional federal rules, and provide research on alternative dispute resolution mechanisms.”<sup>11</sup> While communities have the option under this Act to implement their own law, evaluators heard that this can be a challenge given the legal costs and logistical coordination required. It was noted several times that the Centre of Excellence plays a valuable role by clearly laying out the process required to enact a law as well as disseminating templates and best practices.

As communities take advantage of new governance tools, it was reported that continued support by the Governance Policy, and Implementation Directorate within the Treaties and Aboriginal Governance Sector would be beneficial and useful. *The First Nations Fiscal Management Act* institutions, discussed later on in this report, are also recognized as a useful governance tool, when accessible.

**Recommendation 1: Examine approaches to support First Nations’ capacity-building related to law-making.**

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<sup>11</sup> <https://www.aadnc-aandc.gc.ca/eng/1350998394711/1350999033025>

### 3. Public Service

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*Effective governance requires a well-resourced public service with the resources to inform and to implement the decisions of political leadership.*

INAC offers Band Support Funding, Employee Benefits, and Tribal Council Funding to a First Nation to operate a public service and support Chief and Council in community governance and program and service delivery. Band Support Funding is primarily designed to also support key overhead costs included in the operation of a band office, such as rental fees, hydro costs and purchase of computers.

The need for funding for a government to run smoothly is well-supported in academic literature. Research from various jurisdictions, for example, notes the importance of a qualified staff complement separate from the political level.<sup>12</sup> An internal INAC document reports that skills and expertise of band staff are necessary for effectively running a First Nation's affairs. Adequate funding is needed to hire professional staff/services. First Nations are in need of expertise in legal, financial and land management areas.<sup>13</sup> The challenges of turnover amongst staff in small or remote communities is noted in several instances as well. Specialized staff are not likely to relocate to work for a band without the incentive of high compensation, which highlights the importance of both a secure amount of Employee Benefits funding as well as training for band members to develop expertise and stay on-reserve.<sup>14</sup> It is also noted that some First Nations are too small for an adequate economy of scale in administration,<sup>15</sup> suggesting a need for aggregate service delivery approaches such as use of tribal councils. As such, these program elements together are, at least, conceptually well-placed to support the core functioning of First Nations public services.

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<sup>12</sup> Begay, Jr., M.A. (1991). "Designing native American management and leadership training: Past efforts, present endeavors, and future options." *Harvard Project on American Indian Economic Development*. Available at: <http://hpaied.org/sites/default/files/publications/PRS91-3.pdf>, pg. 3; Hunt, J. and Smith, D.E. (2007). *Indigenous Community Governance Project: Year Two Research Findings*. Available at: <http://caepr.cass.anu.edu.au/research/publications/indigenous-community-governance-project-year-two-research-findings>, pg. 12; Limerick, M. (2009): "What Makes an Aboriginal Council Successful? Case Studies of Aboriginal Community Government Performance in Far North Queensland," *Australian Journal of Public Administration* 68(4), pg. 418; National Centre for First Nations Governance (2009): *Governance best practices report*; DeGagne, M. (2008). *Administration in a National Aboriginal organization: Impacts of cultural adaptations*. *Canadian Public Administration*, 51(4), pp. 659–672; Aboriginal Affairs and Northern Development Canada. (2013). *Creating the conditions for economic success on reserve lands*. Retrieved from <https://www.aadnc-aandc.gc.ca/eng/1372346462220/1372346568198>; De Chastel, B. & Stark, P. (2014). *Attraction and Retention of CEOs and Senior Staff in Rural-Remote and Indigenous Local Governments: Recruitment, Retention and Performance Management*. Report for the Australian Centre of Excellence for Local Government, Volume 1

<sup>13</sup> Aboriginal Affairs and Northern Development Canada. (2013). *Creating the conditions for economic success on reserve lands*. Retrieved from [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_checklist/2013/internet/w13-35-U-E.html/collections/collection\\_2013/aadnc-aandc/R3-190-2013-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_checklist/2013/internet/w13-35-U-E.html/collections/collection_2013/aadnc-aandc/R3-190-2013-eng.pdf)

<sup>14</sup> Hunt and Smith, pg. 10; De Chastel, B. and Stark, P. (2014): "Attraction and Retention of CEOs and Senior Staff in Rural-Remote and Indigenous Local Governments: Recruitment, Retention and Performance Management." *Report for the Australian Centre of Excellence for Local Government*, Vol. 1., pg. 1.; Limerick, pg. 420; De Chastel, B. & Stark, P. (2014). *Attraction and Retention of CEOs and Senior Staff in Rural-Remote and Indigenous Local Governments: Recruitment, Retention and Performance Management*. Report for the Australian Centre of Excellence for Local Government, Volume 1.

<sup>15</sup> Graham, J. (2012): "Dysfunction governance: Eleven barriers to progress among Canada's first nations." *Inroads: A Journal of Opinion* 31(31).

While there is no performance indicator for the grant-based Band Support Funding, the program's 2014 Performance Measurement Strategy identifies the following indicators relevant to the performance of employee benefits and Tribal Council Funding:

- Number of First Nation employees participating in pension plans and number of pension plans.
- Tribal council activities completed as per member-endorsed work plans.
- Levels of satisfaction with tribal councils as indicated in community level surveys.

The number of eligible employers offering Employee Benefits increased by 5.01 percent from 2009-10 to 2014-15 and the number of participating employees increased by 6.12 percent. While there was no performance target set, performance indicators reveal a slight increase in uptake of the Employee Benefits program, from 19,905 employees and 533 employers in 2009-10, to 21,121 employees and 560 employers in 2014-15.

Data were unavailable for completed tribal council activities. While each tribal council's work plan is available to INAC, they often do not include details on accomplishment of specific items and so this indicator has not been actively tracked. While there was no target identified for levels of community satisfaction, evaluators spoke with tribal council staff and band staff regarding levels of satisfaction with their tribal council and comments are outlined below.

Due to the absence of indicators for Band Support Funding and data on tribal council work plans, the performance of funding to support First Nations public service over the evaluation period is unclear. However, interviewees made it clear that the successful delivery of programs and services to community members, including those from INAC and other federal government bodies such as Health Canada and Canada Mortgage and Housing Corporation<sup>16</sup>, require a capable public service. Findings pertaining to the three components of the program that fund core public service are below.

***First Nations obtain administrative funding from two sources: Band Support Funding for essential costs such as operation of a band office, and funding from other program areas that is dedicated to overhead costs in service delivery. However, this combination of funding is currently inadequate to cover all administrative needs, with the risk that programs and services may not be delivered so as to achieve results.***

Band Support Funding is a grant provided to First Nations to support core administrative needs and infrastructure such as office spaces, electricity costs, computers and the salary of a band manager. The INAC website states that Band Support Funding “helps First Nations with the costs of local government and with administering services funded by INAC. It provides a stable funding base to support effective community governance and the efficient delivery of services.”<sup>17</sup>

<sup>16</sup> In Northwest Territories, First Nation communities deliver programs and services on behalf of the Government of Northwest Territories, as well.

<sup>17</sup> <http://www.aadnc-aandc.gc.ca/eng/1100100013825/1100100013826>

However, the Band Support Funding formula has not changed in thirty years and funding levels have not been updated for price increases since 2005. Without indexation for inflation, the implications are that there is less funding in real terms every year. For band administrations without access to own-source revenue, this has significant implications.

For example, a band manager may not see wage increases to correspond with cost of living. Most communities visited had a population of fewer than 1,000 people. For these communities, it was commonly noted that Band Support Funding provided for salaries for Chief and Council, a band manager and an assistant. However, this depends on community size – in one particularly small community visited, there was not enough money for a band office; Chief and Council have to rent out a community housing unit for their office space.

An internal INAC presentation notes that while a 15 percent administration and overhead cost is typical in non-government organizations, First Nations currently only receive approximately or less than four percent for management and administration of funding via Band Support Funding. As such, evidence suggests that the current Band Support Funding formula is not optimal for facilitating delivery of INAC's programs. Key informants and case study interviewees universally corroborated this evidence and expressed a need for funding levels to take into account changes that have occurred since the formula's inception, such as regular indexation for inflation and a realistic

assessment of Information Technology (IT) costs, including adequate bandwidth. An updated Band Support Funding formula would contribute strongly to improving the management and cost-effectiveness of the investments INAC places in First Nation programs and services.

In addition to the underfunding of core needs such as audit costs, First Nations also took note of administrative needs like legal fees that Band Support Funding is not designed to cover. Key informants noted that generally program and service funding is not sufficient to account for these needs, resulting in a funding gap between what is offered by Band Support funding and program and service funding.

#### **Housing Management**

When evaluators visited communities for a separate evaluation of On-Reserve Housing in summer 2016, they frequently heard that funding expressly targeted to housing management and administration would contribute effectively to extending the life cycle of houses on-reserve. The value of a dollar injected into training a housing manager who can identify, track and mitigate structural problems goes much further than the value of a dollar injected into a single repair. While communities are provided the option to use minor capital allocations for housing management, this is difficult to prioritize when faced with growing backlogs and urgent repairs.

Moreover, a well-run housing program does not exist without land use planning, salary for administrative and repair staff, ongoing training, a database to track a housing inventory, or payroll and Human Resources functions operating in the background.

Current housing funding is not sufficient to cover these needs, but Band Support Funding is also not designed to accommodate these administrative costs as it is meant for core administrative needs – resulting in a funding gap.

Overall, the extent to which First Nations are able to meet their daily administrative needs using a combination of Band Support Funding, program funding and own-source revenue varies from community to community and, without firm estimates, is difficult to assess. However, communities visited for the evaluation offered examples of where necessary administrative resources are lacking in program areas:

- Insurance costs related to community infrastructure.
- Databases to track housing inventories.
- Transportation for students.
- Competitive salary for an Education Director.

Band Support Funding is expressly designed to cover core administrative needs. However, given its flexibility as a grant to be used at the discretion of the First Nation, it is sometimes stretched to serve other pressing needs that are underfunded elsewhere. Without both a modernized Band Support Funding formula and a strategy to cover the gap between Band Support Funding and administrative funding provided by programs and service, communities are often faced with the decision to spend additional program dollars on rent for their office space, accounting services, IT and other administrative needs rather than on direct service delivery. Without sufficient funding for administration, communities had to set aside money that is intended for direct services in order to properly manage programs on INAC's behalf, hindering the results INAC hopes to achieve in these areas.

***The Tribal Council Funding formula was changed during the evaluation period, and the new \$500 000 limit currently places constraints on the ability for First Nations to aggregate services.***

One of the tribal councils engaged for this evaluation has a streamlined, centralized administrative structure. With membership of over 10 000, the tribal council is involved in second-level service delivery of key program areas, including education (such as curriculum development, speech pathology and educational psychology), health and social services (such as staffing dentists and dieticians and operation of maternal child health programming), and infrastructure (such as major project management and building inspections). Moreover, the tribal council provides management and administration support to program areas delivered by its First Nations; for communities too small to afford key administrative functions such as accounting, human resources and IT support, aggregating under a tribal council such as this can provide a useful economy of scale.

### **Second-level Housing Services**

A number of communities visited for the separate Evaluation of On-Reserve Housing noted the value of their tribal council or other aggregate service organization in providing inspection services, which helps housing managers with limited capacity to catch mistakes in building construction before they happen and to stop growing problems from turning into major repairs. One tribal council visited went so far as to maintain a centralized housing database and permitting system for its First Nations, with training and awareness-raising activities for provincial building code standards.

On April 1, 2014, the Tribal Council Funding formula was changed as a cost-saving measure. The current formula provides for three tiers of funding based on member population served and programs and services delivered. The third tier provides a maximum of \$500 000 per year, which is to support both core

administrative needs and advisory services to bands for capacity-building. The tribal council discussed above had its core funding reduced by over 50 percent as a result of the new \$500 000 funding limit. Currently, only 35 percent of its management and administration funding is covered through the Governance and Institutions of Government Program and the remaining 65 percent must be taken from program and service money.

Interviewees expressed the following concerns with the changes made to Tribal Council Funding:

- Disincentives to aggregation – interviewees noted that there is no incentive for tribal councils to take on new programs and services or accept new First Nations as there would be no new accompanying funding beyond the \$500 000 limit to accommodate for increased costs.
- Loss of opportunities for training and development – interviewees noted that many tribal councils are well-placed to deliver training because their close relationships with member communities mean they can provide on-site guidance. Interviewees felt this is not something that can be accomplished through conferences and workshops that last only several days.

Tribal Council Funding is not universal. Of the tribal councils that were interviewed for this evaluation, many of them have had to eliminate the portions of their work that deal in capacity-building entirely, which has been compounded by the fact that the budget for the Professional and Institutional Development Program, discussed below, has been reduced as well. One key informant noted that this is particularly challenging for remote First Nations given that in some cases, tribal councils are the only realistic service delivery and training agent. Though capacity-building training is offered by some pan-Canadian organizations like AFOA Canada, registration in and travel to training that takes place in a city centre is often not affordable.

***Employee Benefits for First Nations are not comparable to other levels of public service and include significant reporting requirements.***

Generally, interviewees noted that Employee Benefits, where applicable, were helpful. However, the following concerns were noted:

- Roughly 20 percent of bands do not receive Employee Benefits, possibly because of a lack of awareness or lack of financial knowledge and capacity to fill out the application forms. The program provides for \$1000 to administer Employee Benefits, which may not be adequate for some First Nations.
- Maximum expenditures under the policy were deemed to be out of date for items such as pension plans. Internal costing studies have noted that benefits rates, at roughly 12.45 percent, are well below provincial and federal benefits averages of roughly 20 percent.
- In many First Nations, Employee Benefits funds are insufficient to cover all employees. For example, in one community visited, Employee Benefits funding only provided for a total of ten employees. As such, the community is unable to afford coverage for any new employees, such as their Director of Education. Moreover, they are unable to enroll in the Canada Pension Plan for those receiving benefits because coverage has to be universal across the organization. This would require any employee wishing to enroll in the Canada Pension Plan to pay both the employee and employer share of costs. Another community visited noted they risk losing out on potential employees because their benefits plan is not competitive with other employers.



- If Chief and Council are receiving honoraria rather than salaries, they are ineligible for Employee Benefits despite the level of service they provide to the community.

These challenges may constrain communities' ability to attract and retain qualified and capable employees.

#### *A Revised Approach*

While the goal of these program components is to support, rather than to fund exhaustively, the reality is that many First Nations without own source revenue are left without the resources needed, which threaten their ability to deliver the programs and services that their communities and members require.

INAC has undertaken a number of costing studies and engagements on how to update these components of the Governance and Institutions of Government Program. Options offered by interviewees for this evaluation, as well as considerations from previous studies, include:

- Indexing Band Support Funding, Employee Benefits and Tribal Council Funding to reflect inflation.
- Building more sensitive price and volume drivers into the formulae to account for factors such as average salary increases and growth in membership.
- Realistic costing for expenses such as office spaces, IT and connectivity, heating and electricity, legal requirements for increasingly complex funding agreements, land use planning, elections, audit and evaluation.
- Updating Band Support Funding to reflect the costs of administration of all INAC programs and services or alternatively integrating Band Support Funding into individual programs and services.
- Converting Employee Benefits into a grant and allowing First Nations greater flexibility with this component of the program.

A common theme advanced by interviewees, alternatively, was to transition away from an approach based on national formulae and specific Terms and Conditions. Instead, INAC could enter into discussions with First Nations leadership on community needs, aspirations and preferred governance structures and to jointly agree on realistic funding that provides for program administration, competitive benefits and tribal councils where applicable.

**Recommendation 2: Engage First Nations to develop and implement a strategy to meet their governance needs that includes the costing of Band Support Funding, Employee Benefits and Tribal Council Funding.**

## 4. The Potential of Capacity-Building

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*Effective governance requires a strong foundational capacity in people, structures, processes, and ongoing investments in systems, tools and peoples.*

One interviewee suggested that whereas Band Support Funding is “keep the lights on funding,” the Professional and Institutional Development Program is the “change management funding” to help communities with governance capacity development and professional development needs. The program was designed to be relevant to and meet the needs of any government; based in literature conducted by the Harvard Project on the ten core functions universal to any government, INAC developed a Governance Capacity Planning Tool, which allows communities to assess their governance needs and plan strategically to enhance their governance capacity. Communities can apply for Professional and Institutions Development funding in order to build governance capacity within these following ten areas:

- Leadership
- Membership
- Law-making
- Community involvement
- External relations
- Planning and risk management
- Financial management
- Human resource management
- Information management/information technology
- Basic administration

Interviewees noted that the program can be quite useful for a variety of projects, including the following:

- Drafting and updating policies and procedures
- Upgrading computer systems, software and networking capabilities
- Improving document management and filing systems
- Financial advice for communities in default
- Financial audit costs and website development costs related to the *First Nations Financial Transparency Act*
- Training costs
- Community planning and strategic governance planning
- Preparatory work for self-government negotiations

The Professional and Institutional Development Program is, relatively speaking, a small portfolio of funding. In 2013-14, for example, just under \$15 million was available for recipients, resulting in an average of just over \$46,000 per recipient. This was changed in 2014 to a total of \$9.3 million through deficit reduction exercises, and so on average, in nominal terms, the total amount of Professional and Institutional Development Program funding that each recipient receives has decreased by about \$10,000 between 2009-10 to 2013-14.

***The Professional and Institutional Development Program is a useful tool, but practical administrative improvements could increase program efficiency and its value for communities.***

There is consensus among First Nation band staff who were interviewed that the Professional and Institutional Development Program is a useful program, as it targets core areas of governance that require support. As one interviewee explained, good governance has two sides: a corporate side and a leadership side. The interviewee explained that Professional and Institutional Development Program funding plays an important role in strengthening the corporate side of governance, such as developing strategic plans and updating technology and accounting software.

While these projects were useful for one-off purposes, interviewees noted that INAC could be allocating its capacity-building dollars far more effectively. Interviewees expressed concern that this limited amount of funding was subject to significant reporting and relatively narrow Terms and Conditions. One interviewee internal to INAC argued that any project that contributes to building governance capacity should be eligible for funding, and gave the example of access to healing services. Several interviewees noted that while funding for conferences and workshops is useful, taking advantage of these opportunities is challenging if funding is so stretched that they do not receive money for travel costs to accompany training fees. They argued instead that training opportunities that are on-site, hands-on and ongoing are more effective.

A number of interviewees expressed a need for a dedicated source of funding for comprehensive community planning. Two communities visited for the evaluation noted the importance of their community plans in strengthening their governance. Effectively-designed plans provided a united vision for the community and were a source of stability for decision making by Chief and Council. However, the importance of ongoing funding for community planning was highlighted as plans need to be updated every year in order to remain relevant. This requires funding to support community engagement and research.

#### ***Support to AFOA Canada***

Regarding strategies to support First Nations in capacity-building, key informants felt that AFOA Canada is a useful resource, but must be complemented by other types of training. It was felt that AFOA's conference, workshops and literature are useful, as are their certifications. In fact, AFOA is working to have their designation recognized as experience toward of a Chartered Professional Accountant designation.

However, during implementation of the cost-saving measures in the program over the evaluation period, regional program staff appear to have shifted informally in some instances to a policy of denying other groups, such as tribal councils, the funding to implement training in their communities. In particular, several interviewees noted that tribal councils' proposals for Human Resources or financial training were denied on the specific grounds that AFOA offers training in these areas. Key informants were concerned about this approach, as they felt that capacity-building takes time and hands-on work at the desks of the employees themselves; as such, they felt that capacity-building in areas such as finance and Human Resources cannot be done exclusively by AFOA, and that INAC should encourage an approach that funds opportunities First Nations identify as a need.

This example highlights the concerns band staff shared regarding the proposal-based nature of Professional and Institutional Development funding. Widely, there was a demand for the proposal-based approach to be replaced with more stable, multi-year funding. This was for two reasons:

- Timing of funding was an issue and interviewees expressed that calls for proposal should be scheduled in alignment with the fiscal year. It should be noted that the main program funding is currently designed to be released on April 1. However, in some cases, program staff are able to take advantage of surplus funding in other program areas later in the year. Due to timing, this can sometimes cause complications. Myriad examples of the same issue were told to the evaluators on case studies: that the receipt of Professional and Institutional Development funding in autumn leaves only a few months for a band to utilize the funding before end of fiscal year, resulting in rushed projects, unused funding, or funding going to purposes not stated on the proposal or necessarily required. A simple improvement in timing of funding could enable a band to utilize the funding to full potential and reduce expenditures in the long term.
- Second, proposal-based funding approaches are often found to be difficult for communities with limited staff and capacity; in these circumstances there is a risk that proposal-based funding is given more to communities with capacity than communities in need.

**Recommendation 3: Revise the Professional and Institutional Development program with consideration for improving the following:**

- a) Administrative elements, including timing of funding, flexibility of Terms and Conditions and reporting requirements.**
- b) The application process, including proactive work with communities on their proposals.**
- c) Alignment with other capacity-building programs at INAC.**

*There is an opportunity for INAC to enhance its capacity-building funding by advancing the principles of the National Community Development Framework*

In January 2015, INAC formed a 'Capacity Taskforce' as a response to a 2013 departmental audit that concluded INAC lacks a coordinated and strategic approach to its capacity development programs. The audit called for an analysis of departmental spending, and the initiative's work thus far has identified challenges in INAC's capacity programming such as proposal bias, a lack of coordination amongst programs, and a lack of resources for INAC staff to visit communities and discuss project possibilities. Moreover, the initiative has identified best practices in capacity-building, including tailoring funding to First Nations' needs, emphasizing community planning and allowing regional staff to take more of a role in assisting First Nations with funding requests.

Several interviewees spoke of the power of Comprehensive Community Planning and the potential of INAC's National Community Development Framework. Overall, interviewees provided the following common messages that align with the National Community Development Framework:

- It starts with planning - Comprehensive Community Planning is a community-driven planning process that outlines needs, goals and aspirations; at its best, a Comprehensive Community Plan is prepared by the community rather than a consultant, and as such each one looks different. Several communities have spoken of its ability to facilitate community healing, and it is also useful as a tool for articulating funding needs. Several interviewees suggested that, rather than being an option under the Professional and Institutional Development program, planning should have its own profile and dedicated source of funding.
- Consolidated capacity dollars could be greater than the sum of their parts - The Professional and Institutional Development Program, while small, could be amplified if coordinated with other capacity-building funds across the Department. For example, funding for Comprehensive Community Planning also exists under the First Nation Infrastructure Fund and other capacity-building opportunities are available under programs such as Lands and Economic Development Services.
- Fund a strategy, not a project – Interviewees noted that while the projects facilitated by Professional and Institutional Development are helpful, communities need access to stable, multi-year funding if they are to put together and act on realistic capacity development and growth projects. Currently, Professional and Institutional Development funding is provided on an annual basis, restricting the opportunity for long-term development in communities.
- Respond with more holistic behavior – Interviewees explained that a move towards more Comprehensive Community Planning, which is generally holistic in nature, should be matched by departmental efforts to fund free of silos, and limiting Terms and Conditions that prevent communities from meeting their own needs. Several interviewees noted that INAC's recently-allocated travel funding that allows Funding Service Officers or other regional representatives to travel to communities and build relationships for these purposes has been highly effective thus far. Evaluators learned that First Nation band staff cannot use Professional and Institutional Development funding where another program has a different funding stream targeting the same issue.

Overall, interviewees were of the opinion that while INAC funding for capacity-building is useful, it would be more useful if communities had access to stable support for planning, and if capacity investments were targeted to the needs communities identified in their community plans.

***INAC's financial-focused approach to supporting communities in crisis is not effective in all situations and needs to be revised.***

The evaluation examined approaches to supporting communities in crisis, who often have low capacity and may face financial, social or other challenges. A number of interviewees noted that INAC's main tool for helping communities to resolve challenges is the Default Prevention and Management Policy, and expressed concern with the parameters of the policy and how it is applied. In some cases, it was argued that the policy is not the best approach for building financial capacity. In other cases, it was argued that deeper root problems have to be addressed prior to financial capacity.

### *Default Prevention and Management*

INAC monitors the risk of its funding recipients as per the Treasury Board *Policy on Transfer Payments* and has the Default Prevention and Management Policy in place to ensure funding is delivered properly in the event that a funding recipient is unable to execute on the Terms and Conditions of its funding agreement.

Currently, INAC's Default Prevention and Management Policy can be triggered as a result of an audit or if there are other concerns surrounding recipient risk, ability to follow through on funding agreements or if there are health and safety issues in the community. If the policy is triggered, a community is placed in one of three categories:

- Recipient-managed Management Action Plan: the recipient develops a plan with INAC to remediate the default and mitigate future occurrences.
- Recipient-appointed Advisor: the recipient contracts an advisor, generally paid using Band Support Funding, to assist in carrying out their Management Action Plan.
- Third-Party Funding Agreement Management: INAC contracts a third party, generally paid using Band Support Funding, to deliver programs and services and to remediate default.

Of 618 First Nations officially recognized by INAC, 136 (or 22 percent) are currently under the Default Prevention and Management Policy. Specifically, 65 First Nations are under recipient-managed Action Plan (10.5 percent of communities), 61 First Nations have a recipient-appointed advisor (9.9 percent of communities) and 10 First Nations are under third-party management (1.6 percent of communities).<sup>18</sup> As such, INAC has met its program expected result of 70 percent of First Nations free of default as per the Performance Measurement Strategy for the Governance and Institutions of Government Program. It is important to note that the geographic spread of First Nations under third-party management is not even. Of the 136 First Nations under the Default Prevention and Management Policy, 43 of them are in Manitoba, and six of the ten under third-party management are in that same province.

However, interviewees expressed significant concern about the processes in place for those communities that do fall under the Default Prevention and Management Policy. The first is that the policy, maintained by the Chief Financial Officer Sector, has no dedicated funding attached to support communities in default. Instead, Band Support Funding is the main source of funding to pay for third-party management. However, when a community is already struggling, diverting some of their limited Band Support Funding elsewhere is not likely to help them succeed. Similarly, Professional and Institutional Development funding is often relied upon to support these communities. While effective, this stretches the funding under this program, which is significantly in demand.

Moreover, it was noted that there are often unclear expectations on what is required for a community's default status to be lifted or the goals they are expected to accomplish during this time. There are also no performance appraisals conducted of third party or co-managers to ensure they are meeting standards.

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<sup>18</sup> As of Jan. 3, 2017

Significant concern was also raised over the relationships communities often experience with third-party managers. Often third-party managers work out of a different province and rarely visit the community. Interviewees questioned how an individual could be expected to spend the community's funding in a manner that reflects its needs or to build relationships for the purposes of capacity building in this context. It was noted that few communities placed under third-party management successfully build the capacity to move out from under the Default Prevention and Management Policy.

#### *Meeting the needs of communities in crisis*

INAC's assessment of recipient risk and capacity emphasizes financial management and considerations such as familiarity with funding agreements, business continuity planning, and financial records and reporting. As such, the approach taken with communities in crisis is to try to build financial capacity – either through third-party management, Professional and Institutional Development funding or support from an institution with a financial capacity-building mandate.

However, a number of interviewees noted that governance issues do not always stem from financial challenges. For example, several interviewees spoke of the importance of healing from trauma before effective governance could take place; in another community visited, substance abuse was a significant challenge. Evaluators approached one community in crisis prepared with a discussion guide on the effectiveness of Band Support Funding and Professional and Institutional Development; the discussion focused instead on the legacy of residential schools on band administration, a lack of clean drinking water and the prevalence of tuberculosis in the community. Simply put, interviewees responded that they could not put energy into applying for and leveraging training and development for band administration – they needed to focus on a housing crisis, which was affecting health and safety and preventing them from attracting qualified teachers to the community.

In these instances, the relevance of the Governance and Institutions of Government Program is questionable. Interviewees were clear that a fundamentally different approach must be taken – to focus on immediate needs and underlying issues rather than the financial capacity challenges that may manifest as a result. These needs are often substantial enough to go beyond the Terms and Conditions of INAC programming.

In this context, several regional offices have begun to take a different approach to working with communities. Funding Service Officers are envisioned more as community liaisons rather than administrators of funding agreements. Regional teams or committees are assigned to look at communities' needs holistically and match programs to them, rather than the other way around. This type of approach may be more effective at resolving long-standing governance issues than INAC's current emphasis on financial capacity and risk. The following are examples of approaches taken by regional offices to help address the needs of communities in crisis:

Region	Approach
<b>British Columbia</b>	British Columbia's Communities in Focus Initiative involves assigning a team of INAC staff from across program areas to work with a community experiencing difficulty. The team coordinates with the community to develop an Integrated Community Support Plan based on the community's Comprehensive Community Plan and works to align funding sources to the community's needs.
<b>Alberta</b>	A Regional Investment Committee examines funding levels for communities in Default and seeks opportunities to provide additional investment. A centralized Corporate Services function allows Funding Service Officers to spend less time on administration and more time liaising with communities to support them in their needs.
<b>Ontario</b>	In Ontario, Funding Service Officers liaise with communities under Default to identify their needs based on their Management Action Plans and fund them using Professional and Institutional Development Funding. For one fiscal year, Ontario also decided to allocate its entire Professional and Institutional Development budget to ensuring each community was funded for a specific priority identified on its Governance Capacity Plan.

The common theme running through these strategies is a requirement for INAC staff to seek out funding and align it to communities' needs where communities do not have the capacity to navigate a complicated network of funding, proposals and reporting themselves. The principles of this strategy run counter to the approach under third-party management – to ensure compliance with program Terms and Conditions in spite of more pressing needs in the community are. Opportunities may exist to formalize this approach and transition to a more effective strategy for supporting communities in crisis.

As discussed above, one element of the National Community Development Framework involves increased resources to allow staff to visit with First Nations, hear their needs and proactively work to support them in securing funding. This portion of the initiative is already underway and several staff commented that it has had very positive results; moreover, several First Nations visited for case studies stated that their main suggestion to improve INAC's programs and services was more direct, face-to-face interaction with staff. Evaluators visited one community that had recently received its official status as a First Nation and interviewees attributed the hard work of INAC staff in helping them to secure funding and guidance as a major factor in their success.



## 5. Toward First Nation-driven Institutions

*Effective governance in communities requires the support of strong Indigenous-led institutions at national and regional levels, and access to fiscal and financial resources.*

***The First Nations Fiscal Management Act institutions have a significant impact building capacity and helping communities leverage their resources effectively, but communities with capacity challenges struggle to take advantage of what they offer. Moreover, five year funding agreements and annual reallocation of funds affect the institutions' ability to plan strategically long-term.***

The *First Nations Fiscal Management Act* was passed in 2006. It provides more authority to First Nations for undertaking fiscal and financial management than is provided through bylaw-making under the *Indian Act*. The Act provides the legislative backing for the following three institutions, supported by contribution agreements with INAC<sup>19</sup>:

- The First Nations Tax Commission is a shared-governance corporation that regulates and streamlines the approval of property tax and new local revenue laws of participating First Nations, builds administrative capacity through sample laws and accredited training, and reconciles First Nation government and taxpayer interests.
- The First Nations Financial Management Board is a shared-governance corporation which assists First Nations in strengthening their local financial management regimes and provides independent certification to support borrowing from the First Nations Finance Authority and for First Nations economic development.
- The First Nations Finance Authority is a non-profit corporation that permits qualifying First Nations to work co-operatively in raising long-term private capital at preferred rates through the issuance of bonds, and also provides investment services to First Nations.

As such, First Nations can make use of the three institutions to develop a revenue base through taxation, to put financial policies and controls in place, and to secure financing at affordable rates. Interviewees and case study participants who had accessed the institutions all noted that the institutions are highly relevant to their needs, as strong financial policy, access to own-source revenue and affordable loans were all deemed to be important factors in good governance. The literature review also indicates that own-source revenue, access to financing and the institutions themselves, have all been cited as a major success factors in economic development, infrastructure financing and community employment.<sup>20</sup>

<sup>19</sup> <https://www.aadnc-aandc.gc.ca/eng/1393512745390/1393512934976>

<sup>20</sup> Aboriginal Affairs and Northern Development Canada. (2013). *Creating the conditions for economic success on reserve lands*. Available at: [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_checklist/2013/internet/w13-35-U-E.html/collections/collection\\_2013/aadnc-aandc/R3-190-2013-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_checklist/2013/internet/w13-35-U-E.html/collections/collection_2013/aadnc-aandc/R3-190-2013-eng.pdf), pg. 15-18; National Aboriginal Economic Development Board. (2012). *The Aboriginal Economic Progress Report 2015*. Available at: <http://www.naadb-cndea.com/reports/NAEDB-progress-report-june-2015.pdf>, pg. 35; Richards, J. (2015). "First Nations Own-Source Revenue: How Is the Money Spent? *CD Howe Institute*, issue 437, pg. 4; National Aboriginal Economic Development Board. (2016). *Recommendations on Northern Infrastructure to Support Economic Development*. Available at: <http://naadb-cndea.com/reports/recommendations-on-northern-infrastructure.pdf>, pg. 22; Flanagan, T. & Bearegard, K. (2013). *The*

### *Performance over the evaluation period*

The program's performance measurement strategy lists the following indicators related to the *Fiscal Management Act* institutions:

- Percentage of Band Council Resolutions from First Nations requesting addition to the *First Nations Fiscal Management Act* Schedule submitted for processing within one month.
- Percentage of Governor in Council appointment packages prepared and approved by the Senior Assistant Deputy Minister of Regional Operations within two weeks of being provided with a complete request by the Minister's Office.
- Core and project-based funding is provided to the *First Nations Fiscal Management Act* institutions to enable them to deliver on their mandate.
- Percentage of governance institutions and organizations scoring low risk on the General Assessment.
- Number of First Nations who have been certified by the First Nations Financial Management Board annually.
- Percentage of First Nations with local revenue laws in place.

However, interviewees suggest that some of these indicators are not relevant to the impact of INAC's support to the institutions or what the institutions themselves can accomplish with First Nations. Instead, program staff intend to revisit these indicators to coincide with the new Treasury Board *Policy on Results*.

Evaluators gathered evidence that demonstrates strong performance by the institutions in a much more tangible way.

#### **Performance Highlights**

- Forty-four million dollars in revenue generated with support of the First Nations Tax Commission
- Sixty-one First Nations with financial certification from the First Nations Financial Management Board
- Twenty-five First Nations accessing over \$85 million in affordable finance through the First Nations Finance Authority

### *The First Nations Tax Commission*

An internal Lands and Economic Development Sector report states that the *First Nations Fiscal Management Act* is a "considerable success" and that participation in, and benefits of, the *First Nations Fiscal Management Act* institutions are projected to increase. Currently, 108 First Nations collect property tax through the *First Nations Fiscal Management Act*, as compared to 50 First Nations under the *Indian Act*. In total, these 158 First Nations generate \$85 million in revenue per year, of which \$50 million is generated by First Nations under the *First Nations Fiscal Management Act*.

The added value of the Tax Commission's work, according to key informants, is that it helps First Nations develop clear regulatory structures for their taxation laws: this includes publishing of tax bylaws in the First Nations Gazette, operated by the Tax Commission, and use of the Tax Commission as a neutral dispute resolution body for tax collection, a service that is was previously not available to First Nations operating under the *Indian Act*.

Concerns over the operation and impact of the Tax Commission were minor. Three specific concerns were noted:

- The Commission operates under a five-year agreement, which makes longer-term stability and planning difficult to achieve.
- Relative to the First Nations Financial Management Board and the First Nations Finance Authority, there has been relatively less uptake of the Tax Commission's services by First Nations, owing to a resistance amongst some First Nations to tax membership.
- Finally, in some First Nations, there may never be a role for the Tax Commission to play because there is not enough income or revenue in the community to generate a strong tax base.

Nonetheless, interviewees and case study participants validated literature that suggests taxation and the Tax Commission allow for stronger governance by providing First Nations, where feasible, a stable stream of own-source revenue with which to meet their own needs.<sup>21</sup>

#### *The First Nations Financial Management Board*

Currently, 73 First Nations have achieved financial performance certification under the Financial Management Board. Interviewees felt that these policies will help First Nations enhance financial management and promote transparency and accountability; the policies include, for example, the requirement to produce consolidated audited financial statements.

#### **Alternative means to afford housing**

One First Nation visited for the Evaluation of On-Reserve Housing in Summer 2016 demonstrated how effective use of all three of the *Fiscal Management Act* institutions can enable a community to accomplish much more than it can by using INAC's minor capital allocations alone.

This community established a taxation regime with support of the First Nations Tax Commission and the revenue generated off of property tax is used to pay service fees to their neighboring municipality for garbage collection and access to the municipal water system.

Their work with the First Nations Financial Management Board has resulted in policies that make them eligible to access financing through the First Nations Finance Authority, which they have already used to build a new housing complex. Interviewees noted the difficulty of building subdivisions with limited program funds, whereas financing is a much quicker route.

Finally, the community intends to pursue development of additional financial policies with the Financial Management Board that will allow them to borrow against their tax revenue, further leveraging their work with the Tax Commission and Finance Authority to build more community housing.

<sup>21</sup> Graham, J. & Bruhn, J. (2008). *In praise of taxes: the link between taxation and good governance in a First Nations context*. Institute on Governance; The National Aboriginal Economic Development Board. (2015). *The Aboriginal Economic Progress Report 2015*. Retrieved from <http://www.naadb-cndea.com/reports/NAEDB-progress-report-june-2015.pdf>; Flanagan, T. & Bearegard, K. (2013). *The wealth of First Nations: An exploratory study*. Centre for Aboriginal Studies, the Fraser Institute. Retrieved from <https://www.fraserinstitute.org/sites/default/files/wealth-of-first-nations.pdf>; Aboriginal Affairs and Northern Development Canada. (2013). *Creating the conditions for economic success on reserve lands*. Retrieved from <http://www.aadnc-aandc.gc.ca/prev-prev/eng/1372346462220>.

Several success stories of work with the First Nations Financial Management Board were noted, such as a First Nation that was approached for new business opportunities immediately following certification with the Board. One remote First Nation worked through the Board's certification processes and was able to go from third-party management to the ability to fully control its own funding and to take advantage of financing options under the First Nations Finance Authority. Similarly, two additional First Nations under co-management have been certified with the Board as well.

Following on the success of these capacity-building efforts, the First Nations Financial Management Board is expanding its work to include pilot projects with four First Nations currently under third-party management. While the pilot projects are just beginning, evaluators visited one of these First Nations, where stakeholders expressed hope that the Board's work could help remediate financial challenges.

Interviewees expressed some challenges the Board faces in its day-to-day work:

- Funding is on a five-year cycle, and resources are stretched through additional capacity-building projects done on behalf of INAC, securing access to enough funding is difficult.
- The Board does not reassess communities to ensure compliance with policy once they are certified.
- Depending on a community's capacity, it can take up to five years to draft and adopt all of the policies required by the Board, which is more time- and resource intensive than initially anticipated.
- Some communities simply are not ready to go through the Board's certification processes. While the First Nations Financial Management Board conducted a pilot project on financial readiness for resource development opportunities with communities in the Ring of Fire, the chiefs involved eventually declined to continue as they were focused on simply achieving stability in their communities.

As such, interviewees noted that for those First Nations able to accomplish all steps in the Board's certification process, what the Financial Management Board offers is very valuable. However, more integrated support may be needed to help interested First Nations undertake the rigorous processes required for certification.

#### *The First Nations Finance Authority*

The First Nations Finance Authority issued its first bond in 2014, resulting in nearly \$86 million in loans issued to 13 First Nations. The bond was re-opened in 2015 with 10 new borrowing members and subsequently in 2016 with an additional five First Nations. These bonds have allowed First Nations to follow through on projects such as housing complexes, community buildings, refinancing to lower interest rates and land purchases. As such, the Finance Authority demonstrates clear impact for First Nations and strong value for money in its loan portfolio.

However, interviewees noted that the Authority faces challenges as well:

- The funding arrangement the Authority has with INAC is a flexible year-over-year arrangement. This threatens the credit rating the Authority has with S&P and Moody's, which rate the Authority's investment quality. As such, the Authority's status is rated as an "ongoing concern."
- The Authority needs a certain number of borrowing members in order to break even. In order for First Nations to qualify for entry into the Authority, however, they must first become certified by the First Nations Financial Management Board. As discussed above, in some cases this is taking up to five years to complete. This limits the Authority's client base and its chances to break even on its bonds in the short to medium term, and should be considered in expectations about how long it will take for the Authority to break even.
- The decision to enter into the First Nations Finance Authority is a debate between lower interest on loans and releasing some control of a band's revenue and borrowing flexibility.

Key informants noted that uptake in the regime has far outstripped what was expected; program staff estimate that by 2020, 235 First Nations will be scheduled to the Act, with \$70 million being collected in property tax, 100 First Nations certified by the Financial Management Board and \$1 billion available for borrowing.

As interest in the use of these institutions and in the *First Nations Fiscal Management Act* grows, key informants have suggested several improvements be made to the regime:

- Streamline approval processes and certification processes by scheduling First Nations to the Act in a more timely manner and supporting initiatives such as the Financial Management Board's website expansion and client service portal.
- Provide the institutions with more stable, multi-year funding that includes a realistic assessment of IT costs and costs to support First Nations through their certification processes.

Interestingly, key informants noted that if the Act were to be amended, the First Nations Finance Authority's effectiveness could be further leveraged by allowing for First Nations to monetize their capital transfers from INAC, greatly expanding the impact of the institution's services across other areas of INAC programming.

Generally, evaluators noted that the institutions respond to a need amongst First Nations for revenue generation, financial management expertise and access to finance. However, for First Nations struggling with capacity, entry into the *First Nations Fiscal Management Act* appears to be a challenge, and certification processes with the Financial Management Board take a significant amount of time even for those with capacity. As such, it would be beneficial for INAC to support interested First Nations with any resources possible to navigate the processes required by the *First Nations Fiscal Management Act*.

Although as noted above the First Nations Financial Management Board does not reassess First Nations for compliance with policy on an ongoing basis, the following controls exist in the system:

- Certification by the First Nations Financial Management Board upon completion of a community's financial administration laws, at which time the First Nation can borrow one time from the First Nations Finance Authority
- Approval of a First Nation's Systems Certification 36 months after approval of the financial administration laws, at which point the community can continue to access the First Nations Finance Authority
- Risk control is also exercised by member First Nations of the Finance Authority any time a member chooses to request a loan

Given that the First Nations Financial Management Board does not reassess compliance on an ongoing basis, these controls are an important effort to manage financial risk. However, it is important to revisit these controls as First Nations of varying capacity continue to access the First Nations Finance Authority.

**Recommendation 4: Explore opportunities, in collaboration with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority, to:**

- a) address the increasing demand for, and growth in, the regime; and
- b) support low-capacity First Nations seeking to enter the regime.

## 6. Conclusion – Steps for Supporting a Nation-to-Nation Relationship

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The Government of Canada has committed to a mandate of renewing a nation-to-nation relationship with First Nations peoples. The Governance and Institutions of Governance Program includes a broad range of tools that, if designed more effectively, could be placed at the heart of this mandate. The Governance Policy and Implementation Directorate of the Treaties and Aboriginal Government Sector works with First Nations to strengthen tools for leadership under and outside of the *Indian Act* and to support election processes. Regional Operations sector funds core government administration through Band Support Funding, Employee Benefits and Tribal Council Funding. Governance can be strengthened through the Professional and Institutional Development program and AFOA Canada, also funded through Regional Operations. Finally, the Lands and Economic Development sector funds the *First Nations Fiscal Management Act* institutions to support First Nations in developing a strong fiscal and financial base.

The following key messages have emerged from data collection for this evaluation:

**On tools for leadership** - The case studies found that strong governance plays an important role in the wellbeing of First Nation peoples, from planning for sound infrastructure to fostering culture and community involvement. Greater civil participation and demand for effective governance creates a positive cycle. INAC can continue to play a role by ensuring that leadership in First Nation communities have access to strong tools – such as stable election procedures, support for bylaw-making and access to legislation that provides more effective options than are offered under the *Indian Act*.

**On costing of administration for programs and services** - A focus now on supporting administration of INAC programs and services will result in long-term improvements of the wellbeing of First Nations communities. Greater support for administration also protects Canada's investments, by ensuring that taxpayers' money is being leveraged productively. In this context, funding for governance and administration should be considered as building blocks of all other needs in a community and realistic costing is key both for prosperity in communities and delivery on INAC's core responsibilities.

**On building capacity** - Aligning program dollars to better respond to the individual circumstances and needs of First Nations will contribute to strengthening governance and effective program and service delivery going forward. Practical steps include delivering funding as early in the fiscal year as possible to improve the efficiency and economy of INAC programming and setting reasonable reporting requirements that do not place undue administrative costs on communities. When a First Nation's capacity is low, enforcing stricter adherence to program Terms and Conditions has not led to success. Instead, they require additional support through approaches such as a discussion on funding needs with INAC staff. Securing a dedicated source of funding for Comprehensive Community Planning is critical to building this capacity.

**On First Nation-driven institutions** – Sustainable governance is based in the long run on institutions with authority of jurisdiction, rather than programs and services. There is tremendous opportunity to support First Nations in developing their own fiscal and financial bases. Moreover, this support is very effective when it comes from institutions that are First Nation-run. As organizations such as the *First Nations Fiscal Management Act* institutions expand their reach, INAC is well placed to support their growth. This can be done by offering stable funding agreements, ensuring organizations are backed by an effective legislative base and offering support to First Nations that wish to access these institutions, but are struggling to do so.

The following recommendations are designed in the spirit of these core messages:

1. Examine approaches to support First Nations' capacity-building related to law-making.
2. Engage First Nations to develop and implement a strategy to meet their governance needs that includes the costing of Band Support Funding, Employee Benefits and Tribal Council Funding.
3. Revise the Professional and Institutional Development Program with consideration for improving the following:
  - a) Administrative elements, including timing of funding, flexibility of Terms and Conditions and reporting requirements;
  - b) The application process, including proactive work with communities on their proposals; and
  - c) Alignment with other capacity-building programs at INAC.
4. Explore opportunities, in collaboration with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority, to:
  - a) address the increasing demand for, and growth in, the regime
  - b) support low-capacity First Nations seeking to enter the regime.

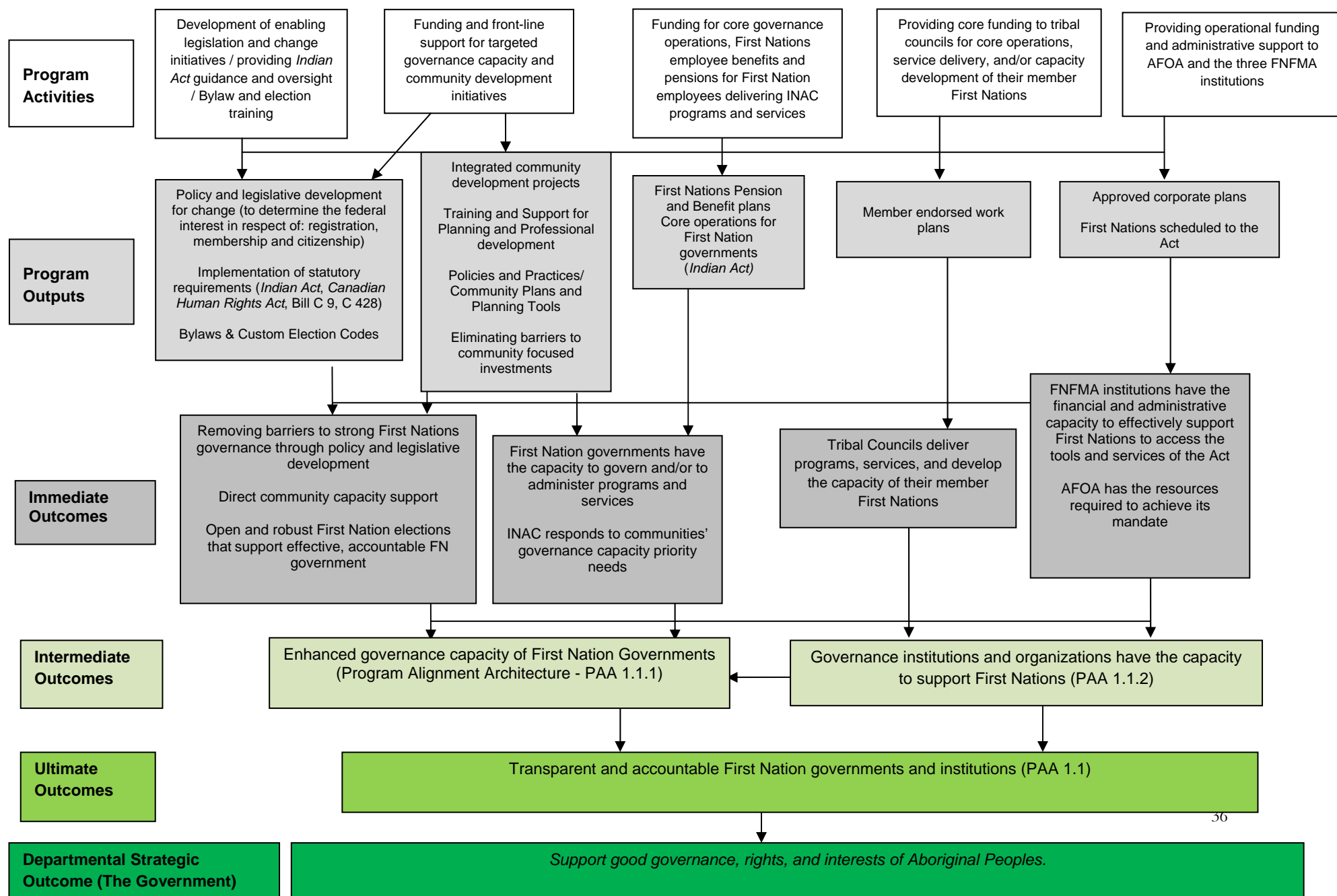


# Appendix A – Coverage of Evaluation Issues and Questions

Evaluation Issue	Coverage in report
1. Do the programs and activities of the Governance and Institutions of Government program address a demonstrable need of Indigenous communities, and to what extent are federal investments essential to meeting this need? Are they responsive to the needs of Indigenous communities?	Chapters 1, 2, 3 and 4
2. Are the objectives and activities of the Governance and Institutions of Government program consistent with the federal government's priorities and INAC's strategic outcomes?	Chapter 1
3. To what extent do GIG objectives align with the roles and the responsibilities of the federal government?	Chapters 1 and 2
4. Is there duplication or overlap with other programs, policies or initiatives?	
5. To what extent is progress being made towards the achievement of Governance and Institutions of Government expected outcomes of (i) enhanced government capacity for First Nations governments; and (ii) governance institutions and organizations; and toward the ultimate outcome "Transparent and accountable First Nations Governments and Institutions"	
What factors hinder or drive success in these areas?	Chapter 1
With respect to component programs, the following questions will be considered:	
5.1 (Treaties and Aboriginal Government – Bylaws, Policy, and Elections): Has the component program been successful at (i) removing barriers to strong First Nations governance through policy and legislative developments; (ii) providing direct community capacity support; (iii) promoting "open and robust First Nations elections that support effective, accountable First Nations governments"?	Chapter 2 Chapter 3 Chapters 3 and 4
5.2 (Regional Operations – Professional and Institutional Development, Band Employee Benefits, Band Support Funding) – Has the component program been successful at (i) responding to communities' governance capacity needs and effective at (ii) ensuring First Nations governments have the capacity to govern or deliver programs and services, including sufficient human resources and core operational funding?	
5.3 (Regional Operations – Tribal Council Funding) – Has the component program been successful at supporting Tribal Councils to deliver services and develop the capacity of their member First Nations?	
5.4 (Lands and Economic Development – <i>First Nations Fiscal Management Act</i> (FNFMA), with Regional Operations – AFOA) – To what extent do First Nations have access to the tools and services of the <i>First Nations Fiscal Management Act</i>	

through FNFMA Institutions? To what extent has the Department been successful at supporting First Nations in developing financial management skills and accessing own-source revenue through AFOA and the FNFMA institutions?	
6. How effective is the current Governance and Institutions of Government program delivery structure? (i) Are the division of roles and responsibilities clearly defined and understood between three responsible sectors? and (ii) What impacts, if any, resulted from organizational change in 2001-12?	Appendix C
7. How effective is Governance and Institutions of Government's performance measurement strategy? Are there opportunities for improvements?	Appendix C
8. Are there alternative or more efficient ways of delivering Governance and Institutions of Government components that would achieve similar or better results?	Chapter 3
9. Have simplified application formulas and reporting processes produced cost savings for First Nations or INAC?	Appendix C
10. What are the lessons learned and best practices that emerged from implementation of Governance and Institutions of Government components that might enhance its efficiency or effectiveness?	Chapter 3

## Appendix B – Program Logic Model



## **Appendix C – Assessing the administration of the Governance and Institutions of Government program**

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The Terms of Reference for the evaluation asked several questions related to internal management of the Governance and Institutions of Government Program. While findings were not central to the relevance, performance or design and delivery of the program, these questions are addressed below.

***How effective is the current Governance and Institutions of Government program delivery structure? (i) Are the division of roles and responsibilities clearly defined and understood between three responsible sectors? (ii) What impacts, if any, resulted from organizations change in 2011-12?***

Prior to April 2014, the components of the Governance and Institutions of Government Program were managed collectively under INAC's Governance Branch. In 2014, the Governance Branch was dissolved and as a result, the program is managed by three different groups: bylaws, policy and elections are managed under the Treaties and Aboriginal Government Sector; Band Support Funding, Employee Benefits, Tribal Council Funding, Professional and Institutional Development and support to AFOA Canada are managed under Regional Operations; and the funding agreements with the First Nations Tax Commission, the First Nations Financial Management Board and the First Nations Finance Authority are managed under the Lands and Economic Development Sector.

A recent audit of the program recommended that senior management in the three sectors collaborate to review the program structure, and program staff committed to clarifying roles and responsibilities and coordinate on performance measurement indicators. As such, evaluators examined progress to date on managing the relationship between the three sectors. Generally, key informants felt the dissolution of the Governance Branch has not caused challenges for program delivery. However, minor concerns were noted that could be addressed with more efforts in communication.

Key informants were of the opinion that the three-sector approach to the program is working well. It was noted, for example, that having the *First Nations Fiscal Management Act* portion of the program run out of Lands and Economic Development is beneficial as the Institutions generally have more ties to other efforts in this sector such as Access to Capital and the Strategic Partnerships Initiative. It was noted that the *First Nations Fiscal Management Act* is a key part of ensuring the proper climate for economic development.

One key informant argues that the Program Alignment Architecture is artificial and the fact that the program elements are grouped together conceptually does not mean they have to fall under the same management in practice. The three groups do take opportunities to work together; one key informant gave the example of Regional Operations funding the development of an election code in collaboration with Treaties and Aboriginal Government, and of the two groups coming together to answer questions on elections appeals and Band Support Funding after a recently-disputed election.

Several key informants disagreed. For example, in two regional cases groups find it easier to coordinate the program elements under one particular group for assisting First Nations with governance tools. Another key informant argued that the three groups need to coordinate more often for capacity-building work.

Key informants also commented on the relationship between regions and headquarters, and were of mixed opinion. Whereas one key informant noted that the relationship functioned smoothly, another expressed difficulty with the fact that they have to deal with three different sectors at Headquarters for support regarding the program, which is compounded by turnover of staff. A third key informant noted that it is good for Headquarters to have central control of policy and databases to ensure consistency, but that the group could benefit from a stronger understanding of funding needs in the region, such as the advantages of moving to three-year capacity plans and funding.

***How effective is the Governance and Institutions of Government Program's performance measurement strategy? Are there opportunities for improvements?***

There were mixed opinions about the usefulness of the program's Performance Measurement Strategy, but key informants provided input into improvements that could be made. In particular, it was felt that indicators on the impacts of the *First Nations Fiscal Management Act* institutions could be made much more robust.

It was noted that for Regional Operations the Performance Measurement Strategy is useful, but that it may not be as effective for the *First Nations Fiscal Management Act* institutions or the Governance Policy and Implementation Directorate, as they are part of the same Program Alignment Architecture element for conceptual reasons rather than operational ones.

Key informants suggested revising the Performance Measurement Strategy in the following ways:

- Emphasize the extent to which community needs are being funded as opposed to simply the number of First Nations that have received funding for capacity development plans; it was also noted that measuring capacity is an ongoing challenge and INAC's Capacity Development Taskforce is currently exploring effective measures of capacity
- In certain cases distinct indicators are difficult to identify; for example, measuring guidance and advice given by the Governance Policy and Implementation Directorate on good bylaws and electoral practices is something that cannot be measured discreetly or directly
- However, examining policies, bylaws, membership codes, audit support and other aspects of band administration as a result of funding delivered was deemed to be a good step toward capturing output-level data

Finally, it was noted that in a nation-to-nation context, asking First Nations about performance on specific indicators, which may not be relevant to them is not a realistic activity. Broadly speaking, governance and long-run social determinants of well-being cannot be realistically measured in a five-year period.

***Have simplified application formulas and reporting processes produced cost savings for First Nations and INAC?***

In 2014, the program's funding authorities were merged to operate under one consolidated authority: *Contributions to supply public services in Indian government support and to build strong governance, administrative and accountability systems.*

Key informants generally did not feel that streamlined authorities and reporting have had an impact over the evaluation period. However, several comments were made regarding marginal improvement:

- It was noted that the merging of authorities during the evaluation period left gaps such as a lack of a specific funding provision for the First Nations Finance Authority.
- One key informant felt that streamlined funding authorities have resulting in increased flexibility for First Nations.
- In many cases, timing of funding has improved so that funds are released for April 1 and therefore, usable for a full year; however, coordinating between groups such as tribal councils and program staff to ensure everyone meets the early deadlines in December and January for April 1 processing is a challenge.
- Streamlined authorities have resulted in collaboration between AFOA Canada and the Social Sector in developing a financial literacy program.

First Nations interviewees were generally of the opinion that application and reporting processes have not changed over the evaluation period, and called for more simplified reporting. *See Chapter 3 on Professional and Institutional Development funding for further details.*

### ***The role of Funding Service Officers***

Finally, a number of communities expressed a desire for more contact with INAC regional staff. Similarly, INAC staff also noted the benefits of more face-to-face contact with communities. One First Nation visited had recently been given land and was in the process of applying for and administering funding for the first time. In this community interviewees noted that the proactive relationship INAC staff have formed with them has been critical to their success.

In this context, it should be noted that INAC is currently exploring opportunities to realign funding agreement management processes. The evidence collected for this evaluation suggests that any changes designed to relieve Funding Service Officers of administrative duties should be encouraged, as this would allow for more time to focus on the vital relationships First Nations need to navigate INAC's funding and reporting structures.