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The Governance and Fiscal Environment of First Nations'
Fiscal Intergovernmental Relations in Comparative Perspectives

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by

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INTRODUCTION

This paper examines the Canadian Aboriginal fiscal inter-governmental system by comparing it to other countries, and also focuses on the key characteristics of the Canadian system.

Over the last 20 years governments have decentralized power and responsibilities in response to an increasingly competitive global economy.¹ This has led them to strengthen the responsibilities of their regional and local governments. Key to this process are central governments' attempts to structure and restructure their local and regional governance systems to articulate – that is link - the social and economic development of each community into the global economy. This articulation – and re-articulation – has tremendous influence on the implementation of local and regional systems of governance. In particular, it results in a tug-of-war between some fundamental principles of government, specifically between principles of autonomy and responsibility of each government level, and efficiency and democratic accountability.

As a result of these on-going decentralizing reforms, contemporary local and regional governments are more often made up of elected officials that are accountable to their local and regional electorates. Their resources are increasingly dependent on local wealth and local tax revenues; increased financial, democratic and managerial stress follows, as well as more policy responsibilities. The most successful regional governance systems are those that are best able to adapt to these changes, while also being sensitive to local and regional-specific culture, tradition, and history. This is the environment that sets the current context of fiscal inter-governmental relations in Canada.

I begin with an overview of fiscal intergovernmental relations in France, Mexico, Australia and Germany in order to place Canadian-Aboriginal fiscal relations into an international comparative context. The remainder of the paper is divided into six sections that address successively the legal and constitutional dimension of these relations, the revenues, functions and responsibilities of Aboriginal communities and First Nations, their relations with the Federal department of Indian and Northern Affairs Canada (INAC), their fiscal and financial reality, and finally concludes with a discussion on recent trends.

The overarching argument is that inter-governmental relations play a part in maintaining the social and economic underdevelopment of First Nations. First, whereas Canadian fiscal inter-governmental relations in general are based on principles that are flexible and decentralize power among different government levels that are considered equal partners, in contrast, Canadian-Aboriginal relations are based on a rigid top-down system of government similar to those found in France and Mexico. These relations, either regulated under the Indian Act or under self-governance agreements, lead to a system of mixed governance that do not allow for a successful articulation of social and economic development of Aboriginal communities into the global economy. In other words, this paper argues that contrary to the recognition of the principle of self-government, administrative Aboriginal-Federal inter-governmental relations actually produce relations

of dependence.² The data presented in this paper makes the case that these relations of dependence take varied forms of jurisdictional, administrative, and financial dependency, all of which are also used to justify poor funding levels.

1- Comparing Fiscal Inter-governmental Relations

Fiscal Intergovernmental Relations in France, Mexico, Australia and Germany

Fiscal relations often characterize the governance and inter-governmental relations of a country. In short, the nature of these relations tells us a great deal about the nature of the governance of a given country. Clearly, fiscal relations greatly influence what lower-level governments can do and how they do it, and, how successful they may be. Furthermore, the governance of fiscal relations may enhance, or limit, what lower level governments can do to compete in the global economy as they strive to advance their social and economic development.

This section compares the systems of France, Mexico, Australia and Germany in order to draw general lessons that will be helpful to assess Canadian - Aboriginal relations with the Federal and provincial governments.

i) France and Mexico – top-down centralized fiscal relations

France is the archetypical example of a top-down-centralized government system. All powers are concentrated at the center. Fiscal relations consist of conditional grants and tax-sharing mechanisms. Conditional grants are usually attached to transfers of responsibilities. This system is praised for its redistributive capacity. It centralizes control and equitable redistribution at the highest government level.³ But, it has also been criticized for not addressing the issue of the level of public service and concurrent cost. Despite indexation on inflation and on GDP growth, the central government has not devolved adequate funding to guarantee public service quality standards. For example the transfer of the responsibility for high schools to regional governments in the 1980s actually cost French regions four times as much as the conditional grant allocations.⁴ The mechanism of tax sharing allows central government to procure either a specific portion or all the revenues necessary for the delivery of a policy to regions and other local governments. This mechanism, however, has been used by central government to “re-centralize.” Since the 1980s French local governments saw the proportion of their own revenue sources reduced from about 52% to about 45%.

Similarly, in Mexico a great proportion of local revenues come from the central government. These include about 70% of all local resources, including about 34% in conditional grants. Local taxes, including user fees, and fines, and loans constitute the remaining 30% of municipal revenues.

Both in Mexico and France, local communities struggle to control their revenue sources and to carry out their responsibilities as conditional grant systems and tax sharing agreements contribute to their financial instability. In both cases central governments use

grants mechanisms to control the policy activities of local governments.⁵ Both systems have been criticized because central governments use grants to control the activities of local governments. Financial relations are unstable because from one year to the next funding levels vary. Also, central government funding rarely take into accounts increasing costs.

ii) Australia and Germany – decentralized Federal fiscal relations

Both Australia and Germany have decentralized Federal fiscal relations, which means that their local governments' major sources of funding result from local taxes, or funding schemes controlled by local governments. In Australia, the financial prerogatives of local governments are set by State laws (similar to Canadian Provinces). The revenues of local governments have been stable at about 1.2% of GDP, and are made up of their own revenues for 83%, and transfers of payments for 13% (this figure has varied from about 12 to about 17% over the last 20 years). As a result, Australian local governments are amongst the most autonomous of the western world.

In Germany, it is notable that local governments' revenues primarily arise from local revenues; overall, 35% of all revenues come from local taxes, 11% come from user fees, and 32% from Federal and provincial grants. The remaining 21% come from various sources of revenues including European funds. What is significant is that in Germany the largest part of local governments' fiscal resources does not come from central governments.

Both in Germany and Australia (like in Canada) local governments have achieved a high degree of fiscal autonomy unheard of in France and Mexico. Fiscal autonomy entrenches stability of revenues and of funding levels across policy arenas. Central governments do not control, but negotiate inter-governmental policies with local governments, including increasing costs.

In our four examples, local government revenue sources vary significantly, but it is clear that those with the highest levels of local revenues are the most autonomous. This is an important finding, but it would be an oversimplification to assume that centrally administrated grants always reduce the autonomy of local governments. Central government policies can either be perceived as controlling or on the contrary may contribute to greater local autonomy; they can also dramatically increase or reduce dependency on the local economic wealth. In other words, when downloading responsibilities central governments can also equalize revenues by redistributing wealth through grants. There is a lot of evidence that block grants enhance local autonomy while conditional grants may turn out to be financial "straight jackets." Certainly, when changing local-central relations and when allocating responsibilities and resources, central governments attempt to reach a balance. Downloading responsibilities with large political return along with the appropriate resource levels is likely to strengthen the autonomy of local communities, whereas downloading responsibilities that are unpopular and politically difficult along with limited or diminishing resources will increase local managerial, administrative and political pressures and tensions, and also undermine the

autonomy of local communities. It is important to note that the literature on this fine balance suggests that the influence local and regional elites have on the national political system at large is a fundamental element of such systems.⁶ The literature shows that a local political voice at the center is fundamental because it is the presence and representation of local elites in institutions of central government which is critical to the formation of policies that address local needs. Clearly, this is not the case in Canada where too few aboriginal chiefs are also provincial or federal members of parliament. Aboriginals and First nations do not have a good provincial and federal political representation first because of their relative size in populations; only about 3% of the overall Canadian population is of Aboriginal or First Nation origin. Second, because even in proportion to their population size, they do not participate nor take part in local, provincial and federal politics.

iii) What do we learn from these four countries when compared to Canada?

Inter-governmental relations in Canada are characterized as *Federal* because the constitution divides the works of the Federal and Provincial governments according to areas of responsibilities. The literature on Canadian fiscal Federalism describes the system as modernizing, flexible and tending toward greater efficiency. Canadian municipalities are qualified as the “creatures of Provinces” because their existence and powers result from Provincial legislation, but Canadian municipalities raise a very large portion of their revenues from local property taxes, user fees and development charges, and are responsible for wide policy areas. This system compares well with the Australian and German systems where local governments have great autonomy. All in all, the Canadian fiscal system is deemed to be flexible enough to provide for regional diversity, decentralization, de-concentration, and innovation and responsiveness to local/regional demands.⁷ Indeed, Dennison argues that two essential mechanisms ground successful fiscal governance in Canada; strong institutions from the top down - from the central government to local communities - and strong inter-governmental linkages that keep information flows across vast and complex government networks that include local governments, Provinces and central government departments and agencies. These networks accommodate the evolving governance that over the last 20 years has become administratively, jurisdictionally, and financially more decentralized, i.e. giving more power to lower government levels, which ensuring adequate resources.

iv) How does the financial and fiscal relations and powers of Aboriginal communities and First nations of Canada compare with French, Mexican, Australian, German and Canadian local governments?

Not well; the literature on Aboriginal fiscal governance and fiscal inter-governmental relations suggests that First Nations have been excluded from the historical and contemporary discussion on Canadian fiscal federalism. For instance, in “*Paying for Self-Determination*,” Frances Abele and Michael Prince argue that First Nations are kept in a fiscal “straight jacket,” and that there is a need to “indigenize federalism.”⁸ These recommendations, among others,⁹ have led to recent Federal inter-governmental and governance reforms: A number of key bills created four new tax and statistical First

Nations government-bodies, including: the *First Nations Tax Commission*, the *First Nations Finance Authority*, the *First Nations Financial Management Board*, and the *First Nations Statistical Institution*. All four new Federal bodies, legislated in March 2005, participate in an effort to organize and monitor the collection of local revenues for Aboriginal communities from property taxes to treaty agreements.¹⁰ The literature on intergovernmental relations also suggests that the urbanization¹¹ of the Aboriginal population is resulting in complex relations where responsibilities and jurisdiction have been dysfunctional. Yet, in this domain Federal, Provincial and municipal governments are tightly entangled. For instance, Canada West Foundation president, Roger Gibbins, has argued that the Federal government cannot escape at least residual responsibility for the off-Reserve Aboriginal population, and that Provinces are also tied in because of their social service obligations that concern all provincial residents.¹² He also points to municipalities that cannot ignore that an increasing percentage of the Aboriginal population is urban (up to 20%). It is a population that faces disproportionate problems of homelessness and drug abuse among others, and is affected by inner-city decay. In short, Gibbins argues that Aboriginals should be brought to the inter-governmental table. However, the current situation is inconsistent, and unsystematic.¹³ The remainder of this paper details these relations looking first at the constitutional and legal environment.

2- The Constitutional, Legal and Fiscal Position of Aboriginal people and First Nations in Canada

The constitutional position of First Nations and other Aboriginal peoples appears to be a point of debate but in fact the Federal Government of Canada and Canadian courts have recognized the principle of self-government of First Nations since 1997.¹⁴ Though recognized in principle this jurisprudence is still in debate and confusion with regard to the degree to which this power is exercised. This jurisprudence also raises other important issues regarding urban Aboriginals, Métis, Inuit, and First Nations.¹⁵ The *Indian Act* limits the Federal government responsibility to “registered” or “status” Indians, and therefore transfers de facto primary responsibility of all Aboriginals to the Provinces. However, from a legal perspective there is no clear division of responsibilities between Federal and Provincial governments. Provincial government officials would insist that there is a clear division of responsibilities – and that primary responsibility rests with the Federal government, but there is a lot of evidence, which show that relations are complex and ill defined. Both levels of governments have been hesitant to engage in policy making targeting urban Aboriginals. In turn, it seems that urban Aboriginals do not receive the same level of services as other Canadians, or First Nations people living on Reserves.¹⁶

What is surprising is that this lack of constitutional clarity does not “fit” with the generally accepted view that Canadian federalism is functional, decentralized, flexible and efficient. On the one hand, Canadian governments recognize rights of self-governments, yet also do not clearly address their policy responsibilities regarding off Reserve Aboriginals. Those two issues clearly polarize the Federal and Provincial positions regarding Aboriginal people.

The next section outlines the fiscal and functional top-down control exercised by central government departments over Aboriginal communities and First Nations. The argument is that over the last ten years, despite institutional and legal changes, Ottawa has been very slow in addressing the recommendation of the 1996 Royal Commission on Aboriginal Peoples. In particular, it has failed to re-organize its financial and fiscal responsibilities toward Aboriginal communities and First Nations.

3- Revenues, Functions and Responsibilities

Today, the Federal Government spends about \$9.1 billion yearly on Aboriginal people policies, which concern about 1.4 million individuals across Canada. Specifically, in 2006, there were 615 First Nations, accounting for 748,371 individuals, with 397,980 living on Reserves, 24,203 on Crown land, and about 326,188 living off Reserve. Interestingly, the percentage of registered individuals residing on Reserve and Crown lands has decreased from 71% in 1982 to 56% in 2005. This indicates significant increase in the number of First Nations living off Reserve.¹⁷

The average per capita expenditures of all Canadian governments on non-indigenous Canadians stands at about \$15,000/\$16,000, while it is only about \$9,000 for Aboriginal Peoples.¹⁸ While there is some debate regarding the way this is calculated, it is clear that spending for First Nations and other Canadian Aboriginals is way below par with spending on non-indigenous Canadians.¹⁹ There is, therefore, a serious issue of equity that helps explain why services to Aboriginals are not held to standards for non-Aboriginal Canadians.

The central cause for this funding deficit is found in the budget practices of the Federal department of Indian and Northern Affairs Canada. The budgetary exercise of INAC limits annual budgetary increases to two percent. This has resulted in the pauperization of public services for Aboriginals. Furthermore, First Nations annual funding formulas are capped under inflation rate and population increase. In 2005 Canada's Auditor General commented that spending on First Nations programs had increased by 1.6% between 1999 and 2004 while population growth had increased by 11.6%. In a recent press release, Phil Fontaine, the National Chief of the Assembly of First Nations, compared these figures to the Canada Health and Social Transfer, which have grown by 6.6% yearly, and are set to grow by 33% between 2004 and 2009.²⁰

Similarly, funding of the Health Canada's First Nations and Inuit Health Branch is also capped at 3% yearly for the next ten years.²¹ This is forecasted to lead to a shortfall of about \$2 billion over the next five years. The Assembly of First Nations estimates of the average community shortfall are 9% and 14% respectively for 2007 and in 2008. Clearly, Canadian Federal Aboriginal programs are unable to match program spending with program growth. This will only contribute to increasing the economic and social difficulties within Canadian Aboriginal communities. In other words, the current budgeting formula fosters an environment leading to managerial, administrative and political difficulties for Aboriginal leaders and managers.

Some scholars and policy makers argue that the revenue levels of Aboriginal communities should expand through an increase in their own tax bases and the development of appropriate tax instruments to raise tax revenues. This issue is not as straightforward as it seems.

First, while most local government systems across the world do contribute a portion of their own resources, these vary a great deal from only a few percent in Mexico to over 70% in Australia. Second, in the Canadian Aboriginal case, the recent tax reforms started in the late 1980s and mid 1990s are still in the implementation phase, and treaty negotiations are only progressively being settled. Clearly, these reforms are unlikely to contribute significantly to revenues until implemented across the country over the next years. In other words, what is needed is a proper equalization-type system that would reflect needs, costs and revenue raising capacity.²²

These findings should not be surprising, as these issues have previously been identified by the 1996 Royal Commission on Aboriginal People (RCAP). The RCAP had argued that *“the main policy direction, pursued for over 150 years, first by colonial then by Canadian governments, has been wrong.”* The RCAP had suggested that Canada had to *“close the economic gap between Aboriginal peoples and non-Aboriginal people by 50% and improve social conditions in the next 20 years.”*²³

Canadian Federal and Provincial officials have long known that there are both policy and economic gaps to be addressed. For instance, these issues were present in the mind of all the signatories of the *Kelowna Communiqué*, one of the last major policy initiatives of the Liberal government of Paul Martin. All the Provinces, Territories and First Nations, in a bid to address Native fiscal imbalance issues, had ratified it, and pledged that \$5.1 billion over the next five years were necessary to redress fiscal Aboriginal imbalances in policy areas such as education, housing, health care, and economic development. These policy programs were to target on-Reserve and off-Reserve individuals. One of the goals was the transfer of home ownership to Reserve residents to allow for the implementation of a property tax system. The plan committed \$812 million in 2006, \$830 million in 2007 and was to reach \$1.2 billion in 2010. However, the current government appears hesitant to act upon this agreement, contending that it had not been budgeted for.

The evidence presented in the above two sections makes clear that the non-specific nature of the constitutional text regarding Aboriginal fiscal resources (a provision that now exists in a centralized country such as France, or in Federal countries such as Australia, Germany) means that Canadian Aboriginal fiscal resources will always depend on the government of the day. At the very least, their financial autonomy is not guaranteed. And, the current debates on Aboriginal resources suggest that issues of fiscal equity will remain high on the agenda of the Assembly of First Nations and low on that of Canadian Parliament. Political science research points to the importance of local representation at the centre for local issues to be addressed by government. This is not the case in Canada – the number of Aboriginal members of parliament or elected MLAs²⁴ in Provincial governments, which is very low, may be an interesting indicator of this issue. Furthermore, while caps on budget increases have some historical significance, today

they simply justify a fiscal policy of inadequate funding. The traditional financial control by central government state officials is the topic of the next section. It suggests that the current centralizing features of the INAC, which focus on control over public finances, are not likely to recede in the near future.

4- INAC Relations and Reporting Arrangements with First Nations and Aboriginal Communities

INAC a decentralized but centralizing and highly controlling organization

The Federal department of Indian and Northern Affairs Canada was set up in 1966 and became responsible for Indian and Inuit affairs in 1970. Today, it administers over 50 statutes, notably the *Department of Indian Affairs and Northern Development Act*, the *Indian Act*, and other territorial acts. INAC provides and coordinates the provision of national programs such as the Family Allowance, Old Age Security and Unemployment Insurance for Aboriginal communities and First Nations. It also provides funding and programs for education, social assistance, social housing, and infrastructures. Since the mid 1990s most of those programs are actually administered by Aboriginal and First Nations. It is notable that each of INAC ten regional offices actually advertises the percentage amount of funds that it does not administer directly. For instance, in Saskatchewan and in British Columbia, 98% and 95.5% of the funds are administered directly by First Nations and other Aboriginal governments.

In 2006-07 INAC managed about \$9.1 billion in fund, with about 4500 full time employees, about 20% of which worked in regional offices. The Federal department focused its efforts on the implementation of five major programs: the Government, the People, the Land, the Economy and the Office of the Federal Interlocutor. The overarching goals of these five programs are to provide good governance, effective institutions and cooperative relations with First Nations, Inuit and Northerners. Policy objectives include enhancing individual and family well-being on the basis of strict performance measures, and the development of a national well-being barometer to promote sustainable policy usage of the land, and to foster economic development. Also, a Federal Interlocutor is to facilitate the relations between Métis, urban First Nations and other Aboriginal, and Federal departments, and to help the work of other government departments and agencies. For instance, it is through INAC that the Federal government delivers Province-like and municipal-like programs to Canadian Aboriginals. The Federal department actually spend 85% of all its resources for the delivery of programs and services specific to Reserves.

The top down administration of these programs has become more and more complicated, in particular because, with time, many government department activities and programs have begun to overlap. Regional inter-governmental tables remain powerless instruments to address those issues.

In the end, while INAC widely claims that it is decentralized, however, the department is primarily de-concentrated – that is centralized and centralizing relying on field offices

and officials across Canada to help in the tight administration of centrally designed programs. It focuses its efforts on the conception, control and the performance and evaluation or measurement its centrally designed programs and relies on provincial offices to administer all those policies.²⁵

Decentralization, on the other hand, would mean greater financial, administrative, legislative and judicial independence of First Nations governments. The reality is that responsibilities are devolved by contracts to First Nation and/or Aboriginal Federal institutions and/or band governments. Thus devolution is only administrative and tightly regulated by contracts. Devolution of powers is submitted to stringent controls that are unknown by any other local or provincial governments in Australia, Germany or Canada. Also, there is little evidence of Canadian wide, and systematic, mechanisms of coordination, and of cooperation processes for the evaluation, design, funding and implementation of all these programs serving Aboriginal and First Nation communities.

Hence, despite the recognition of the principle of self government, the central administration in Ottawa implements a controlling policy. The following section shows how contractual relations organize the administrative compliance of Aboriginal communities to administrative rules regarding Federal funding and policy goals. Indeed, funding instruments give limited policy freedom to First Nations. These are tied into strict mechanisms of financial accountability.

Funding instruments

Today, there are basically three possible types of funding agreements that Aboriginal communities and First Nations can sign with INAC's *Department of Transfer Payment Directorate*. To do so, it relies on funding templates. All access to funding schemes are bound by accountability requirements, including transparency, disclosure, redress and that also underscore local accountability of local decision making.

1. The *Comprehensive Funding Arrangement* (CFA) is a program budgeted funding of one year. The CFA basically reimburses actual expenditures.
2. The *First Nations Funding Agreement* (FNFA) is a block-budgeted funding arrangement that may last five years. This funding mechanism includes the delegation of some authority to the signatory First Nation band council, including the program design and delivery, and management of the funds so as to fit the band's need, but it is subjected to minimum standards such as maintaining specific service standards.
3. The *Canada First Nations Funding Agreement* (CFNFA) is also a five-year block-grant agreement that allows Federal department initiatives to regroup funding and program activities into one funding agreement with First Nations and bands.

Despite rights of self-governance, Aboriginal and First Nations freedom is drastically constrained by these contracts. The legal, administrative and political autonomy of bands is limited by contracts because even in the case of the CFNFA (a block grant), the band council(s) is very much accountable to one or more Federal departments, and to their policy priorities. For instance, in 2006 INAC acknowledged contracting about \$1 billion using DFNFA and CFNFA contracts – this is only \$1 billion out of a \$9 billions budget. Also, none of these three funding templates provide much financial freedom to First Nations. Financial freedom would, more typically depend on a per-capital allocation of funds toward broad social, economic and political goals; and all policy initiatives would result from primarily local need while taking into account provincial and Federal goals. Funding would be allocated in the form of block grants that would include a significant portion of equalization funds. In contrast, the current funding levels are generally inadequate because they do not include significant equalization funds, and focus on the reporting systems imposed through funding. As illustrated in the following section these keep First Nation and Aboriginal communities focused on Federal policy objectives, rather than their own community goals.

Reporting instruments

In 2002, then Canada's Auditor General Sheila Fraser assailed the “crazy quilt” of audits INAC imposes on First Nation and Aboriginal communities. But little changed since then, INAC enforces three categories of reporting instruments: *Financial reporting, non-financial reporting and remedial management interventions*. Each one of them relies on the intervention of independent auditors or consultants that have to agree with and certify the financial statement of the reporting organization. Each type of reporting instrument is also related to a procedure carrying varying administrative freedom. The remedial management procedure withdraws all administrative and managerial freedom, and basically places a First Nation or Aboriginal organization under the tutelage of a consultant appointed by INAC. The other two categories of instruments give more administrative freedom.

Each year, First Nations and other Aboriginal organizations are required to produce an annual financial statement, which is reviewed and certified by an auditor. This audited statement is an important document because it is the basis of all relations between INAC and the First Nation. On the basis of the financial situation INAC assesses whether policy goals and financial requirements have been met or not.

Every year each First Nation is to produce “various reports” on its policy activities to verify that the usage of funds is coherent with all INAC funding agreements. INAC uses these reports to control the financial and policy management of First Nation communities. When policy and funding goals are not met, INAC takes “remedial action.” Two major reasons may lead to “remedial action,” an 8% budget deficit, or decisions that interfere with essential services being delivered.

These reports are extremely important to the relationship First Nations have with INAC. They focus on four broad assessment criteria: First, First Nation councils must meet the

terms and conditions of the agreement that the external/independent auditor agrees with their reports. Second, financial books must be in order. Third any deficit should remain under 8%. And fourth, the health safety and welfare of First Nation must not be compromised.

When INAC assessments show an infringement in one of those areas, INAC may launch a process to redress the situation following a three-step process.

First, it may ask the First Nation contractor to submit and approve a *Remedial Management Plan*. If the assessments, however, suggest that the First Nation is faced with a capacity issue to address the issues at stake, INAC may elect to appoint a *Co-manager*. Finally, when the assessments suggest that the First Nation contractor is not able/willing to address the issues at stake, then INAC is able to appoint a *Third Party Manager*, whom will take away from the band council all decision making powers to redress the issues at stake.

Clearly, these funding instruments give INAC and its auditors and consultant tremendous amount of control over the administrative, managerial and political decision of First Nations. These allow INAC policy makers and public officials, or their appointed representatives, to enforce control as a principle of administrative management, and from a centrally designed policy perspective that may only marginally accommodate Aboriginal communities. Together, these controlling schemes and the annual reduction of resources redistributed put First Nations administrators in increasingly difficult positions. They are accountable to INAC for their administrative, managerial and financial decisions in a context in which population increases means that demands are increasing, and where resources are progressively being reduced or at best are stable. In the end, the administrative and financial position of most First Nations and Aboriginal communities are in a bind in which balanced budgets are impossible exercise.

5- Reality Check

For the last 10 years, the Federal government has been aware of serious difficulties affecting First Nations basic infrastructure. For instance, a 2003 report indicated that First Nations water systems rated below a safe and healthy drinking water level.²⁶ Overall, 29%, or 281 of the 740 community water systems reached the high-risk level. The study indicated that in Manitoba over 58% of water on Reserves were unsafe for drinking and/or required repairs. There were six Reserves that were high risk and 32 that required repairs.

This same report detailed that 2,145 of the 89,897 homes on Reserves had no water and that a further 4668 homes did not have access to sewage. The Assembly of Manitoba Chiefs said that Reserves' water issues were similar to "third world drinking water problems." Then Minister of Indian and Northern Affairs, Bob Nault, then announced funding increases for native water and wastewater systems over the next five years, and also explained that the goal was to raise standards, implement regulations and protocols necessary. These reforms were to provide for 65 new water projects on 62 Reserves.

Also in 2003, the Chrétien government set Aboriginal quality of life as a new goal, in part as a response to a survey that identified that Aboriginals and First Nations views of the Federal government had declined, with 34% (against 29% in 2001) of those surveyed stating that the performance of the Federal government was poor. The same survey indicated that Aboriginal budgetary priorities were education (70%), children (66%) and health care (63%).²⁷

These issues are still unresolved for many First Nations, who must still balance the books while trying to meet very basic infrastructure and well being demands of their communities. For instance, Chief George Kemp of Berens Rivers (Manitoba), a lawyer and band administrator for 5 years, explains that with nearly \$5 million in debt, his band council is faced with a very difficult situation. Housing is in need of about \$1.7 million in repairs and so is its \$13 million water-treatment plan that burned down a year ago. The Band's annual revenue stands at \$16 million. But it needs to invest for \$11 million in roads. It spends \$8 million on band operations, six million to run the school and \$2 million in social assistance. Also, it pays \$1.3 million in interests on debts, and owes an additional \$330,000 to Manitoba Hydro, and pays about \$120,000 in funerals yearly.

Yet if administrators faced with similar issues, like Chief Kemp, do not balance the band annual budget, they lose all managerial control to an INAC appointed consultant. In other words, band administrators have limited autonomy, while facing a very demanding level of accountability, coupled with limited financial alternatives. Together, this creates conditions for more fiscal crisis, and possibly either Co-Management or Third-Party Management.

It is important to note that no other government in Canada is ever confronted with such drastic managerial procedures. There are no cases where local governments could possibly see all their administrative, legislative and judicial powers taken away, and given to one appointed official. This procedure is actually more characteristic of centralized states. For instance, it was still common in France in the late 1970s, where centrally appointed officials, the "prefects," were able to overwrite any decisions taken by municipal councils, for any financial, administrative or technical reasons. In France, such procedures have been eased by decentralization laws but are still in force when local governments are unable to maintain a balanced budget.

Surprisingly, only 20% to 25% of all First Nations and other Aboriginal organizations in contract relation with INAC are actually managed by a *Third Party*. INAC publishes statistics regarding the *Transfer of Payments Management System* for the period of May 2002 to May 2006. The total number of recipient varies from 173 to 130 yearly. The numbers of *Third Parties* varies from 34 to 25. The number of *Co-Managed* varies from 54 to 42, and the number of *Recipients* varies from 90 to 63.

Looking at a three-year period in one Province may allow us to assess the frequency of these events. In Manitoba, for instance, in 2003, there were 11 bands in third-party management, 10 in co-management and 18 working within a remedial plan. In 2006,

there are only 4 managed by third-party, 18 co-managed and 13 under a remedial plan. However, those numbers add up to a significant portion of Manitoba's 63 bands (39 in 2003 and 25 in 2006).

Similar trends are found when comparing data across Manitoba, Saskatchewan and Alberta. In January 2003, a Federal report identified 79 bands were facing managerial issues. According to this report these bands were moved into *Remedial Management plans*, which strip control of their own finances. Not surprisingly, the leaders of many First Nations view these problems as resulting from under-funding not-mismanagement. For instance, Ken Young, who is the vice-chief of the Assembly of First Nations of Manitoba, argued, "there is not enough money to meet the needs of communities." Other bandleaders expressed as well that they faced demands from all sides to meet the needs of their community, and they cannot, and that they must go into debt to make ends meet.

INAC states that most of the 600 Reserves across Canada are well managed, and that it is now able to identify those Reserves lagging behind and work with them on capacity. Often it is when the debt level of a Reserve is not manageable that the ministry contracts out this management. In fact INAC funds up to \$7 million worth of contracts for the management of Reserves by outside experts. This applies especially to the worst cases, which involve about 33 Reserves across Canada.²⁸ The cost of contracting out, however, has also been questioned. As noted by NDP aboriginal affairs critics Pat Martin, there are cases where outside managers are paid up to \$30,000 per month to manage the affairs of a small Reserve. Furthermore, Phil Fontaine, the Manitoba native leader and Chief of the Assembly of First Nations, expressed the concern that outside consultants leave little behind when their job is done. The issue of capacity remains the same as before the management exercise.

A similar central issue, raised by Canada's Federal Auditor general, is that INAC has failed to manage *Third Party* cases appropriately. The Federal Auditor underscored issues regarding the tender of consulting work. Other issues included inconsistencies of fees charged by INAC appointed consultants. Also noted was the lack of oversight by INAC. Furthermore, the Federal Auditor remarked that none of those three procedures actually enhanced the managerial capacity of the First Nations or Aboriginal organization.²⁹

Third Party and *Co-Management* are procedures of financial control that are ill equipped to address human resource issues, for instance events where managerial and administrative skills are failing. More important, however, is the sheer number of First Nations councils and other organizations, that as a result of these funding procedures, are maintained in Federal "tutelage."³⁰ This administrative procedure raises questions regarding the autonomy of Canadian communities that have been granted constitutional rights of self-governance. Also, it is a surprising mechanism that does not fit with the fundamental principles of flexibility, decentralization, innovation and responsibility of Canadian Federalism. The following section documents recent changes that are deemed to enable First Nations and Aboriginal organizations to gain more financial autonomy and responsibilities, but while influencing the governance of Aboriginal policies.

In the end, it is through a veil of strict administrative control of rules and procedures that Ottawa justifies inadequate funding and inadequate equalization. In other words, in contradiction with the recognition of the principle of self-government, Aboriginal and First nations are told that they do not manage well enough their resources to either become autonomous, or to receive adequate funding levels. The following section documents this reality.

6- CONCLUSION

Aboriginal – Federal Fiscal Intergovernmental Relations

Since the publication of the 1996 five-volume report of the Royal Commission on Aboriginal Peoples,³¹ the Government of Canada's answer has been to offer to "work with Aboriginal governments and organizations" so as to provide more stable and predictable fiscal relations. Two parallel goals have accompanied this broad objective. First, Aboriginals and First Nations have to increase their accountability. Second they are to maximize their own revenue sources. Aboriginal governments are basically expected to increase their own financial autonomy, and consequently to develop their own sources of revenue, and to become more fiscally self-reliant.

The Federal Government reformed its funding mechanisms from the one-year to the five years funding arrangement. Today, about \$1 billion yearly is committed in multi-year agreements, which is about 11 or 12% of all INAC funding. Also, the management of programs by Federal level organizations has expanded; for instance, the Aboriginal Cultural Friendship centres, and cultural education centres were transferred to their Federal head organizations. Finally, arguably the multi-year agreements are working on the basis of "clear funding formulas" to increase predictability of program services, and funding forecasting. The Federal government also initiated work to regroup its largest programs, particularly its Health Canada programs with those managed by INAC. Finally, inter-governmental tables are organized at the provincial level to insure stable, predictable, and fair transfers.

In turn, the Federal government has required that First Nation governments modernize accountability mechanisms to reach standards similar to those in use by other Canadian governments. These include making funding accountable to constituents and transparent across governments. Budgeting, reporting and auditing requirements have increased and are expected to become common practices across Canadian First Nations. And finally, Aboriginal governments have been expected to increase their own financial independence through economic development and other schemes leading to increased revenues.

The evidence presented above clearly suggests that institutional and administrative reforms have justified increasing pressure on Aboriginal communities. Federal policies assume that good governance comes first ignoring that funding levels are a fundamental element of this inter-governmental relationship. Centrally administered grants do not have to reduce the autonomy of Aboriginal communities, but could free them from their dependency on inexistent local economic wealth. While Federal level reforms are

organizing the future Aboriginal fiscal federalisms, it is clear that local daily issues remain. Not all First Nations are able to raise taxes. Many Reserves are isolated and inadequately connected to the global economy. Finding investors takes time, and may be difficult for some whereas others may be able to develop easily. Indeed despite these changes and for many years there will be many First Nations and other Aboriginal communities that will struggle with local issues of balanced budgets and basic resources to provide for increasing demands on services.

The Nature of the Aboriginal-Federal Fiscal Interaction and Governance

In considering the *nature* of First Nations-Federal fiscal interactions, it is clear when comparing the inter-governmental relations of Aboriginal communities and First Nations with other local governments in Australia, Germany or Canada that they are maintained in a very unforgiving administrative dependency. INAC, the arm of Federal policy, still determines whether an issue gets on the policy agenda, establishes the policy frameworks, points to policy choices, and then enforces the delivery of programs according to strict administrative guidelines. This system compares to the hierarchical centralized relationship that existed in France in the 1970s and Mexico in the 1980s.

This is an inter-governmental system that does not allow Aboriginal communities to properly articulate their social and economic development claims in the global economy. Decisions are not made at the local level. Centrally designed policies interfere with the principle of autonomy, efficiency and democratic accountability that dominate inter-governmental relations elsewhere in Canada.

However, ministerial departments do not need to base the administration of grant systems on inflexible conditions that lock Aboriginal communities into “straight jackets.” They could just as easily design program guidelines that foster local financial autonomy and equalize revenues, and redistribute wealth, and enhance local social and economic development. At this time, the inter-governmental system is controlling and increases economic dependency on local wealth, while also increasing political and managerial stress, all of which is unlikely to foster social and economic development.

Clearly, unresolved funding issues continue to plague Aboriginal fiscal inter-governmental relations. INAC primary focus is on administrative control and governance, and does not deal with the current conjuncture of funding needs. It ignores the structural deficits that are affecting band infrastructures and the delivery of social and education programs, all of which are fundamental tools of social and economic development.³²

It is clear that Federal policies have been historically inadequate. Today, inter-governmental relations participate in maintaining Aboriginal and First Nations in social and economic underdevelopment. Numerous Provincial and municipal governments are aware of this situation, for instance, in July of 2006, the provincial premiers joined in the ranks of native leaders in an attempt to convince the Harper Conservative government to honour a liberal government commitment to pay \$5.1 billion. The National Chief of the Assembly of First Nation, Phil Fontaine confirmed that he received strong support from

all 13 premiers and territorial leaders. The goal was to narrow the gap in areas as living standards, health care and education between aboriginals with other Canadians. The issue had to do with negotiations about the transfer of payments where Alberta and Ontario had each to contribute one billion.³³

Those propositions, however, would only make a small dent in the current situation. Simply put, the Federal government should also start allocating as much funding to Aboriginal policy as it does to non-aboriginal Canadians and raise the per capita transfers by about 40%. The annual budget for First Nations would then reach about \$10 billion, and the overall budget transfers for Aboriginal peoples of Canada would be closer to \$13 billion than the current \$9 billion. Justifications for such policy changes may be found in the 1996 Royal Commission report recommendations that have yet to be implemented. Political objectives that would want to increase parity or equity amongst all Canadians could also justify such policy changes. Finally, a central political reason should be to develop and create capacity for investment and growth. Local Aboriginal and First nation communities need to develop investments and capacity for economic development and growth, which also justifies such policy change.

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¹ Michael Goldberg & John Mercer, (1986), *The myth of the North American city*, Vancouver: University of British Columbia Press; Donald Rothblatt & Andrew Sancton, (1998), *Metropolitan governance revisited*, Berkeley, CA: IGS Berkeley Press; This is Michael Keating's argument in Michael Keating, (1999), Challenges to federalism, territory, function and power in a globalizing world, in Robert Young, (Ed.), *Stretching the federation*, (pp. 8–27), Kingston, ON: Queens University Press. An argument is also found in T. Salmon & M. Keating, (Eds.), (1999), *The dynamics of decentralization*, Kingston, ON: School of Public Policy, Queens University; and in Michael Keating, (1992), *Comparative urban politics*, United Kingdom: Edward Elgard. An argument also found in Saskia Sassen, (1996), *Losing control*, New York: Columbia University Press.

² Scholars have suggested a similar conclusion when looking at First Nations governance issues, in particular, Frances Abeles and Michael Prince (2003) "Paying for Self Determination: Aboriginal People, Self Government, and Fiscal Relations in Canada. Paper for presentation at the conference Reconfiguring Aboriginal State Relations, Canada: The State of the Federation 2003, Intergovernmental Relations. School of Policy Studies. Queen's University.

³ The argument according to which the redistributive function of government should be located at the highest level of the intergovernmental system is clear and not controversial. See for instance Paul Peterson (1981) *City Limits*, University of Chicago Press, or again Michael Keating, (1991) *Comparative Urban Politics*, Aldershot: Edward Elgar. Obviously, one issue with centralized redistribution is that it also tends to lead to one size fit all policies that would be contrary to, for instance, Canadian principle of self government which promotes the view that each government is the best political and policy locus for local decisions.

⁴ Emmanuel Brunet-Jailly (2007) "France Between Decentralization and Multilevel Governance" in Christian Leuprecht and Harvey Lazar. Editors. (2007). *Spheres of Governance*. Queen's McGill University Press.

⁵ For instance, grants may free local communities from the constraints of market competition for tax revenues, and income from business investment and real estates developments. Setting limits on borrowing and taxation, and organizing revenue sources from block and conditional grants can also free local and regional communities from pressures to subsidize local developments and industries with public amenities. See for instance, Michael Keating, (1993) *Comparative Urban Politics*. Savitch and Kantor, (2001) *Cities in the International Market Place*. Princeton University Press.

⁶ See for instance the work of Michael Keating on Minority Communities in Europe and around the world in Michael Keating *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era*, Oxford University Press, 2001. Michael Keating and John McGarry (eds), *Minority Nationalism in the Changing State Order*, Oxford University Press, 2001. Michael Keating, 'Repensanat d'autodeterminació', *Diàlegs*, 11.5 (1999). Michael Keating, 'Principes et problèmes du gouvernement asymétrique', *Politique et sociétés*, 17.3 (1998), pp.93-111. Michael Keating, 'Asymmetrical Government: Multinational States in an Integrating Europe', *Publius: The Journal of Federalism*, 29.1 (1999), pp.71-86. Michael Keating, 'Les nationalités minoritaires d'Espagne face à l'Europe', *XXX*, 4 (1999), pp.729-743. Michael Keating, 'The Minority Nations of Spain and European Integration. A new framework for autonomy?', *Spanish Cultural Studies*, 1.1 (2000), pp.29-42. Michael Keating, 'Self-determination, multinational states and the transnational order', in M. van der Valtt van Praage and O. Serroo (eds), *The Implementation of the Right to Self-determination as a Contribution to Conflict Resolution*, Barcelona: UNESCO Catalunya, 1998. Michael Keating, 'So Many Nations, So Few States. Accommodating Minority Nationalism in the Global Era', in A-G. Gagnon and J. Tully (eds), *Struggles for Recognition in Multinational Societies*, Cambridge University Press, 2001. Michael Keating, 'Nations without States: minority nationalism in the global era', in Ferran Requejo (ed), *Democracy and National Pluralism*, Cambridge University Press, 2001 (Spanish edition from Ariel). Michael Keating, 'Europe's Changing Political Landscape: Territorial Restructuring and New Forms of Government', in Paul Beaumont, Carole Lyons and Neil Walker (eds), *Convergence and Divergence in European Public Law*, Hart, 2002. Michael Keating, 'Plurinational Democracy in a Post-Sovereign Order', *Northern Ireland Legal Quarterly*, 53.4 (2002), pp.351-65. Michael Keating, 'European Integration and the Nationalities Question', *Politics and Society*, 31.1 (2004), pp. 1-22. Michael Keating, 'L'Après-souveraineté. Les nations dans le nouvel ordre mondial', *Bulletin d'Histoire Politique*, 10.1 (2001), pp.145-50. Michael Keating, 'Sovereignty and Plurinational Democracy. Problems in political science', in Neil Walker (ed.), *Sovereignty in Transition*, Oxford: Hart, 2003, pp.191-208. Michael Keating, 'Plurinational Democracy and the European Order', *Estudios sobre la propuesta política para la convivencia del lehendakari Ibarretxe, Oñati: Instituto Vasco de Administración Pública*, 2003, pp.17-40. Michael Keating, 'European Integration and the Nationalities Question', *Politics and Society*, 31.1 (2004), pp. 367-88.

⁷ Don Dennison (20\5) Policy Options “Investing in institutions: Getting more out of federalism” p.36-39.

⁸ Michael Prince and Frances Abeles (2002) “Paying for Self Determination: Aboriginal People, Self Government, and Fiscal Relations in Canada.” in M. Murphy (ed.) (2006) in the Queen’s University series, State of the Federation.

Today, despite a much different environment it is still common to find publications that focus on fiscal relations in Canada that do not include a section on fiscal Aboriginal relations. There is a long history of such omissions: the Royal Proclamation of 1763 did not include Aboriginal Nations, the Indian Act of 1876 subordinated Indians to the federal Government. And starting in the 1950s, and particularly during the 1970s, there

was a rise of integrationist policies that attempted to subsume Aboriginal communities to federal views and to weaken systematically indigenous laws, customs and governance practices. During the 1970s, the influence and size of provincial governments expanded, along with new guidelines, which organized federal – provincial relations along decentralized fiscal federalism principles. At the same time Aboriginal peoples saw their dependence on federal departments increase. The literature on this issue clearly describes a top-down, rigid and controlling system of administration that increased centralization. This situation came to a head in the 1990s, when Aboriginal communities and First Nations made it clear that this highly centralized fiscal situation did not work. As Abele and Prince underscored in their 2002 paper, however, the “prevailing form of fiscal transfer *today* is the one-year conditional grant” which they qualify as a “fiscal straight jacket.” What Abele and Prince suggested was “indigenising federalism.” They argued that a fundamental but simple way to achieve this goal would be for First Nations to enjoy the same fiscal conditions enjoyed by other local, provincial governments of Canada, however imperfect it was. They would enjoy stable, regular, predictable and consistent funding roughly adequate to the needs of their citizenry. They proposed that appropriate mechanisms be set up for effective federal-provincial-territorial fiscal relations. These would allow appropriate aggregations and legitimacy of relations. Abele and Prince also emphasized that equalization was a necessity. They cited the Nisga’a Treaty as a model that should be generalized across Canada. As argued above in this paper, funding and equalization have not followed with those recommendations. However, in the areas of governance and intergovernmental relations some reforms are underway.

⁹ Numerous authors have been arguing the cause of Aboriginal communities in Canada. For instance please see: Hawthorn et al. *A survey on the Contemporary Indians of Canada. A Report on the Economic, Political, Educational Needs and Policies* in two volumes. Queens Printer. Ottawa. (1967). Royal Commission on Aboriginal Peoples. *Report of the Commission on Aboriginal Peoples*. Canada Communication Group 1996. Keith Peter. (1983) Canada, *Report of the Special Committee on Indian Self-Government*. Ottawa. Michael Murphy. *Canadian Journal Of Political Science*. Culture and the Courts, “A New Direction in Canadian Jurisprudence on Aboriginal Rights.” 34/1 pp. 109-129.

¹⁰ See The First Nations Fiscal and Statistical Management Act:
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?pub=bill&doc=C-20&parl=38&ses=1&language=E> –

This act was sanctioned on March 23, 2005. This act provides for real property taxation powers of First Nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts

Also, note that the *First Nations Fiscal and Statistical Management Act* introduced by the federal government did not raise much media attention but was a legal and fiscal turning

point for First Nations because it allows First Nations to pool their revenues to collectively raise long term capital at better rates and secure funds through property taxes. The funds would then be used for basic infrastructures in roads, sewer and water works. The new law also provides for new institutions such as a finance authority, a tax commission, a financial management board and a statistical institute. These reforms address some criticisms that the existing system where Ottawa provides funding to Reserves for infrastructures is not sufficient to address needs because always in competition with housing needs, which those funds also attempt to address. To take part in this new program Reserves have to declare that buildings and lands are to be subjected to property taxes. Clearly one practical issue is that most Reserve land and buildings are owned by the First Nations itself. In other words there may not be many Reserves where private sector investors would readily pay property taxes. The legal reform remains controversial, although many First Nations leaders are in support. Manny Jules, Chief of the Kamloops band and chair of the Indian Taxation Advisory Board, for instance, argues that this reform is “critical to luring investments.” (Doug Cutland, “Infrastructure dollars crucial to Reserves” in Winnipeg Free Press Thursday January 9, 2003, A11. Indeed, others believe that this is the only way ahead with self- government.

¹¹ See Evelyn Peters. (2003). *Geographies of Urban Aboriginals in Canada*. Paper presented at the Reconfiguring Aboriginal State Relations in Canada Conference. Institute for Intergovernmental Affairs. Queen’s University. Table 1 page 21. http://www.iigr.ca/conferences/archive/pdfs3/Evelyn_Peters.pdf
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¹² Calvin Hanselman and Roger Gibbins (2002) *Another Voice is Needed*. Paper presented at the Reconfiguring Aboriginal State Relations in Canada Conference. Institute for Intergovernmental Affairs. Queen’s University. http://www.iigr.ca/conferences/archive/pdfs3/Hanselmann_Gibbins.pdf

¹³ It is inconsistent because each province offers a different mechanism of policy making, and it is unsystematic because too many social issues are ignored (issues of income support, family violence, childcare, addiction, suicide or human right). Gibbins documents both inconsistencies and lack of system showing that programs are found in some provinces but not others, and policies are addressing urban Aboriginal issues in some provinces but not others. Finally, in most cases Aboriginals are not present at the policy table despite being the community primarily concerned with those programs. In conclusion Gibbins argues that both the federal and most provincial Governments make policies to address urban aboriginal issues, but these do not address all issues. What is interesting is that in this area of policy-making both federal and provincial governments have evolved toward the implementation of negotiated multilateral agreements, called Memoranda of Understanding (MOU). Such memoranda are now well known; the Saskatoon Community Partnership Table, and the Calgary Urban Aboriginal Initiative, or again the Regina Regional Inter-sectoral Committee is among a few

available examples. In each case, these mechanisms emerge as partnerships between both the federal and provincial governments in areas lacking jurisdictional clarity. Second, these memorandums include municipalities, and other local organizations that are providing social services. Third, these address Aboriginal issues, and fourth, include representatives of Aboriginal communities. These memoranda organize the complex partnerships necessary for the conception, implementation and funding of policies that address the local and provincial needs of these Aboriginal communities.

What is important here is that these agreements are clearly the way for productive intergovernmental relations in the policy arenas that are the primary concerns of Aboriginal communities. First and foremost, in the case of urban Aboriginals, all three tiers levels of governments are concerned one way or another. Second, because Canada recognizes the inherent right of Aboriginal self-government it cannot ignore that intergovernmental relations have become the primary mechanism of policy making. Such mechanisms however, would be ineffective without the presence of Aboriginal representatives, because those policies are to address issues that are their primary concern.

¹⁴ Decision of the Supreme Court (*Delgamuukw v. British Columbia*). In this decision, Supreme Court Justices recognized that Aboriginal title is entrenched in section 35 of the Constitution; this includes Aboriginal titles and rights to make decisions about the land itself. It is a right of self-government.¹⁴ The federal government of Canada also recognized this right in 1995 in a policy guide presented by the Minister of Indian Affairs and Northern Development, regarding the implementation of the inherent “Right and the Negotiation of Aboriginal Self-Government.”¹⁴ The guide stipulates that the federal Government “recognizes the inherent right of self-government as an existing right within section 35 of the Constitution Act of 1982.

¹⁵ Indeed, the constitution gives exclusive legislative authority “for Indians, Land Reserved for Indians” to the federal parliament, making urban aboriginal policies a legal, political, and policy loophole, and an issue of contention over responsibility for both federal and provincial governments (see the Constitution Act of 1867, section 91 (24). Not surprisingly, this lack of constitutional clarity has led to many debates. Scholars and legal experts disagree as to whether this clause is to be understood restrictively or with greater ambit).

¹⁶ See Royal Commission on Aboriginal People 1996, page538

¹⁷ All data see Indian and Northern Affairs Canada, History of the Department at http://www.ainc-inac.gc.ca/ai/hist_e.html

¹⁸ See the work done by the Assembly of First Nations (2007) “Fiscal Imbalance” <http://www.afn.ca/cmslib/general/FI-FS.pdf>. The report argues that average per capita for Aboriginal peoples is \$9,000.

¹⁹ Assembly of First Nations. “Fiscal Imbalance: the truth about spending on first nations” (2007) <http://www.afn.ca/cmslib/general/FI-FS.pdf>, accessed, December 2006. See also federal Government Funding to First Nations: The Facts, the Myths and the Way Forward <http://www.afn.ca/cmslib/general/federal-Government-Funding-to-First-Nations.pdf> accessed December 2006.

²⁰ Campbell Clark. (2007). “Natives to hit Ottawa with rights complaint.” Globe and Mail, February 05, 2007. A1. Phil Fontaine, Assembly of First Nations, explained “The underlying problem is the impoverished state of First Nations communities. The families are suffering.” See above endnote as well.

²¹ See for instance, Assembly of First Nations. “Fiscal Imbalance: the truth about spending on first nations” (2007) “Indian Health Envelope has been capped at 3% growth for ten years.” <http://www.afn.ca/cmslib/general/FI-FS.pdf>, accessed, December 2006.

²² Even if, on the long term, Canadian Aboriginal communities would be able to contribute a significant portion of their fiscal revenues, the 2007 estimates of First Nations revenues from property taxes stands at about \$44 million (or about 5% of the overall budget of 9 billions), and only about 15% of First Nations are actually able to collect property tax revenues. It is interesting to note that since Bill C-115 passed to amend the Indian Act in 1988 only about 20% of First Nations have enacted the property tax by-laws. Similarly, the implementation of the federal Sales Tax Bill C-93 in 1997 regarding the delegation of tax authority to First Nation communities for Tobacco products is still currently being implemented. All in all, even if local property tax revenues, federal GST and treaty settlements were added up, it is clear that Aboriginal communities and First Nations in particular are not close to contributing about 50% to their overall revenues.

²³ See Royal Commission on Aboriginal People and Royal Commission on Aboriginal People at 10 years: A Report Card” http://www.afn.ca/cmslib/general/afn_rcap.pdf

²⁴ MLAs are Members of the Legislative Assembly, Ontario uses the MPP designation, i.e. Member of a Provincial Parliament.

²⁵ A *decentralized* governmental organization downloads powers, that is resources and responsibilities to lower government levels. A *de-concentrated* organization has field offices in charge of the administration of its centrally defined policies; provincial, regional and local offices have only limited administrative powers. Their primary activity is implementation and control/evaluation of centrally defined policies.

²⁶ Paul Samyn, “Feds add \$600 M to upgrade water on Reserve” Winnipeg Free Press, May 15, 2003 A3

²⁷ Paul Samyn, “Budget to help First Nations” Winnipeg Free Press, February 11, 2003, A12.

²⁸ Paul Samyn, (2003) Millions spent on Reserve experts 10 Manitoba First Nations run by outside managers” Winnipeg free press, Monday July 07, 2003 A1.

²⁹ Dan Lett “Cash Crunch – First nation struggles against time to stave off financial disaster” Winnipeg Free Press, July 02, 2006 B1

³⁰ For instance, in British Columbia, the closest we have to "tutelage" for local governments is in Part 30 of the Local Government Act, dealing with "Administrative Commissions" (ss. 1026-1040). Section 1027(1) sets out what is essentially the only reason that an administrative commissioner can be appointed -- failure/inability to pay debt. Further information is available on the provisions concerning municipalities and Regional Districts at http://www.qp.gov.bc.ca/statreg/stat/L/96323_32.htm#part30.

If a commissioner is appointed as a result of a report of the inspector of municipalities, or by order of the court based on an application by a creditor or elector, then the commission has all the powers and authority that before the appointment were vested in or exercisable by the local government and many related bodies (e.g. the police board; the school board; any local government commission), including powers to make bylaws, to borrow, etc. This ability to appoint an administrative commissioner applies to both municipalities and regional districts.

It is important to note that in the case of mainstream local governments, this power to appoint administrative commissioners has been used sparingly and not for decades in the municipal sphere. However, there were a number of defaults or apprehended defaults in the 1930's. Places like Prince Rupert, some of the North Shore (of Burrard Inlet) municipalities, and Burnaby were all implicated and put under commissioners. Some of these commissioners lasted until the 1950's before reversion to full local self-determination. There is also a parallel scheme relating to School Boards. The power would be found in the School Act. In this case, the triggers are broader than is the case under the LGA and might be closer to your notion of "mismanagement". I can remember the powers having been invoked to replace the Vancouver School Board at some point in the fairly recent past, maybe 15 or 20 years ago. Possibly this happened during the turmoil in the era of the so-called "Solidarity Coalition."

A broader (and more recently used) example of "tutelage" would be LGA s. 742 which allows Cabinet to appoint a receiver to manage the affairs of an IMPROVEMENT DISTRICT, if it appears in the "public interest" to do so. That power gives the receiver all the powers of the trustees and improvement district officers and exclusive control of the property, assets and revenues of the improvement district. That was the authority used to deal with the Erickson Improvement District, located near Creston in the Kootenays, back about 5 years ago. The issue concerned the inability or refusal of the existing improvement district to deal with a public health threat tied in with the improvement district's responsibility for water supply. You can read the ID provisions at http://www.qp.gov.bc.ca/statreg/stat/L/96323_25.htm#part23.

As for the rest of Canada, because municipalities in all provinces are corporations, and like business corporations, where the power to appoint trustees on bankruptcy always exists, in all likelihood there would be some power to step in in the case of municipal corporations.

- most likely that all provinces have such provisions
- most likely, the design of such schemes differs in every province
- most likely all provinces differ in terms of what would trigger action

In Alberta's Municipal Government Act for instance, (<http://www.canlii.org/ab/laws/sta/m-26/20070117/whole.html>) at section 575 of that act, which reads: "Official administrator as supervisor, 575(1) The Minister may at any time appoint an official administrator to supervise a municipality and its council. (2) So long as the appointment of an official administrator under this section continues, (a) no bylaw or resolution that authorizes the municipality to incur a liability or to dispose of its money or property has any effect until the bylaw or resolution has been approved in writing by the official administrator, and (b) the official administrator may at any time within 30 days after the passing of any bylaw or resolution disallow it, and the bylaw or resolution so disallowed becomes and is deemed to have always been void."

³¹ The Royal Commission on Aboriginal Peoples (RCAP) was released on November 21, 1996.

³² See for instance, Susan Clarke and Garry Gail, (1999) *The works of Cities*, University of Minnesota Press. Manuel Castell (2001) *Network Society*, Oxford University Press.

³³ Murry Cambell "Premiers and native unite to push Ottawa – Leaders want Conservatives to honour Liberal's 5 billion Kelowna accord." *The Globe and Mail*, July 26, A4.