

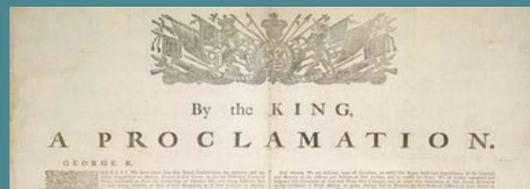


SHARING THE WEALTH

How resource revenue agreements can honour treaties, improve communities, and facilitate Canadian development

KEN S. COATES

JANUARY 2015



CELEBRATING



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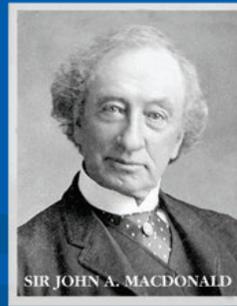
5 Years of True North
in Canadian Public Policy

A MACDONALD-LAURIER INSTITUTE PUBLICATION

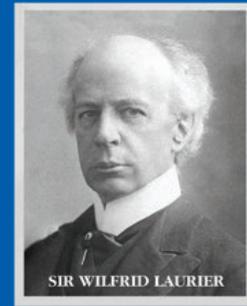


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True North in Canadian Public Policy



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PREFACE

The year 2013 was the 250th anniversary of the Royal Proclamation of 1763. The Royal Proclamation is widely regarded as having been one of the cardinal steps in the relationship between Aboriginals and non-Aboriginals in British North America – what eventually became Canada.

A quarter of a millennium later it is our judgment that that relationship has often not been carried out in the hopeful and respectful spirit envisaged by the Royal Proclamation. The result has been that the status of many Aboriginal people in Canada remains a stain on the national conscience. But it is also the case that we face a new set of circumstances in Aboriginal/non-Aboriginal relations. Indigenous peoples in Canada have, as a result of decades of political, legal, and constitutional activism, acquired unprecedented power and authority. Nowhere is this truer than in the area of natural resources.

This emerging authority coincides with the rise of the demand for Canadian natural resources, a demand driven by the increasing integration of the developing world with the global economy, including the massive urbanisation of many developing countries. Their demand for natural resources to fuel their rise is creating unprecedented economic opportunities for countries like Canada that enjoy a significant natural resource endowment.

The *Aboriginal Canada and the Natural Resource Economy* project (of which this paper is the sixth instalment) seeks to attract the attention of policy makers, Aboriginal Canadians, community leaders, opinion leaders, and others to some of the policy challenges that must be overcome if Canadians, Aboriginal and non-Aboriginal alike, are to realise the full value of the potential of the natural resource economy. This project originated in a meeting called by then CEO of the Assembly of First Nations, Richard Jock, with the Macdonald-Laurier Institute. Mr. Jock threw out a challenge to MLI to help the Aboriginal community, as well as other Canadians, to think through how to make the natural resource economy work in the interests of all. We welcome and acknowledge the tremendous support that has been forthcoming from the AFN, other Aboriginal organisations and leaders, charitable foundations, natural resource companies, and others in support of this project.

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EXECUTIVE SUMMARY

Until very recently, Canada's large and vital resource sector was not well connected to Aboriginal communities across the country. Previous developments occurred on traditional Indigenous territories, but without a substantial return, occasionally leading to unrest and dissatisfaction. This situation cannot continue. If Canada is to capitalize fully on the opportunities for all – Aboriginal peoples, resource companies, governments, and all Canadians – we have to find ways to share the wealth.

There are in general two ways to go about this. The first and most established avenue is corporate payments to affected communities, including provisions for training and subcontracting opportunities, often in the form of impact and benefit agreements. There have been difficulties, such as the uneasy relationship between the impoverished Attawapiskat First Nation and the nearby De Beers diamond mine in northern Ontario, but there have been many lesser-known successes as well.

The second option, which will be the focus of this paper, is revenue sharing by governments. By sharing resource revenue, governments can meet their treaty, legal, constitutional, and moral obligations to the Aboriginal people of the country. Only 20 years ago, this was a radical notion. But not anymore.

Businesses have argued that they should not be responsible for the entire cost of making deals with Aboriginal communities work. First Nations have advocated revenue sharing for many years. Chief Perry Bellegarde of the Federation of Saskatchewan Indian Nations has said “We did not cede (or) relinquish (resource rights). We said we’d share this land. The treaties were not meant to make one side poor and one side rich.” In his new role as National Chief of the Assembly of First Nations, Chief Bellegarde has been just as clear: “We will no longer accept poverty and hopelessness while resource companies and governments grow fat off our lands and territories and resources. If our lands and resources are to be developed, it will be done only with our fair share of the royalties, with our ownership of the resources and jobs for our people. It will be done on our terms and our timeline” (Kennedy, Postmedia News, and Warnica 11 December 2014).

This concept has emerged as a major policy issue but its application has been uneven and there has been significant resistance from non-Aboriginal peoples. In the 2011 Saskatchewan provincial election, the Saskatchewan Party's opposition to an NDP proposal for sharing provincial resource revenues with Aboriginal peoples won significant support from the public.

Yet revenue sharing is the price that Aboriginal communities can and will require in order to support development on their territories. Agreements with a number of provinces and territories and modern treaties with the federal government provide for a considerable variety of revenue sharing arrangements, from the 2002 accord between the government of Quebec and the Cree Nation to the 2009 Maa-nulth First Nations Final Agreement in British Columbia.

In the classical tradition of Canadian federalism, resource revenue sharing is emerging in an ad hoc, uncoordinated fashion. The concept is too new in application to suggest that one approach is ideal, but we can establish guidelines for successful revenue sharing agreements:

- Recognize, as some jurisdictions have done in law, through modern treaties or in practice, that resource revenue sharing is a reality, and establish the mechanisms, procedures, and structures to establish an appropriate system.
- Set up resource revenue sharing in consultation with Aboriginal people.

- Consider new approaches to revenue sharing. Jurisdictions could, for one example, use a fixed percentage of the resource revenue to be shared as part of an allocation to all Aboriginal people. Perhaps one-third could be allocated to a general Aboriginal fund, for distribution to all Aboriginal governments in a particular province or territory. The other two-thirds would be allocated to the Aboriginal community or communities on whose traditional territory the development is occurring.
- Address non-Aboriginal resistance to the sharing of resource revenue in open and frank discussions with Aboriginal people within the jurisdiction. Real leadership will be needed at the provincial, territorial, and federal levels. This has been effective in the territorial North.
- Recognize that resource revenue sharing is not a replacement for the accommodation and collaboration agreements that the companies have been signing in recent years, with considerable positive effect, with Aboriginal communities.
- Make public, in keeping with the accountability spirit of the times, the resource revenue sharing arrangements so that Aboriginal people and the general public understand the degree of financial allocation.
- Allow Aboriginal governments to use the funds at their discretion, subject to the transparency and accountability provisions established by the Aboriginal community and/or the provincial/territorial and federal governments.
- Explain, to the country as a whole, the cumulative impact of the various resource revenue sharing, accommodations and collaboration, and modern treaty arrangements. This is not a task for the Aboriginal communities, but rather for an external agency. Monitoring the impact of resource revenue sharing could be a vital element in convincing politicians and the public at large to support the idea.
- Work with governments, the private sector, and Aboriginal communities to develop interest in equity investments in resource development. This can be a means of creating long-term wealth and sustained opportunity.
- Recognize that resource revenue sharing is not a panacea and it will not solve the problems facing Aboriginal communities quickly or decisively.

Resource revenue sharing is one of the most promising developments in Aboriginal-government relations and Indigenous economic development in recent decades. If the process is handled properly, and if the experience to date is continued and improved upon, Aboriginal people in Canada stand to gain the funding they need to build stronger and more resilient economies. There is an urgent need for new and more sustainable collaboration around resource development with Aboriginal peoples in Canada. Revenue sharing is a crucial part of this development puzzle.

SOMMAIRE

Jusqu'à très récemment, le secteur des ressources naturelles, qui représente un atout considérable et vital pour le Canada, n'a pas été bien branché sur les communautés autochtones au pays. Historiquement, il y a bien eu des projets mis en œuvre sur les territoires autochtones traditionnels, mais sans retombées suffisantes, ils ont causé par moments conflits et frustration. Cette situation ne peut plus continuer. Si le Canada souhaite tirer parti à fond des possibilités pour tous – peuples autochtones, entreprises de ressources, gouvernements et Canadiens – il est impérieux de trouver les moyens de partager cette richesse.

Deux grandes approches peuvent être envisagées pour réaliser cet objectif. Dans la première et la plus traditionnelle, des sommes sont consenties par les entreprises aux collectivités touchées, notamment en vertu d'ententes sur les répercussions et les retombées, ce qui comprend l'octroi de budgets pour la formation et des possibilités de sous-traitance. Cette approche a eu d'importants ratés, comme l'ont démontré les relations tendues entre la Première Nation appauvrie d'Attawapiskat, dans le nord de l'Ontario, et une mine voisine exploitée par le diamantaire De Beers, bien qu'elle a aussi remporté de nombreux succès, ceux-là moins connus.

Dans la deuxième approche, qui fait l'objet de la présente étude, les gouvernements partagent les recettes provenant de la mise en valeur des ressources. En redistribuant les recettes tirées des ressources naturelles, les gouvernements peuvent répondre à leurs obligations juridiques, constitutionnelles et morales à l'égard des peuples autochtones, ainsi qu'à celles qui sont issues des traités. Il y a seulement vingt ans, cette idée paraissait radicale. Elle ne l'est plus du tout.

Les entreprises ont fait valoir qu'elles n'avaient pas à prendre entièrement à leur compte les coûts afférents au bon fonctionnement des ententes négociées avec les communautés autochtones. Les Premières Nations préconisent, quant à elles, le partage des recettes depuis de nombreuses années. Ainsi, comme Chef de la Fédération des nations indiennes de la Saskatchewan, Perry Bellegarde a déclaré : « Nous n'avons pas cédé (ni) abandonné (nos droits sur les ressources). Nous avons affirmé que nous partagerions notre territoire. Les traités n'étaient pas censés rendre les uns indigents et les autres, riches ». Dans ses nouvelles fonctions à la tête de l'Assemblée des Premières Nations, le Chef Bellegarde a été tout aussi clair : « Nous n'accepterons plus la misère et le désespoir pendant que les entreprises de ressources et les gouvernements s'enrichissent de nos terres, de nos territoires et de nos ressources ... Si nos terres et nos ressources doivent être exploitées, ce sera à la condition qu'on nous garantisse notre juste part des redevances, nos droits de propriété sur nos ressources et des emplois pour nos populations. Le développement se fera à nos conditions et en fonction de notre propre ordre du jour ».

Le concept de partage des recettes tirées des ressources a émergé comme un enjeu politique majeur, mais son application a été inégale et a dû faire face à une forte résistance de la part des populations non autochtones. Au cours de l'élection provinciale de 2011 en Saskatchewan, le public a soutenu le Saskatchewan Party lorsqu'il s'est opposé à une proposition du NPD relative au partage des recettes provinciales avec les peuples autochtones.

Pourtant, le partage des recettes est le prix que peuvent et que vont exiger les communautés autochtones pour soutenir les projets sur leurs territoires. Les accords négociés avec un certain nombre de provinces et territoires ainsi que les traités modernes conclus avec le gouvernement fédéral ont prévu une variété considérable d'ententes de partage des recettes, en passant par l'entente conclue en 2002 entre Québec et les Cris, surnommée la paix des braves, jusqu'à l'Accord définitif des Premières nations Maa-nulthes en 2006 en Colombie-Britannique.

Or, dans la plus pure tradition du fédéralisme canadien, le partage des recettes provenant de la mise en valeur des ressources est en train d'émerger comme une solution de circonstances. Le concept est trop nouveau pour affirmer qu'une approche est idéale, mais pour concevoir des ententes de partage des recettes qui ont des chances de succès, nous pouvons établir les lignes directrices suivantes :

- Reconnaître, comme l'ont fait certains champs de compétence, dans le droit, par des traités modernes ou dans la pratique, que le partage des recettes provenant de la mise en valeur des ressources est une réalité, et établir les mécanismes, les procédures et les structures permettant de mettre en place un système approprié;
- Décider du partage des recettes en consultation avec les peuples autochtones;
- Envisager de nouvelles approches pour le partage des recettes. Les différents paliers de gouvernement pourraient, par exemple, redistribuer un pourcentage fixe des recettes dans le cadre d'une allocation à tous les peuples autochtones. Le tiers pourrait être affecté à un fonds consolidé autochtone dans le but d'être réparti entre tous les gouvernements autochtones d'une province ou d'un territoire donné. Les deux autres tiers seraient alloués à la communauté ou aux communautés autochtones occupant le territoire traditionnel sur lequel le projet est mis en œuvre;
- Engager des discussions ouvertes et franches avec les peuples autochtones sous un même champ de compétence pour trouver des solutions à la résistance des populations non autochtones au partage des recettes. Il faudra alors compter sur un véritable leadership aux paliers provinciaux, territoriaux et fédéral de gouvernement. Cette approche a été efficace dans le Nord territorial;
- Reconnaître que le partage des recettes n'est pas un substitut aux ententes sur les accommodements et la coopération signées par les entreprises ces dernières années, et dont l'effet positif sur les communautés autochtones a été considérable;
- Rendre publics, conformément au principe de reddition de comptes en vigueur de nos jours, les ententes de partage des recettes conclues, afin que les Autochtones tout comme le grand public puissent connaître l'importance des allocations financières;
- Permettre aux gouvernements autochtones d'utiliser les fonds à leur discrétion, conformément aux objectifs de transparence et de responsabilité établis par les communautés autochtones, les gouvernements provinciaux ou territoriaux et le gouvernement fédéral ou encore, par tous ces paliers;
- Présenter à l'ensemble des Canadiens les retombées cumulatives des diverses ententes de partage des recettes tirées des ressources, des ententes sur les accommodements et la coopération, ainsi que des droits issus des traités modernes. Il ne s'agit pas d'une fonction qui peut relever des communautés autochtones, mais plutôt d'une agence externe. Documenter les retombées du partage des recettes générées par la mise en valeur des ressources pourrait être essentiel pour convaincre les politiciens et le grand public du bien-fondé de l'approche;
- Susciter de l'intérêt pour l'investissement dans le secteur des ressources en travaillant avec les gouvernements, le secteur privé et les communautés autochtones. La mise en valeur de nos ressources est un des moyens pouvant être mis en œuvre pour générer de la richesse et des opportunités durables à long terme;
- Reconnaître que le partage des recettes n'est pas non plus une panacée et ne va donc pas résoudre rapidement ou de manière décisive tous les problèmes auxquels font face les communautés autochtones.

Le partage des recettes tirées des ressources est l'un des développements les plus prometteurs des dernières décennies pour les relations entre les gouvernements et les Autochtones et pour le développement des économies autochtones. Si le processus est utilisé avec discernement et si l'expérience à ce jour est prolongée et renforcée, les peuples autochtones au Canada seront en position d'obtenir le financement dont ils ont besoin pour bâtir des économies plus fortes et plus résilientes. Au Canada, le besoin de nouvelles collaborations durables avec les peuples autochtones autour de la mise en valeur des ressources est pressant. Le nœud de ce casse-tête se situe au niveau du partage des recettes.

INTRODUCTION

Canada is a resource superpower, enjoying one of the most prolonged and wide-ranging bursts of economic prosperity this country has ever experienced. While national attention rightly focuses on the Alberta oil sands and related developments, resources are in play across the country, from shale gas potential in New Brunswick to uranium and potash in Saskatchewan to large mines in Nunavut, and literally hundreds of promising opportunities across the country. To a degree that Canadians seem reluctant to admit, and despite current volatility in world oil markets, Canada's economic prosperity rests significantly on the development of these resources.

A key question stands out: How should Aboriginal people share in the economic and related benefits that arise from resource developments on their traditional territories? During the resource boom that transformed northern Canada in the 1950s, little thought was given to this question. To the extent that companies and governments concerned themselves with Aboriginal returns, the general thought was that individual First Nations, Métis, and Inuit people could engage with the resource developers, typically as workers but even as sub-contractors. A wealthy Canada, the idea seemed to run, would produce greater opportunities for all, including Aboriginal people in the affected regions. That did not happen, at least not to the extent expected. Indeed, many Indigenous communities experienced sharp dislocations from their traditional activities and felt shunted aside by the development of their lands. The failure to accommodate Aboriginal interests during the resource boom after the Second World War, combined with general social unrest and the rise of Aboriginal rights movements, sparked Indigenous protests against resource projects.

This report focuses on the absence of a fixed formula or approach to resource revenue sharing with Aboriginal people in Canada. The country has revenue sharing with Aboriginal people, communities, and governments, but it is far from standardized. Canada has also tied its short- and medium-term economic future to sustained resource development and related projects, such as pipelines. It is clear that the country, in the interests of fair treatment of Aboriginal people and national prosperity, requires appropriate, well-understood, and openly embraced approaches to resource revenue sharing. In the established pattern of Canadian federalism, there is wide variation across the country, from Saskatchewan's refusal to discuss the issue to British Columbia's project-by-project approach, and the entrenchment of comprehensive arrangements in the modern treaties and devolution agreements in the territorial North. Such regional flexibility is at once a strength and weakness of the Canadian system, causing considerable difficulty for Indigenous peoples as they adjust to major development pressures.

How should Aboriginal people share in the benefits arising from resource developments on their traditional territories?

Twenty years ago, resource revenue sharing was a radical notion, out of step with legal requirements, commercial assumptions, and political realities. This paper will reflect on how it has become a fact of life over a few short decades. It will then review the great variety of resource revenue sharing arrangements across the country, assess the pros and cons, and make recommendations going forward for adopting resource revenue sharing by governments and ensuring that Canada's vast resource potential is developed to the benefit of all.

SECTION ONE: BACKGROUND TO RESOURCE REVENUE SHARING

The concept of resource revenue sharing is straightforward. Governments receive revenue, in the form of royalties, from natural resource developments. This is why the Government of Canada needs resource development to fund government programs and why Newfoundland, Alberta, British Columbia, Saskatchewan, and Manitoba have had substantial revenue increases in recent years. Aboriginal people argue that, since the development is occurring on their traditional territories, they are entitled to an appropriate share of that revenue, which they would use to fund their programs and to invest for the future prosperity of their communities. Governments have increasingly agreed with this approach – although there are holdouts – and the country has created a patchwork of revenue sharing arrangements that are designed to encourage resource development, in large measure, by sharing revenue with the Aboriginal governments and communities.

Aboriginal people have negotiated far more significant arrangements with resource companies than they could in the 1960s and 1970s.

There is an excellent foundation for improving resource revenue sharing in Canada. In the current environment, proceeding without due recognition of Aboriginal rights and interests is untenable, for a variety of moral, legal, political, and economic reasons.

The world facing Aboriginal peoples in Canada is in transition and, for once, there are reasons for real economic optimism. Buoyed by a series of major Supreme Court of Canada decisions, starting really with the *Haida Nation* and *Taku River Tlingit First Nation* cases on the duty of the Crown to “consult and accommodate,” and continuing with the *Tsilhqot’in (William)* case of 2014 that recognized Aboriginal title in non-treaty areas, First Nations, Inuit, and Métis people have been given

a far more prominent role in natural resource development than in earlier decades.¹ There are concerns, of course, as seen in the sustained Aboriginal protests in British Columbia directed at the Northern Gateway Pipeline Project and occasional opposition to localized resource developments, including the proposed shale gas exploration in New Brunswick. On balance, however, Aboriginal people have been able to negotiate far more significant arrangements with resource companies than they could in the 1960s and 1970s.

Most of the recent efforts at collaboration have involved business interests and have focused on three main elements:

- company payments to communities for developments within traditional territories,
- training and employment arrangements with the resource companies, and
- subcontracting opportunities with the major developers.

Surprisingly extensive partnerships and substantial cooperation emerged from these new arrangements. These are major accords, returning substantial benefits to the communities. Much of the conversation focuses on the financial arrangements, which, while important, are only part of the story. The Cameco/Areva collaboration with English River, a small Aboriginal community in northern Saskatchewan, called for benefits amounting to some \$600 million over 10 years. The First Nations people of Fort Chipewyan, a focal point for oil sands protest in Alberta, receive millions of dollars in benefits from the oil sands companies each year. The Voisey’s Bay partnership with the Innu in Labrador is worth hundreds of millions of dollars in total return to the Aboriginal communities, both

in the form of royalty revenue sharing and other benefits. There are many different ways in which the money secured through these agreements is distributed. In Northern Quebec, for example, these include payments to individuals (which is how Alaska uses a substantial portion of its oil revenues) or investment in infrastructure or other projects (which is how Alberta has tended to use its energy trust fund). More generally, the resource agreements with First Nations, Métis, and Inuit communities include many other commitments beyond financial transfers, skills training, and employment arrangements.

The transition has been extensive, and more successful in producing returns – personal and collective – to Aboriginal communities than is generally realized across the country. Using the cases of Cameco and Areva in northern Saskatchewan as illustrations, the new arrangements provided cash infusions of several tens of millions of dollars over a decade (the amount varying according to the impact of the mining activities on the local population) that the communities could use for local development and/or longer-term investments.² The companies also made formal commitments to increase the number of northerners working within the firms, and finance training and skills development opportunities for qualified workers. The companies also reached procurement agreements with several communities, resulting in the establishment of Aboriginally controlled firms, often with Aboriginal development corporations, that in turn hired additional northerners. The expanding investment activities of English River (particularly through Des Nedhe Development), Lac La Ronge Indian Band (through Kitsaki Management),³ and the Athabasca Basin (through Athabasca Basin Corporation) demonstrate the utility of these measures. These collaborations resulted in the establishment of numerous Aboriginally-owned companies, many of which quickly expanded operations beyond their original mine-focused base. The Fort McKay First Nation has capitalized on its extensive relationships with the oil sands companies based in the Fort McMurray area to establish the Fort McKay group of companies. Several First Nations individuals established private companies (not owned by the Fort McKay First Nation), generally in the supply sector related to oil sands (Boucher 23 January 2014).

Resource revenue sharing is different than the impact and benefit agreements and collaboration agreements that resource companies have been negotiating with Indigenous communities. Revenue sharing involves money from the provincial and territorial governments and would be on top of any funds secured by the Aboriginal community from their relationships with the companies. Governments have moved toward revenue sharing for several key reasons:

- The revenue sharing arrangements were negotiated by the federal government into modern treaties and are therefore constitutionally protected Aboriginal and treaty rights;
- the governments want to encourage resource development and know that Aboriginal opposition could slow or stop commercial activity; sharing resource royalties is the price of peace and cooperation on the development frontier;
- governments worry about potential court rulings that will, in an extension of existing decisions about Aboriginal land and resource rights and obligations to consult and accommodate, compel the sharing of royalty payments with Indigenous peoples and governments;
- governments decide that Aboriginal people have a moral right to share in the prosperity associated with the development of their traditional territories. Direct payments through royalty sharing provide Indigenous governments with control over the financial benefits.

Consider, for example, the little-known situation in New Brunswick. Following the defeat of the Joshua Bernard case in the Supreme Court of Canada, the Government of New Brunswick took the unusual step to use this decision as a foundation on which to build a partnership by guaranteeing First Nations 5.3 percent of the allowable cut of timber on Crown lands, amounting to over 233,830 cubic metres of wood fiber (before an announced expansion of overall forestry activity in the province, a policy of the previous NB government that is now under review). According to a 2005 review, the arrangement produces around \$12 million each year for the First Nations. In addition, New Brunswick distributes another \$3.35

million of Crown royalties to First Nations (Wilson and Graham 2005). (This is a small portion of the \$1.45 billion in annual revenues from the sector [The Canadian Press 12 March 2014]. There are approximately 10,000 First Nations with Registered Indian Status out of a total provincial population of over 750,000.) This policy was reinforced as recently as 2014, when the Government expanded the allowable cut in the province. In this way, First Nations share directly (in this instance through access to a percentage of the harvestable timber) in the resource development in the province.

Sharing resource royalties is the price of peace and cooperation on the development frontier.

Revenue sharing is more straightforward in the case of Nunavut, where the territory was created out of a treaty agreement with the Inuit, and much more complicated in British Columbia, where revenue sharing arrangements are on a project-by-project basis.

This issue has resurfaced as a major policy issue in Canada. The debate over resource revenue sharing featured prominently in the 2011 Saskatchewan provincial election. The New Democratic Party, heading for a serious defeat at the polls, injected controversy into the campaign by calling for the sharing of provincial resource revenues with Aboriginal people. The Saskatchewan Party, led by Premier Brad Wall, did the opposite, declaring that

the province's resources and revenues belonged to all Saskatchewan residents and would not be partitioned for specific groups. The Saskatchewan Party platform was welcomed on the doorsteps across much of the province. While it is wrong to suggest that the issue tipped the election away from the NDP, it is clear that the respective positions on resource revenue sharing solidified Saskatchewan Party support and contributed to the size of the NDP defeat.

A Meeting of the Minds

There is a surprising level of agreement between development corporations and Indigenous people on the importance of resource revenue sharing with governments.

Dan Jepsen, Chairman of C3 Alliance Corp, observes:

Most of the business community has faced the frustration of trying to build positive ventures and revenue-sharing agreements in order for projects to move forward and share the benefits with these local communities . . . However, they end up footing the entire cost of making those deals work. If the resource revenue sharing rolls out and it's positive, it should provide some tools in the toolkit for the minerals and mining sector to bring those deals together. (Bisetty 2008)

The greater involvement of Aboriginal governments in the development process, including through resource revenue sharing, has surprisingly broad support. Consider the position articulated by the Prospectors and Developers Association of Canada:

The PDAC is supportive of GRRS [government resource revenue sharing] between the Crown and Aboriginal communities. Such Crown-community arrangements can generate economic benefits for communities, in addition to the industry practice of developing private arrangements with impacted communities, and encourage participation in the mineral sector. Further, GRRS mechanisms across the country can help create certainty for projects, contribute to community support of projects and lessen the expectation that industry should shoulder the full burden of sharing profits, which are often key components of any company-community agreement. The PDAC is supportive of government policies and mechanisms that seek to share public revenues, to the extent that they do not result in changes to tax regulations that would increase costs for companies. (PDAC 2014)

Lest it be assumed that PDAC and other corporate groups supportive of revenue sharing were freely spending government money, recall that the duty to consult and accommodate processes focus pri-

marily on corporate compensation and company-Aboriginal collaborative agreements and have greatly increased company commitments to Aboriginal communities.

First Nations have advocated similar approaches for many years. In 2013, as part of the controversial discussions with Prime Minister Stephen Harper following Chief Theresa Spence's protest in Ottawa, the Assembly of First Nations (11 January 2013) issued an aspirational statement which included this element: "Resource Equity, Benefit and Revenue Sharing - building on treaty implementation and enforcement and comprehensive claims resolution there must be a framework that addresses shared governance of resource development and the fair sharing of all forms of revenues and benefits generated from resource development." Chief Perry Bellegarde of the Federation of Saskatchewan Indian Nations said in June 2013, "We did not cede [or] relinquish (resource rights). We said we'd share this land. The treaties were not meant to make one side poor and one side rich" (Warick 7 June 2013). This was not a new theme for the Chief, who was recently elected National Chief of the Assembly of First Nations. He said in an interview two years earlier,

We have inherent rights. We have title to the land and resources. We have to start sharing and benefiting from the resource wealth. Formal agreements have to be put in place. In Saskatchewan last year, in potash alone, \$2 billion in royalties. How are First Nations people benefiting? Under treaty, we agreed to share to the depth of the plow with the white people who came to this territory. Nothing underneath. That has to be challenged legally and politically. In Saskatchewan, for example, we're 14 percent of the population. Does that mean 14 percent of the royalties come back to the First Nations? Well, that could be a start. These lands weren't surrendered or given up under treaty. We don't want all of it, but let's share. That's the bottom line. (Warick 26 June 2009)

Not everyone agreed, of course, led by Premier Brad Wall of Saskatchewan. As the Premier said in January 2013, "Our position will remain unchanged as long as I am premier, as long as this government is in office, that there will be no special deals for any group regardless of that group in terms of natural resource revenue sharing." He repeated the sentiments many times: "The Saskatchewan Party categorically rejects any special natural resource revenue-sharing deal with First Nations or any other group . . . We believe the natural resource revenue of the province belongs to all people - belongs to everybody equally. That's how we build highways, that's how we fund health care, that's how we keep schools open and those things benefit all. It's how we pay down debt. It's how we keep taxes low" (Lacroix 19 October 2011).

Alberta, the province with the most at stake in this sector, has likewise refused to establish resource revenue sharing. As Athabasca Chipewyan First Nation Chief Allan Adam said in 2013 of the Alberta government's position: "It's the same old same old from the province. Why not give us a piece of the revenue that comes from our traditional territory? We could fund our programs and services, no different than (how) any other municipality or big cities benefit from the resources that come from our area" (Narine).

Manitoba is moving in the direction of revenue sharing, it appears, establishing the Mining Advisory Council in November 2013, with a view to ensuring Aboriginal people participate in and benefit from future mining activity. As Mineral Resources Minister Dave Chomiak notes, "First Nations that want to participate will be partners every step of the way as new mines are brought on line and they will share in the benefits of resource development . . . There will be new training opportunities, good jobs, revenue sharing and a range of social and economic benefits for First Nations communities. This will also send an important message to those who want to invest in Manitoba's mining sector that we're open for business" (Government of Manitoba 8 November 2013). Revenue sharing was not the dominant theme in the announcement of the new Mining Advisory Council, which focused more on consultation process and impact and benefit agreements, but the fact that it was mentioned suggested the province was moving closer to the Aboriginal position on the matter.

The greater involvement of Aboriginal governments in the development process has surprisingly broad support.

To the Depth of the Plow

On the prairies, where 19th and early 20th century treaties are of paramount importance in defining First Nations–Government relations, Aboriginal people have strong opinions about resource revenue sharing. There are two vital elements to their argument:

- The numbered treaties were generally understood by previous governments to be “land surrender” accords, in that First Nations gave up subsequent claims to their traditional territories in return for reserves and various forms of government support. First Nations do not agree. They argue that the land surrenders extended only “to the depth of the plow” and were intended to facilitate or permit agriculture. At the time – from the 1870s to the first decade of the 20th century – there was no serious contemplation of mining activity, they argue, and therefore the sub-surface rights were not included in the treaties. The Government of Canada does not accept this assertion nor has any court yet agreed with the First Nations’ position on the matter.
- When the treaties were signed and the Western Canadian territories and provinces were created, the Government of Canada reserved for itself control over natural resources. In 1930, the Natural Resources Transfer Agreement saw Canada shift responsibility for resources to Manitoba, Saskatchewan, and Alberta, setting the stage for the current resource-based income streams that sustained the prairie governments. First Nations argue – as yet without agreement from the courts – that this transfer occurred without their permission and without consultation. The resource transfer, in their estimation, should have accommodated Aboriginal interests and should have provided for a significant return to the First Nations in the treaty territories.⁴

This matter is of great importance to Aboriginal people on the prairies. The argument for resource revenue sharing is tied directly to the First Nations’ belief that they have not transferred or sold the rights to the sub-surface resources through treaty. The implied threat, therefore, is that, in the absence of an agreement on resource revenue sharing, they could go to court to seek a ruling on either or both of the key propositions relating to unresolved Aboriginal rights to resources.

The Absence of Legal Direction

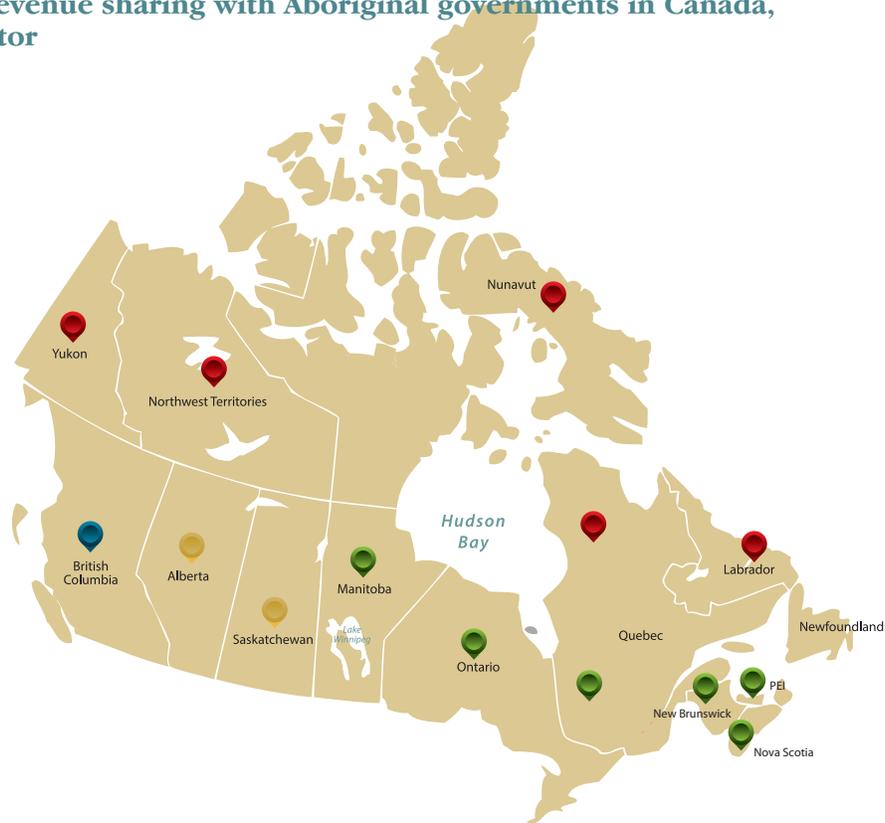
At this point in Canadian law and politics, there is no standard approach to resource revenue sharing. Governments may be compelled to consult and accommodate, directly or through corporations, but they are not required by law to provide any specific kind of compensation for the Aboriginal people affected by development. However, the combination of modern treaties and the Supreme Court of Canada’s 2014 *Tsilhqot’in (William)* decision and a clear national priority for enhanced collaboration between provincial/territorial and Aboriginal governments has shifted the landscape dramatically. Furthermore, governments can and have negotiated revenue sharing into Aboriginal land claims agreements, resource development agreements, or other political accords, including the 2014 devolution arrangements involving the Government of Canada and the Government of the Northwest Territories.⁵

SECTION TWO: UNDERSTANDING RESOURCE REVENUE SHARING TODAY

How Resource Revenues are Shared Across Canada

The diversity of arrangements for resource revenue sharing in different jurisdictions reflects, among other things, provincial/territorial political attitudes, the existence, nature, or absence of land surrender treaties, and the urgency attached to resource development. The map gives an overview of the typical approach to sharing resource revenues by province and territory.

Map 1
Resource revenue sharing with Aboriginal governments in Canada, mining sector



-  Revenue Sharing Based on Modern Treaties (Labrador, Northern Quebec, Yukon, NWT and Nunavut)
-  Province Opposed to Revenue Sharing (Saskatchewan, Alberta)
-  Project by Project Revenue Sharing (British Columbia)
-  No Fixed Policy on Revenue Sharing (Nova Scotia, New Brunswick, PEI, Ontario, Southern Quebec, Manitoba)

RESOURCE REVENUES ON ABORIGINAL LAND

Indigenous interest in revenue sharing focuses primarily on resources developed off reserve or outside settlement lands (the former relating to earlier treaties and the reserves created by government in the 19th and 20th century and the latter referring to modern, post-1970s agreements that identified lands under direct Aboriginal control and other lands over which Indigenous peoples had lesser control). On occasion, Aboriginal people have developed the resources on their reserves – including timber, minerals, or oil and gas. In such circumstances, but subject to the regulations associated with the *Indian Act* and federal responsibility for Indian reserves, substantial financial benefits can accrue to the First Nation from such development. The best-known case in Canada is Maskwacis (formerly known as Hobbema), where oil and gas development has produced millions of dollars in revenue for the community. In other areas, including Samson Cree Nation and Sawridge First Nation (Alberta), Onion Lake Cree Nation (Saskatchewan), and in natural gas development zones in northern British Columbia, energy resources have been produced, providing substantial annual incomes to the First Nations under whose territories the resource reside. In the case of the Nisga'a in northwestern BC, in what is a standard clause on this subject, the *Nisga'a Final Agreement Act* includes the provision that the “Nisga'a Lisims Government has the exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of mineral resources on or under Nisga'a Lands.”

These are not technically resource revenue sharing arrangements. Instead, the Indigenous group, with control over the land, is assured a significant return from the resources that have been developed. In the case of Onion Lake and Maskwacis, the resources are oil or gas; in different settings, including Westbank and Squamish, two First Nations with reserves near wealthy populated centres in British Columbia, the marketable resources are the land itself, leased out to non-reserve members in return for substantial annual payments. Where Aboriginal communities have gained control over specific pieces of land, through a pre-1970 reserve creation process or a post-1970 modern agreement, they have the potential to participate directly in both the revenue flows from that project. Logically, they also have the authority to prevent the development from occurring in the first instance, as the land belongs to the community. (For a provincial and territorial summary of resource revenue sharing arrangements with Aboriginal peoples, see appendix 2.)

MODERN TREATIES

Modern agreements with First Nations and Inuit have provisions regarding resource revenue sharing imbedded in the final settlements, with no constraints on how the First Nations are to use the money. The arrangements, summarized in table 1, show considerable variation in the arrangements across the North (Simeone 2014).

TABLE 1 – RESOURCE REVENUE-SHARING PROVISIONS UNDER NORTHERN LAND CLAIMS AGREEMENTS

| Agreement | Initial Share for Aboriginal Signatories | Secondary Share for Aboriginal Signatories | Threshold for Taxable Royalties |
|---|---|--|---------------------------------|
| Umbrella Final Agreement with Yukon First Nations | 50% of first \$2 million in royalties | 10% of additional royalties | - |
| Gwich'in and Sahtu final agreements | 7.5% of first \$2 million in royalties | 1.5% of additional royalties | Above \$3 million |
| Tlicho final agreement | 10.429% of first \$2 million in royalties | 2.086% of additional royalties | Above \$4.172 million |
| Labrador, Nunavut, and Nunavik Inuit final agreements | 10.429% of first \$2 million in royalties | 5% of additional royalties | - |

Source: Tonina Simeone, 2014, “Resource Revenue Sharing Arrangements with Aboriginal People.”

The Government of Canada also implemented interim arrangements for some groups, such as the Dehcho First Nations, who had not reached final settlements. In this instance, the allocation was 12.25 percent of the first \$2 million in total royalties and 2.45 percent on royalties over that threshold.

If the developments occurred on settlement lands, different considerations held. In the case of the Yukon, each First Nation that signed the Umbrella Final Agreement selected Category A lands, over which they maintained surface and sub-surface rights. Development of Category A lands has been slow, but the Mining Explorations Ltd. development on the property owned and controlled by the Selkirk First Nation did proceed. For 2009, the Government of Yukon paid \$5.9 million in royalty payments to the Selkirk First Nation under the terms of the Final Agreement. The government also authorized the mining company to pay \$1.4 million, under the Community Economic Development Expense Allowance provision (included in the Yukon royalty regulations) for a new early childhood development centre in Pelly Crossing. Several Yukon First Nations have not yet signed modern treaties; they do not have the formal, agreement-based arrangements for royalty payments (Government of Yukon 25 October 2010).

THE MAA-NULTH FIRST NATIONS FINAL AGREEMENT

The Maa-nulth First Nations Final Agreement (British Columbia) of 2009 included arrangements with the federal and provincial governments to share revenues from natural resource development of the First Nations' land. The 25-year agreement was cost-shared between Canada and British Columbia, based on the actual revenue produced for governments by resource activity on the territories. The agreements set a floor and ceiling for the allocations to protect against major changes in revenue flows. The allocations totaled \$1.2 million per year, divided between the Huu-ay-aht (\$350,000), Ka:'yu:'k't'h'/Chek'tles7et'h' (\$300,000), Toquaht (\$70,000), Uchucklesaht (\$100,000), and Ucluelet (\$380,000) (The First Nations of Maa-nulth Treaty Society).

QUEBEC AND THE CREE NATION

Eager to establish better relations in the midst of debates about the implementation of the James Bay Treaty, the Government of Quebec signed a 2002 accord with the Cree Nation that shared resource returns from the hydro-electric, mining, and forestry operations in the Cree territories. The agreement called for payments reaching \$70 million a year for a total of 50 years, or \$3.5 billion in total. The agreement, according to the Government of Quebec, respected the nation-to-nation relationships in the region, respected the autonomy of the Cree on matters of community and general economic improvement, and had an underlying and shared commitment to sustained development as understood by the Cree and their traditional ways, signalling a new era of cooperation in the development of northern resources. As Ted Moses, then Grand Chief of the Grand Council of the Crees, observed, "Today we can finally turn the page and focus our attention, energy and imagination on our common effort in a true spirit of cooperation with Quebec, with a view to planning a future that takes into account all Quebecers, including the Crees" (Quebec n.d.).

Modern agreements have provisions regarding resource revenue sharing imbedded in the final settlements.

NEWFOUNDLAND AND LABRADOR AND THE NUNATSIAVUT INUIT

The large-scale Voisey's Bay mine in Labrador sparked the development of that part of the province and generated strong demands from the Aboriginal people about sharing in the prosperity from the resource activity. Under the agreement, "The Nunatsiavut Government is entitled to receive, and the Province shall pay to the Nunatsiavut Government, an amount equal to 25 percent of the Revenue from Subsurface Resources in Labrador Inuit Lands". For developments that occur within the Labrador Inuit settlement area but outside the Labrador Inuit lands, the provincial government was compelled to pay the Nunatsiavut government a sum equal to 50 percent of the first \$2 million in royalty revenue and 5 percent on royalties received above that sum (but excluding Voisey's Bay). For the Voisey's Bay project, the province agreed to pay 5 percent of the revenue from the project (*Labrador Inuit Land Claims Agreement Act*, S.C. 2005, c. 27, page 100).

OUTSIDE TREATIES: THE BRITISH COLUMBIA EXPERIENCE

The long-standing policies of the Government of British Columbia have been an impediment to relationships with Aboriginal peoples. For decades after joining Confederation in 1871, the Government of BC took a hard line on Indigenous rights, blocking efforts to start land claims negotiations and resisting Aboriginal attempts to secure recognition of their land and resource rights. This resistance ended, albeit slowly, in the 1990s, leading to the start of land claims negotiations, the resolution of the long-outstanding Nisga'a claim and after, some difficult times in the early years of the government of Premier Gordon Campbell, a sharp about-face that saw the province emerge as a leader in the negotiations of the Kelowna Accord with Prime Minister Paul Martin and Aboriginal leaders from across the country. As a province with extensive mineral resources, vast quantities of natural gas deposits, and the belief that accelerated development held the key to BC's future prosperity, the government of British Columbia placed a high priority on positive relations with Aboriginal people, particularly as regards resource development.

The general industry view on revenue sharing is that it would improve access to resource-rich lands and encourage First Nations to support resource projects.

Under Premier Campbell and, even more aggressively, his successor Premier Christy Clark, the government of British Columbia sought new ways to encourage collaboration with Aboriginal peoples and minimize litigation over resource projects. The policy was foreshadowed in the 2005 provincial statement arising out of the Supreme Court of Canada's decisions on *Haida Nation* and *Taku River Tlingit First Nation* that established the concept of the "duty to consult and accommodate." At that time, the provincial government indicated that it would "Develop new institutions or structures

to negotiate Government to Government agreements for shared decision-making regarding land use planning, tenuring, and resource revenue and benefit sharing" (Clark 2009).

One of these, announced in 2008, was resource revenue sharing with First Nations, a concept pushed aggressively by First Nations in the province and supported by the mining industry. The Mining Association of British Columbia (MABC) applauded the move; according to MABC President Pierre Gratton, "The MABC and our counterparts in industry have been calling for resource revenue sharing with First Nations for some time. We are pleased to see the government moving in this direction." Gratton, who is now President and CEO of the Mining Association of Canada, shared the general industry view that the new approach would improve access to resource-rich lands and encourage First nations to support resource projects more readily (Dolha 24 November 2008). Implementation proceeded slowly; three years later, Pierre Gratton was urging the government of BC to redouble its efforts to secure resource revenue sharing arrangements (Gratton 10 May 2011).

British Columbia openly endorsed the resource revenue sharing idea. As Randy Hawes, Minister of State for Mining, observed, “Our support for revenue sharing is unequivocal. We are determined to continue engaging with First Nations as fully as possible. For the benefit of both the province and the First Nations, it is vital that First Nations play a significant role in the mining industry.” (Government of British Columbia 7 March 2011). Agreements, Hawes observed, would be struck with new mines, negotiated for each new project with the level of payment from mining tax revenues determined by the nature of the resource projects, the impact on the First Nations involved, and other factors. Agreements were signed, for example, with the McLeod Lake Indian Band (Mt. Milligan mine) and the Secwepemc Nation (New Afton Mine) (Government of British Columbia 7 March 2011). (It is important to note that the government of British Columbia also has resource sharing arrangements with First Nations relating to forestry operations and special agreements with Treaty 8 First Nations, in the Northeast part of the province, to cover oil and gas development.)

“Today, resource development should mean jobs and investment opportunity for all residents and businesses in the NWT.”

– Premier Bob McLeod

The arrangements are now in place and agreements are being negotiated, with the government of British Columbia prepared to provide up to 37.5 percent of its resource revenue to First Nations partners. Progress in the province has been challenged by strong Aboriginal resistance in the wake of the 2014 *William* decision (*Tsilqot’in*), which strengthened the First Nations’ authority over undeveloped traditional territories. While some worried that the legal changes would stop mining activity, an agreement signed with the Nisga’a in northwest British Columbia in July 2013 included an understanding on revenue sharing relating to the Avanti mine (expected to produce \$43 million over the life of the mine) and over \$120,000 a year from a hydroelectric project near Stewart (Hampel 31 July 2014).

ARRANGEMENT PENDING IN ONTARIO

The Government of Ontario, facing strong development pressures in the North, particularly in the Ring of Fire, has not yet developed a full resource revenue regime, in part because of the demands from First Nations for half or more of the provincial revenue. The government has been discussing a revenue sharing arrangement since 2007, and has set aside money for the past five years to finance agreements, but a final arrangement is not yet in place. The First Nations in the region, who have many outstanding grievances against the government and the resource sector tracing back for generations, are demanding compensation for previous resource development and more favourable revenue sharing for future projects (Ross 8 September 2012).

DEVOLUTION IN THE NORTHWEST TERRITORIES

Northern Canada has unique political and constitutional arrangements, and matters relating to resource revenue sharing reflect these broader political and legal structures. In the case of the Yukon and Northwest Territories, control over natural resources and the revenues attached thereto have only recently been transferred to the territorial governments. Nunavut still does not control its natural resources, which remain in federal hands. In the case of the Northwest Territories, devolution of natural resource rights and responsibilities occurred in 2014, providing the territory with substantial financial and administrative flexibility. Under the new arrangements, the Government of the Northwest Territories (GNWT) receives 50 percent of all royalty revenues, up to a fixed limit (after which the incremental revenues are subtracted from federal transfers). The arrangements for the first year,

2014/2015, would see the GNWT receive some \$60 million, less than the official ceiling payment of \$76 million.⁶

The Government of the Northwest Territories has then taken the extra step of allocating 25 percent of total royalty payments to Aboriginal governments that have concluded land claims agreements. Of course, many of the services provided and infrastructure built and maintained with the remaining funds would be used for the benefit of the large number of First Nations, Inuit, and Métis in the territory. The share of the Aboriginal governments would be in addition to funds that some of the Indigenous peoples, in this instance the Gwich'in, Sahtu, and Tlicho First Nations, receive through their land claims settlements. As Premier Bob McLeod observed in March 2014,

When resource revenues are collected by the government of the Northwest Territories, Aboriginal government partners will receive a direct share of the benefits of resource development . . . We are setting a new standard for collaboration here in the Northwest Territories. Nowhere else in Canada have revenues from public lands been offered to Aboriginal governments at this level. Resource revenue sharing offers the promise of further fiscal capacity to Aboriginal governments. Gone are the days when resource development in the NWT offered little opportunity to Aboriginal people. Today, resource development should mean jobs and investment opportunity for all residents and businesses in the NWT. (Wholberg 3 March 2014)

SECTION THREE: DEBATING RESOURCE REVENUE SHARING

Options for Sharing Revenues

Resource revenue sharing is not a single policy option, but rather a range of possible means of ensuring that Aboriginal people benefit financially from resource development in their traditional territories. There are a variety of possibilities, several already operational, available for Indigenous groups and provincial or territorial governments.

PROVINCE/TERRITORY-WIDE

Provincial and territorial governments collect royalties from each mine and draw them into general revenue, where they are used for the benefit of the population at large. These governments could, as the Government of the Northwest Territories has done, distribute the revenue to Aboriginal governments (typically on a per capita basis) throughout the jurisdiction. This approach has the benefit of sharing incremental revenue among all the Aboriginal groups, as identified by the province, regardless of the location of the resource development.

CONNECTED TO MODERN TREATIES

Modern treaties, as noted earlier, contain language that ensures First Nations a negotiated share in the revenue from resource activities on traditional Indigenous territories. These arrangements are part of the remuneration package First Nations secured in return for signing the final treaty. The funding, in these instances, goes to the specific Indigenous group on whose traditional territory the development is occurring.

PROJECT SPECIFIC

Another option, used currently in British Columbia, works on a project-by-project basis. When a resource development is planned, the appropriate government negotiates with an Indigenous government on whose land the project is occurring. The Aboriginal communities most directly affected by development gain the financial benefit, in an arrangement that is comparable to the impact and benefit agreements or collaboration agreements that companies sign with affected communities. The system runs into difficulties when two or more Aboriginal governments claim the site lies in their traditional territory, a common occurrence in British Columbia where land claims remain substantially unresolved. It also creates a “winners and losers” scenario based on geographic “luck” (the location of a mine or other resource opportunity).

PROSPERITY SHARING AMONG INDIGENOUS GROUPS

Another possibility, one that has not been widely debated but which might have the greatest possible impact, would see Indigenous peoples share the resource revenue more generally. At present, resource revenues and resource opportunities are very small in the Maritimes and much higher in Alberta and British Columbia. Canada operates on a regional equalization system, designed to provide an appropriate level of financial resources for all provincial governments. Some of one province’s prosperity is shared with other jurisdictions. This approach could be used with Aboriginal people and would be designed to distribute benefits among a much larger group of Aboriginal peoples. A version of this approach is used with casino revenues in Ontario, with the distribution based on a formula that takes into account population, isolation, and economic opportunities. Given the comparative poverty of almost all of the Indigenous peoples in the country, political considerations, and Aboriginal cultural diversity, it is difficult to imagine Indigenous governments agreeing to such a distribution of revenue among Indigenous governments and communities. At the same time, such an arrangement would ensure that Indigenous peoples are not barred from participating in economic opportunity simply because geographical “accidents” mean that no commercially viable mineral or oil and gas deposit are on their lands.

INFORMAL SHARING BY PROVINCE/TERRITORY AND FIRST NATIONS

The final option would not involve the distribution of government resource revenues directly to individual Indigenous groups. Instead, the affected provincial or territorial government would take into account the money received from resource development and would target expenditures and programs to create greater equality of opportunity, if not circumstances, for Aboriginal peoples. While control of the revenue would remain with the provincial or territorial government, an appropriate portion of the royalty income would flow to projects specifically designed to address Aboriginal needs in the fields such as education, health, recreation, and infrastructure. Aboriginal people vastly prefer having direct control, and therefore the ability to fund local needs and projects. But if the government is not prepared to relinquish the funds, informal sharing (with appropriate consultation and public accountability) might provide an acceptable alternative to the status quo. This, conceptually, is close to the Saskatchewan position, with the government asserting that First Nations and Métis

benefit from general provincial expenditures on programs, services, and infrastructure and therefore are already – along with other Saskatchewan residents – beneficiaries of resource development. Aboriginal groups do not accept the argument.

Is Revenue Sharing Good Public Policy?

Revenue sharing is a reality in Canada. Aboriginal groups, albeit not uniformly, share directly in the financial returns from resource developments. In a growing number of instances, the revenue sharing arrangements are entrenched in modern treaties or codified in provincial or territorial policy. In many other cases, British Columbia being the prime example, royalty revenue sharing exists in practice but not in law. This means, of course, that the arrangements could be abandoned – or expanded

Aboriginal support for resource development is contingent on significant, tangible, and easily understood benefits.

– without recourse to the courts or the legislature. Given the priority attached to resource revenue sharing by Aboriginal groups – a matter of moral obligation and principle to them – it is unlikely that the concept will disappear. Governments have discovered that revenue sharing is a crucial tool in keeping Indigenous peoples on side in the general development process. If any lesson has been learned in recent decades it is that Aboriginal support for resource development is contingent on significant, tangible, and easily understood benefits for affected communities and regions. No other elements in collaboration agreements, impact and benefit agreements, or negotiated arrangements are as practical and transparent as resource revenue sharing.

The outstanding question is whether or not resource revenue sharing should be expanded, contracted, maintained, or scrapped. The following section reviews the main considerations weighing for and against expanding resource revenue sharing:

Arguments in Favour of Resource Revenue Sharing

- The simplicity and transparency of resource revenue sharing makes the system easy to understand and evaluate for all parties. Revenue sharing is based on a percentage of government returns from profitable mines, allocated when development occurs and in direct relationship to the level of activity in the resource project. The open sharing of returns is easily explained to all. The inflow of sizable sums into the communities, through a transparent transfer of funds from provincial and territorial governments to Aboriginal governments, provides a clear incentive for open and accountable business practices within the Indigenous governments. Aboriginal beneficiaries would expect, if not demand, a proper accounting for funds deposited with a development corporation and/or an Aboriginal government, thus providing a strong foundation for open political and management processes.
- Aboriginal people deserve a financial return from resource development in their traditional territories and revenue sharing is a tangible sign of shared benefits. Given historical ties to their lands, and given Supreme Court decisions that make it clear Indigenous peoples should benefit from the development of their territories, the sharing of money is a logical and almost unavoidable outcome of modern resource activity. Resource revenue sharing may be the only significant tool at the disposal of Aboriginal communities seeking to address the fundamental and major infrastructure challenges (such as housing, roads, water supplies, and recreational facilities) facing their villages and settlements.

- Aboriginal governments, like their non-Aboriginal counterparts, experience incremental costs due to expanded resource activities. The revenue thus provided would cover many of the costs associated with the additional government programming and would help protect Indigenous communities from further dislocations associated with rapid economic expansion and social change. Revenue sharing provides a much-needed infusion of cash into Aboriginal communities, potentially providing the investment capital Indigenous governments and development corporations need to become equity partners in resource development and to support and sustain other business activities for their community members.
- There are a growing number of Aboriginal communities and governments that have made effective use of resource royalty payments (or other major injections of capital), investing in income- and employment-generating activities in their community, region, or province/territory and partially securing the long-term economic future of their people. The experience of groups such as the Inuit of Nunavut, the James Bay Cree, the Gwitch'in of Old Crow, and the Inuvialuit provide valuable role models for communities that find themselves with additional income from revenue development.
- Given that Indigenous engagement is essential, under existing law, if governments and companies wish to keep the support of Indigenous communities and governments for expanded activity, revenue sharing is a key means of doing so. That Aboriginal people are partners in development, in terms of the standard impact and benefit agreement elements, environmental impact arrangements, and through revenue sharing, sends a clear message to Canadian and international critics that resource development is not occurring on the backs of Indigenous communities and peoples and is, instead, being undertaken in collaboration and partnership with them. Revenue sharing starts to address the historical challenges associated with resource development and shares some of the country's prosperity with Aboriginal communities. Indigenous communities, particularly in remote regions, are consistently among the poorest in the country. Sharing resource revenues helps offset the other economic disadvantages associated with living in remote and isolated regions.

Aboriginal people deserve a financial return from resource development in their traditional territories.

Arguments Against Expanding Resource Revenue Sharing

- Aboriginal people benefit from many of the programs and services funded by provincial and territorial governments, which are in turn partially supported by the revenues from resource development. By reducing the flow of money to the provincial or territorial government, revenue sharing means that Aboriginal people continue to get services provided at the provincial or territorial level of government while gaining additional money to invest in their own activities and programs. In this way, resource revenue sharing has replaced the historical inequalities in managing returns from resource development with new forms of inequity.
- Aboriginal governments, many of which have serious problems with administrative capacity, have had difficulty managing substantial cash infusions in the past. In the worst case scenarios, bad management has seen sizeable returns from resource agreements, treaty settlements, and other initiatives disappear in rapid order. The poor economic outcomes in Attawapiskat First Nation, in Ontario, which has a good financial deal with De Beers, is a case in point. Similarly, substantial financial transfers to Aboriginal communities associated with the Northern Flood Agreement in Manitoba have not produced systematically positive results.⁷ In many other cases,

the difficult challenges associated with managing small and isolated Aboriginal communities have made it difficult to capitalize on the opportunities created by short-term capital gains.

- Revenue sharing, as opposed to increased direct support from governments, would make Aboriginal communities more dependent on rapid resource development in order to meet their fiscal needs. This, in turn, could make them less alert to environmental dangers, more beholden to the resource companies, and more focused on short-term returns than the long-term impact of resource development on their communities and territories.
- Too little thought has been given to the question of the appropriate balance in revenue sharing between the provincial/territorial governments and the Aboriginal governments. Patterns are emerging, but they are not informed by extensive and thoughtful examination of appropriate and current responsibilities of government, the potential uses (and misuses) of resource revenues, the best models for the allocation and expenditure of the funds and the possibility that federal and provincial/territorial governments will simply cut other transfers to offset the increased revenue coming to a community from resource development.

Revenue sharing would make Aboriginal communities more dependent on rapid resource development in order to meet their fiscal needs.

- The current approach to resource revenue sharing – which sees 100 percent of the sharing going to the community or communities closest to the resource activity – rewards accidents of geographic history and does not address real needs and responsibilities across the country. Two communities, separated by only a few dozen miles, could end up with markedly different fiscal outcomes, one with substantial additional revenues and another with nothing. The lack of equity in the system – replicating, incidentally, the Alberta–New Brunswick or Saskatchewan–Nova Scotia dichotomy in Canadian federalism but without the regional equalization arrangements – would distort arrangements between and among Aboriginal populations.

- There is not yet a general consensus on the idea of resource revenue sharing, just as there is considerable public concern about the expansion of Indigenous rights generally. Where the sums of money involved with revenue sharing are relatively small, the problems are easily surmounted. When the money involved becomes substantial, as in the case of oil and gas development, public dissatisfaction with expenditures on Aboriginal governments and communities could easily expand. Sharing implies that all parties – Aboriginal and non-Aboriginal Canadians and not just government officials – understand and accept the concept and the justification for resource revenue sharing. It is not clear that the Canadian electorate is at this place at present.

Resource revenue sharing, to put it simply, remains a matter of intense debate and disagreement. Not enough time has passed as yet to see, with enough examples in hand, how royalty revenue sharing has worked out in practice. To most Aboriginal people, resource revenue sharing is a logical extension of the spirit and the letter of modern and historic treaties. To many non-Aboriginal people, the arrangements are yet another concession to small and isolated communities that have not yet demonstrated that they can take full responsibilities for their affairs. For corporate and government officials, resource revenue sharing is increasingly seen as a logical and even inevitable part of the development equation – a cost of doing business when capitalizing on the resource wealth on Indigenous territories.

The current approach to resource revenue sharing in Canada is too complicated, too inconsistent, and too unreliable to serve Aboriginal people or the country as a whole well. But it is increasingly likely, through negotiations more than through legal action, that resource revenue sharing will be-

come commonplace. It is the price that Aboriginal communities can and will exact in order to support development on their territories. In places where the concept is strongly opposed – Saskatchewan being the prime example – the provincial government will likely make increased efforts to document and explain how incremental provincial revenues are being dispensed equitably and to the benefit of all provincial residents. In this manner, prosperity sharing may take the place of revenue sharing, an arrangement that leaves the spending power with provincial authorities but with ever-higher degrees of accountability for doing the right thing with and for Aboriginal peoples.

A new financial world is unfolding in the Canadian resource sector. At present, Aboriginal groups are securing a greater, but still not overwhelming, share in the royalty revenue generated from resource developments. As the income grows, and as Indigenous groups continue to add to their existing wealth base, the country will soon experience an important transition point in Aboriginal-non-Aboriginal relationships. With Aboriginal communities and governments holding major financial assets and with those financial assets increasingly interwoven into the economic fabric of the country, non-Indigenous Canadians will have to come to terms with Aboriginal people as substantial land, resource, and equity owners and as major contributors to the economic well-being of the country. (For further discussion of this point, see appendix 1.) Few would have thought it possible only a decade or two ago. Few familiar with the field will doubt the inevitability of these transformations coming within the next 20 years.

Resource revenue sharing is a concept that is timely, relevant, and inevitable. While jurisdictions will vary in their approach, the clarity and strength of Aboriginal land and resource rights ensures that there is an inexorable movement toward the establishment of royalty sharing arrangements with Indigenous peoples and governments. The federal government has included such sharing in modern treaties. Most provinces and territories are on board. Saskatchewan and Alberta, with the

most at stake, are outliers in the process. While these resource-rich provinces are unlikely to shift quickly to the regimes adopted in BC, Labrador, or other jurisdictions, pressure from Aboriginal groups, potentially buttressed by legal challenges and demonstrated through growing resistance to resource development, is going to increase on both Alberta and Saskatchewan to develop strategies that provide greater sharing of wealth, prosperity, and opportunity with Indigenous peoples. Ontario, seriously in need of an economic boost and eager to promote the stalled Ring of Fire development, needs to refine its resource revenue sharing arrangements, in concert with First Nations and the resource companies. Put simply, Aboriginal communities have to be on board for projects to proceed smoothly and efficiently. The variety of Canadian experiences and models with resource royalty sharing makes it clear that creativity and responsiveness to local circumstances is in the cards.

That governments are prepared to share revenue with Indigenous communities is a clear sign of the shortcomings of the long-standing approaches to resource development and the need for new, creative, and more equitable arrangements going forward. As Canada's resource sector continues to expand, and as more communities are affected by regional resource development, revenue sharing demonstrates that the past is not a constraint when it comes to creating new partnerships with Indigenous peoples.

Resource revenue sharing is a concept that is timely, relevant, and inevitable.

Aboriginal Governments and Resource Revenues

For many Aboriginal governments, the first step toward resource revenue sharing is the most difficult: deciding to support resource development and convincing community members that this is in the best interests of the community. In almost any community – Aboriginal or non-Aboriginal – there will be people unalterably opposed to resource development. There will be others who are enthusiastic supporters from the outset. In most Aboriginal communities, the majority are in the middle, eager for the jobs and financial resources that might come but wary about environmental impacts and socio-economic changes that could distort Aboriginal life. Without the measure of influence and control that has been established in recent years, most Aboriginal peoples would see little reason for engaging in the risky business of encouraging development. With assurances of direct benefits – and resource revenue sharing is among the most significant – it is much easier for Aboriginal governments to make the decision to support resource activities.

As a starting point, it is vital that Aboriginal governments understand what is happening across the country. They need to know the nature and extent of revenue sharing and impact and benefit agreements. They need to understand that strong opposition or excessive demands can, as happened with the Ring of Fire projects in northern Ontario, lead to the delay or cancellation of development, with the attendant loss of jobs, business opportunities, and opportunity for their communities. Recognizing how other Aboriginal governments and peoples have shared resource development to suit local needs and learning more about what to expect from companies and governments is a vital precondition, one that many First Nations, Métis, and Inuit communities have already met. Once the decision has been taken to proceed, of course, a new set of concerns and decision points emerge, focusing primarily on how to use the money in the best long-term interests of the Aboriginal people.

Aboriginal governments, most of them dealing with extreme demands on their limited financial and human resources, face pressures to direct available funds to serious situations in housing, education, health care, and local infrastructure. As income from resource revenue sharing increases, chiefs and councillors will be urged to spend the money as it comes in, if for no other reason than that there are critical issues that require urgent attention. In this environment, it is vital that Aboriginal governments think carefully about their alternatives and take a long-term view on the management of what are, after all, finite resources. The problem with resource revenue sharing is that such income is, in the case of non-renewable resources, temporary. The revenues from a mine will decline over time and will stop, often more quickly than people assume. If an Indigenous government has used the revenue for regular government expenditures, the funding will run dry in due course.

The alternative, already in operation in some communities, is to use the resource revenue as an investable asset, a source of capital that the Aboriginal government can use to protect the community's long-term financial well-being. Aboriginal groups with substantial revenue flows have the opportunity to convert short-term development projects and time-limited revenue flows into a foundation for community financial sustainability. This approach is particularly advantageous when Aboriginal groups agree to work together with their investments and business development strategies. In the Yukon, for example, several First Nations have combined with non-Aboriginal investors on real estate and hotel operations, establishing the partnership as a significant player in the region economy.⁸

Aboriginal governments will, in most instances, strike a balance between expenditure and investment strategies. There will be strong political pressures to demonstrate a quick return to the community. But it is vital that these expenditures be limited, while the Aboriginal governments put aside funding for long-term investment. Given the uncertain nature of resource development and the realization that few Aboriginal communities have more than a handful of development opportunities in their region, it is vital that each project be treated as a vital financial asset to be used for the long-term benefit of the community.

SECTION FOUR: NEXT STEPS AND RECOMMENDATIONS

In the classical tradition of Canadian federalism, resource revenue sharing policy is emerging in an ad hoc, uncoordinated fashion. Some provinces have it, the Northwest Territories have it imbedded in land claims and devolution arrangements, and other provinces have declared their resistance to the basic concept. The concept is too new in application to suggest that one approach is ideal or works significantly better than the others. In any case, the amount of money and the duration of the arrangements are dependent on issues well outside the control of Aboriginal people, provincial governments, or even the resource companies, in terms of market demand, global prices, costs of production, and the size and quality of the resource. Expectations established at the outset of an agreement can easily be pushed off course, leading to general dissatisfaction.

However, steps should be taken to entrench, clarify, and improve revenue sharing arrangements, where possible. Specifically, the following measures, most focused on provincial and territorial governments working with Aboriginal communities, seem appropriate:

- Recognize, as some jurisdictions have done in law, through modern treaties, or in practice, that resource revenue sharing is a reality and establish appropriate mechanisms, procedures, and structures to establish an appropriate system.
- Set up resource revenue sharing in full consultation with Aboriginal people, recognizing that the government also has to address the broader public interest and the need for revenue to support general programmatic and administrative responsibilities. Aboriginal resource revenue sharing has limits, to put it simply.
- Develop a hybrid approach between the local and general approach to resource revenue sharing. Use a fixed percentage of the resource revenue to be shared as part of an allocation to all Aboriginal people in the jurisdictions (where existing agreements do not already establish formal mechanisms). It could be for example, that one-third is allocated to a general Aboriginal fund, for distribution to all Aboriginal governments in a particular province or territory. The other two-thirds would be allocated to the Aboriginal community or communities on whose traditional territory the development is occurring.
- There will likely be strong non-Aboriginal resistance to the sharing of resource revenue. The concept of ensuring the Aboriginal people in Canada – the poorest people and the poorest communities in a wealthy nation – share in the prosperity of the country has not been converted into a true national commitment.⁹ Moreover, the idea of having resource money flow directly to the community level, without federal or provincial government intervention, remains a politically challenging proposition. The resistance needs to be addressed in open discussion with Aboriginal people within the jurisdiction, but it is not going to be an easy conversation. Real leadership will be needed at the provincial, territorial, and federal levels.
- Resource companies and the general public need to recognize that resource revenue sharing is not a replacement for the accommodation and collaboration agreements between business and Aboriginal communities signed in recent years, with considerable positive effect. Resource

Steps should be taken to entrench, clarify, and improve revenue sharing arrangements.

revenue sharing is government-to-Aboriginal community in nature and should not affect the resource companies' commitments to training, job provision, community investments, and business opportunities.

- In keeping with the accountability spirit of the times, these resource revenue sharing arrangements should be made public on a regular (annual) basis so that Aboriginal people and the general public understand the degree of financial allocation. Political and legal processes are already moving in this direction. Warning: the money is going to be a fair bit less than people generally believe. This is not a way to quick riches! Some of the sums are substantial, amounting to several hundred millions of dollars over a decade, but the smaller settlements (based on the scale of the resource operation and not the generosity of the company or province/territory) that add \$5 million through a revenue agreement are not going to transform communities with major housing and employment crises.
- The expenditure of the resource revenue funds should be at the discretion of the Aboriginal government to whom they are allocated, and subject to the transparency and accountability provisions established by the Aboriginal community and/or the provincial/territorial and federal governments. These are, to address a contentious point, government resources, deliberately and specifically allocated to Aboriginal governments and carry standard accountability requirements. (This said, Aboriginal governments are being choked by accountability requirements at present, and a streamlining of procedures is urgently required.)
- The country as a whole needs a much better understanding of the cumulative impact of the various resource revenue sharing, accommodations, and modern treaty arrangements. This is not a task for the Aboriginal communities, but rather for an external agency. The sums involved are substantial and will be growing quickly in the years to come. The funds available to Aboriginal governments for investments and programming are already in the billions of dollars, most of it held by development corporations and other collectively managed units. It is vital that Canadians understand that resource companies are already working with Aboriginal communities, that revenue is already flowing into Aboriginal coffers from resource development, and that Aboriginal governments, development corporations, businesses, and individuals are making substantial headway in terms of job and business creation. Prosperity and decent jobs for community members do help with social, cultural, and political problems. Monitoring the impact of resource revenue sharing could be a vital element in convincing politicians and the public at large to support the idea.
- Governments and the private sector should work with Aboriginal communities to develop interest in equity investments in resource development. The funds raised from revenue sharing could be used to purchase a share of resource, infrastructure, or other companies. Aboriginal communities will be under great pressure to spend whatever money they receive quickly, so great are the needs in almost all communities. One hopes, however, that more Aboriginal communities see the funds received through resource revenue sharing as a means of creating long-term wealth and sustained opportunity. The knowledge gained through substantial ownership of sizable firms would also strengthen the hand of Aboriginal leaders in subsequent negotiations with companies and government.
- Resource revenue sharing is not a panacea and it will not solve the problems facing Aboriginal communities quickly or decisively. Like all other panaceas of the past – from community-based economic development to Aboriginal self-government – this measure provides an opportunity for improvements but carries no guarantees. There is, in some Aboriginal quarters, the misapprehension that the funds involved would run into the hundreds of millions of dollars, something that is a rarity in Canada. Furthermore, the resource revenue sharing is, by definition, tied

to the life of the resource project. Even a sizeable short-term return has to be seen as a long-term asset by the Aboriginal community. So, keeping expectations in check will be absolutely essential going forward.

- Aboriginal governments should investigate carefully the possibility of financial collaboration, involving two or more First Nations, in the development of larger revenue and investment pools, using these resources to create the economies of scale needed for more extensive engagement with economic development. There are instances where one community has substantial resources but few development prospects and another with excellent opportunities but few investable assets. The incremental funds under the control of Aboriginal people can be a foundation for collective, Native-driven prosperity.

There is resistance in the country to the idea of Aboriginal people prospering from resource development, particularly where the amount of money is large, as is the case in Alberta and some parts of British Columbia. Canadians will simply have to get used to the concept, in the same way that they have come to accept Alberta's prosperity based on the good fortune to discover massive amounts of oil, gas, and oil sands in the province, or Newfoundland's newfound wealth based on offshore oil. The reality, one that many resource companies have recognized, is that Aboriginal people already play a major role in the resource economy and will do even more in the future. Partnerships are now required, collaboration is inevitable, and consultation is clearly entrenched. Canada might in due course have more prosperous First Nations – the Fort McKay First Nation in northern Alberta owns successful companies and their participation has produced substantial success – an outcome that would be welcome for all of Canada.

How, then, does Canada get to this desirable end? Recent moves by the Government of the Northwest Territories on revenue sharing have established a regime that makes political and financial partnership possible on a sustained and distributed basis. This arrangement is unique to the situation in the Northwest Territories and is not readily transferable to other jurisdictions. British Columbia's approach – lower profile and project-by-project in nature – is practical and politically saleable, avoiding intense provincial debates and providing companies, First Nations, and the provincial government with room to negotiate. The Maritime provinces, without modern treaties and needing a regulatory and legislative regime to govern resource development partnerships, are in the position to use resource revenue sharing to build both new relationships with Aboriginal communities and sizable natural resource economies. To sum up:

The reality is that Aboriginal people already play a major role in the resource economy and will do even more in the future.

- Resource revenue sharing is an important public policy tool that is crucial to the development of stronger partnerships around natural resource development;
- Governments should establish formal policies on resource revenue sharing and should ensure that the concept is well understood by Aboriginal and non-Aboriginal people alike;
- Aboriginal communities should take a long-term, investment-oriented approach to the use of new revenue streams, seeking to build through equity investments rather than using the funds for short-term needs; and
- Governments and Aboriginal people have to move forward in a transparent fashion, ensuring that the non-Aboriginal population understands the processes being followed and the opportunities being created.

Resource revenue sharing is one of the most promising developments in Aboriginal – government relations and Indigenous economic development in recent decades. If the process is handled properly, Aboriginal people in Canada stand to gain the funding they need to build stronger and more resilient economies. This, and the related employment, will strengthen families and communities. Resource revenue sharing honours the word and spirit of historic and modern treaties and, when done appropriately, the requirements of the recent Supreme Court of Canada decisions on the duty of governments and companies to consult and accommodate the needs and interests of Indigenous people and communities. There is an urgent need for new and more sustainable collaborations with Aboriginal peoples in Canada. Figuring out the right way to share resource revenues is a crucial step in the process.

APPENDIX 1: Do not be afraid of wealthy Aboriginal people

In the 1999 *Marshall* decision on Aboriginal fishing rights in the Maritimes, the Supreme Court of Canada declared that First Nations had the right to earn a “moderate income” from the commercial fishery. It was a strange decision, imposing imprecise limits on the earning potential of Indigenous fishers. While the rationale behind the earning limit is unclear, there appears to be a concern about Aboriginal people making too much money.

Indigenous business and political leaders often comment on the non-Aboriginal preoccupation with the incomes of Aboriginal people, whether it is from post-secondary education grants, salaries for chiefs and councillors, or the wealth of successful Aboriginal business executives. Note the nation-wide First Nations’ reaction to the fall 2014 implementation of federal legislation requiring the reporting of incomes for chiefs and councillors, which is a useful public policy tool but which has unleashed a torrent of public criticism of the small number of Aboriginal leaders people believe to be overpaid. This same sentiment shows up, sotto voce, in the discussions about resource revenue sharing. While Canadians are remarkably sanguine about the often-remarkable wealth accruing to real estate speculators, chief executive officers, entrepreneurs, and professional hockey players, they have no shortage of opinions about Aboriginal prosperity, which many imply is unfair and unjust. That the wealth is typically held collectively, rather than individually, also troubles many non-Aboriginal observers, for it runs counter to the dominant Canadian ethos.

Get over it, Canada. Indigenous Canadians are getting a great deal wealthier than in the past. Many of the larger impact and benefit agreements and the most substantial revenue sharing arrangements, like those in the Northwest Territories and Nunavut, already produce hundreds of millions of dollars in cash and other benefits for First Nations and Inuit communities. The country is going to see more of these companies assembling large pools of investment capital, which they will use to purchase land, support businesses, sustain local programming, and otherwise underwrite the work and lives of Aboriginal peoples. If resource revenue sharing succeeds, Aboriginal people will become substantially wealthier. And the best communities, like the most successful non-Aboriginal communities, will use the income to build even greater wealth and regional opportunity.

While Canadians are sanguine about the wealth accruing to real estate speculators, CEOs, and professional hockey players, they have no shortage of opinions about Aboriginal prosperity, which many imply is unfair and unjust.

Aboriginal people will respond differently to the financial and commercial opportunities presented by resource revenue sharing. Some will, no doubt, come to rely on the income from the revenue, using the funds to supplement existing economic activity and government programs. Others will, in the spirit of Osoyoos, Fort McKay First Nation, Membertou, and others, use the funding to launch new businesses, create additional jobs, and drive their community away from reliance on government transfer payments. The basic point is that resource revenue sharing will give Aboriginal peoples a great deal more money than they have at present, providing them with options, opportunities, and more financial autonomy than they have exercised in generations.

Some development corps already have hundreds of millions. Inuvialuit Regional Corporation has more than \$500 million in assets. Athabasca Basin Development has a turn-over of more than \$100 million annually, much of it related to northern resource development.

A decade or two from now, as the number of successful Aboriginal businesses continues to grow, as more communities find their economic feet, and as more Aboriginal people find employment in Indigenous or non-Indigenous owned companies, there is a good chance that the fundamental relationships in this country will change. Wealth, communal or individual, does matter. Prosperity, elusive for generations, could make a real difference in the lives of Indigenous communities. With commercial and professional success, based in part on resource revenue sharing, Aboriginal people will have the opportunity to share in Canada's overall well-being. When this happens – and these processes are already occurring in selected communities across the country – Aboriginal communities will likely have the social, cultural, and financial resources necessary to address the socio-economic challenges that are such a significant part of Indigenous life in Canada.

There is a quid pro quo in this situation. Aboriginal communities can expect push back from Canadians who do not have access to collective wealth, generated by a legal or treaty regime that is not available to non-Indigenous peoples. Put aside for a time questions of legal and political rights and focus on questions of public perception. To some non-Aboriginals, that Indigenous peoples are gaining financial and other resources at the same time that their demands and needs for government assistance are greater than ever, is worrisome. For the system to work going forward, Aboriginal governments are going to have to get comfortable with standard rules on accountability.

APPENDIX 2: Status of mineral-specific government resource revenue sharing (GRRS) arrangements with Aboriginal people in Canadian jurisdictions

| JURISDICTION | GRRS | POLICY/MODEL |
|---------------------------|------|---|
| Yukon | Yes | GRRS is applied through signed land claims (Final Agreements, guided by the Umbrella Final Agreement). A revised arrangement is being discussed between the government and Yukon First Nations |
| Northwest Territories | Yes | GRRS is applied through three signed land claims and an interim resource development agreement between the Government of Canada and Aboriginal communities. An additional GRRS arrangement between the Government of the Northwest Territories, the Inuvialuit Regional Corporation, the Gwich'in Tribal Council, the Sahtu Secretariat Inc., the Tlicho Government, and the Northwest Territory Métis Nation was signed in conjunction with devolution. |
| Nunavut | Yes | GRRS is applied under the Nunavut Land Claims Agreement (NLCA) and through the Resource Revenue Policy under the Nunavut Tunngavik Incorporated (NTI), a body established in 1993 to ensure implementation of the NLCA for the Inuit of Nunavut. |
| British Columbia | Yes | A non-treaty GRRS agreement mechanism exists for mining, as well as the forestry, clean energy, and oil and gas sectors. |
| Quebec | Yes | GRRS is applied through an agreement between the province and the Crees of Quebec. |
| Newfoundland and Labrador | Yes | GRRS is applied through land claim agreements and applies to resource development within defined areas. |
| Alberta | No | The province has not instituted a GRRS model. |
| Saskatchewan | No | The province has not instituted a GRRS model. Some Aboriginal groups are calling for GRRS but the provincial government has indicated that it will not undertake GRRS. |
| Manitoba | No | The province has not instituted a GRRS model. |

| | | |
|----------------------|----|---|
| Ontario | No | The province has not instituted a GRRS model. In 2008, the provincial government announced the implementation of resource benefits sharing, but has not developed a framework. Ontario appears to be examining options on a case-by-case basis for GRRS in the Ring of Fire mineral development area. |
| New Brunswick | No | The province has not instituted a GRRS model. A current tripartite discussion process regarding Aboriginal rights and self-government includes GRRS, and the province is proposing to develop an oil and natural gas royalty regime. |
| Prince Edward Island | No | The province has not instituted a GRRS model. |
| Nova Scotia | | The province has not instituted a GRRS model. It is not evident if GRRS is part of the “Made-in-Nova Scotia Process” underway to address Aboriginal Rights |

Source: Prospectors and Developers Association of Canada, 2014, “Government Resource Revenue Sharing with Aboriginal Communities in Canada: A Jurisdictional Review,” page 5.

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RESOURCE REVENUE SHARING: FURTHER READINGS

The issue of resource revenue sharing is just emerging as a matter of public policy debate. There are a few resources available for those wishing to explore this matter further:

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ENDNOTES

- 1 For further historical information, see Dwight Newman, 2014, *Revisiting the Duty to Consult Aboriginal Peoples*; Dwight Newman, 2009, *The Duty to Consult: New Relationships with Aboriginal Peoples*; Ken Coates and Dwight Newman, 2014, *The End is Not Nigh: Reason over alarmism in analysing the Tsilhqot'in decision*; and Dwight Newman, 2014, *The Rule and Role of Law: The duty to consult, Aboriginal communities, and the Canadian natural resource sector*.
- 2 Note that the agreements are confidential, a situation that may change if proposed federal transparency legislation relating to Aboriginal business activities comes into law.
- 3 The websites of the development corporations provide a good indication of their activities. See Kitsaki at <http://www.kitsaki.com/>; and Des Nedhe at <http://www.desnedhe.com/>.
- 4 See the argument advanced by the Federation of Saskatchewan Indian Nations, 2014, "Treaty Right to Resources."
- 5 The details of the Northwest Territories revenue sharing agreement can be found in <http://devolution.gov.nt.ca/legislation/new-bills/bill-17-northwest-territories-intergovernmental-resource-revenue-sharing-agreement-act> and in the Northwest Territories Intergovernmental Resource Revenue Sharing Agreement (Government of the Northwest Territories et al. 2014).
- 6 This issue is explored in detail in Christopher Alcantara's 2013 book, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada*.
- 7 For background on the agreement see The Aboriginal Justice Implementation Commission, Chapter Four: Treaty Land Entitlement and the North Flood Agreement, available at http://www.ajic.mb.ca/reports/final_ch04.html (Chartrand and Whitecloud 2001). For discussion of the agreements in operation, see Thibault Martin and Steven Koffman, 2008, *Power Struggles: Hydro Development and First Nations in Quebec and Manitoba*.
- 8 One example of this collaboration is Northern Vision Development LP (2014), a Yukon-based company that is 40 percent owned by First Nations.
- 9 This argument is at the root of John Ralston Saul's (2009) *A Fair Country: Telling truths about Canada*.



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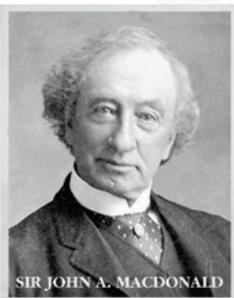
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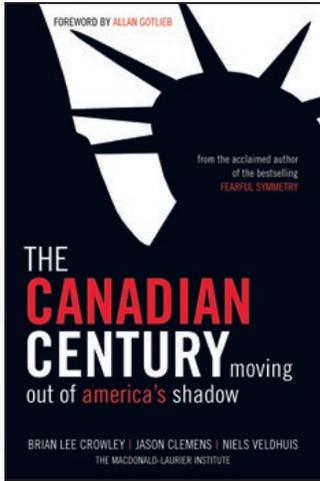
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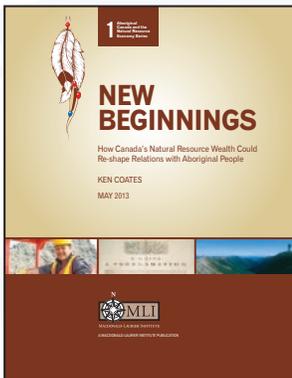


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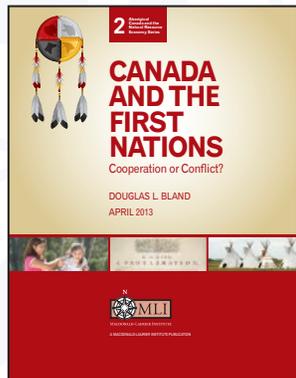
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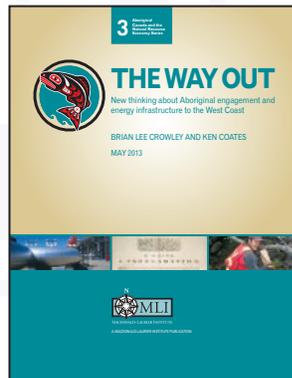
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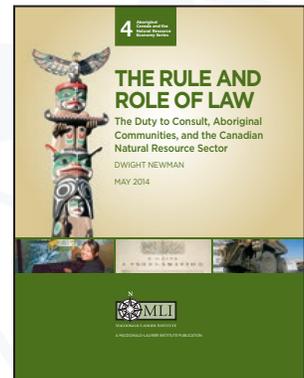
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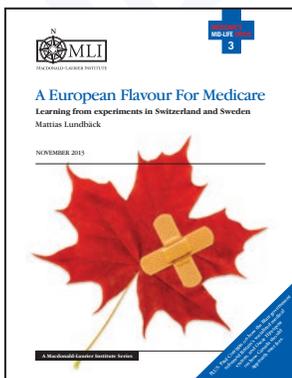
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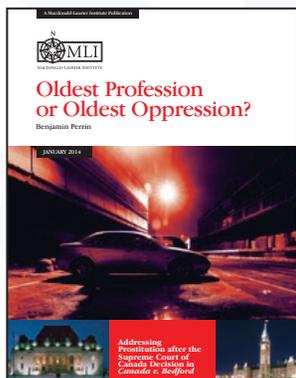
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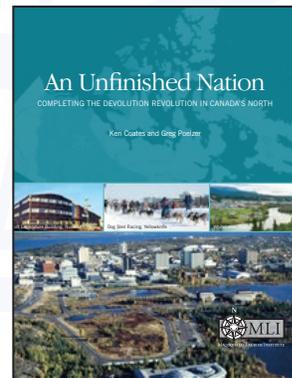
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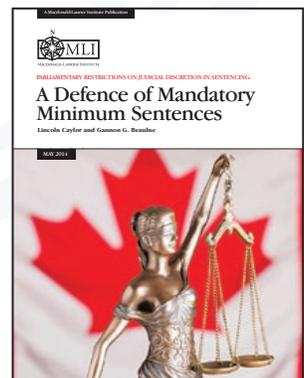
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