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Business Council of  
British Columbia  
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# National Roundtable on Indigenous Access to Capital in Canada: Roundtable Primer

Hosted by Natural Resources Canada

April 27, 2022 – Vancouver, BC

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First Nations Major Project Coalition

# Executive Summary

Natural Resources Canada has convened the National Roundtable on Indigenous Access to Capital on April 27, 2022 in Vancouver, BC to discuss challenges and possible solutions to addressing Canada's waning competitiveness in the natural resource and infrastructure sectors and to develop Indigenous economic prosperity.

The First Nations Major Projects Coalition (FNMPC) and the Business Council of British Columbia (BCBC) have identified six challenges that Canada needs to address:

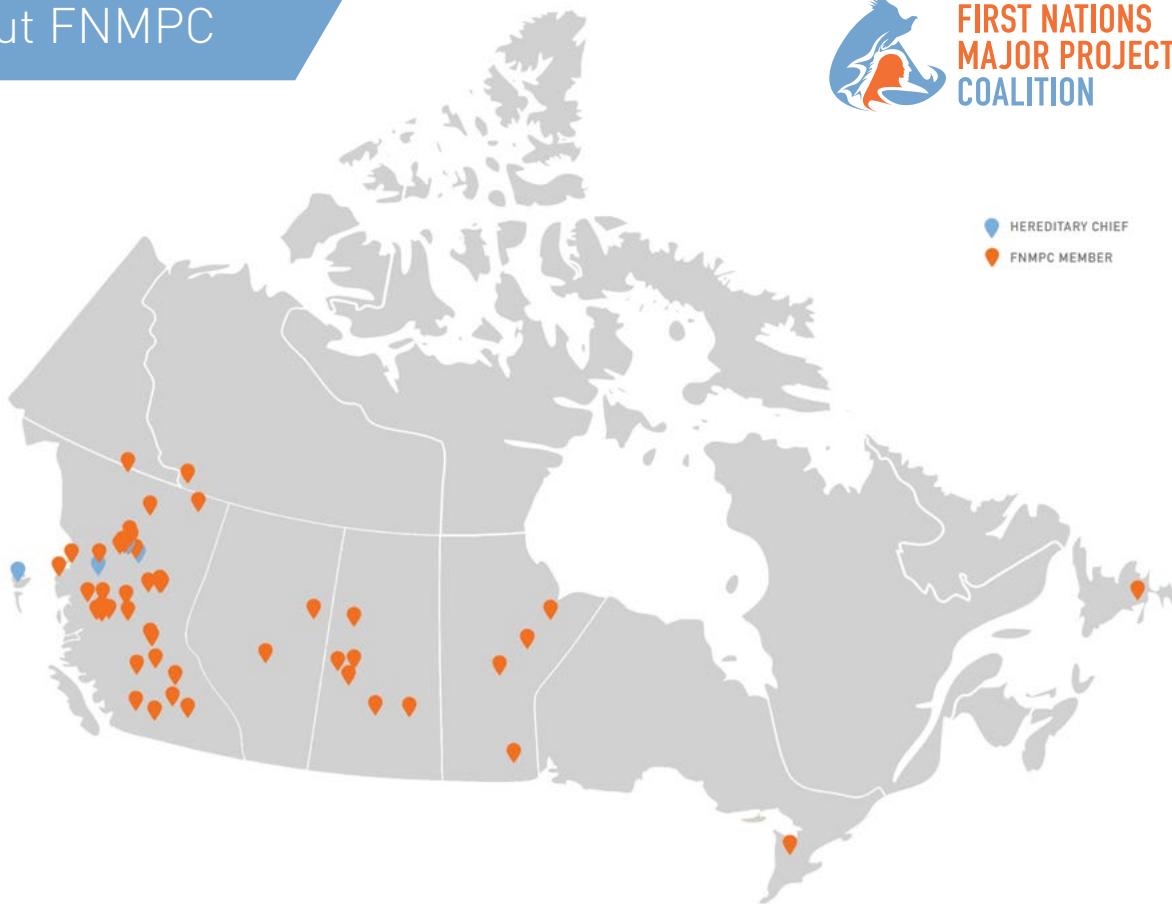
1. Canada's economy is slowing, in part because of uncertainty surrounding new economic projects;
2. Canada is at risk of continued weakened levels of business non-residential investment and worsening capital flight/avoidance. We need to de-risk infrastructure and industrial development projects by addressing Indigenous consent;
3. The *Indian Act* and other factors make it difficult for Indigenous nations to participate fully in the economy as owners of assets and thus from having access to capital, generating own-source income and contributing to the economy;
4. Under Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*, Canada is committed to, but is far from achieving, economic reconciliation with Indigenous nations;
5. Canada has committed to both near term and 2050 greenhouse gas reduction targets, which require new clean energy projects built on Indigenous lands;
6. Canada has a mandate and the budget to develop a national benefits-sharing framework.

Canada can begin to address these problems by building a national Indigenous access to capital program. Specifically, Canada needs to facilitate access to capital for Indigenous nations. This additional support could include three mechanisms:

1. An **Indigenous Infrastructure Bank** that provides **debt** to projects; and
2. An **Indigenous Loan Guarantee Program** that backs Indigenous **equity** purchases into major projects in their Indigenous territories.
3. Indigenous access to **business capacity and negotiation supports** for Indigenous nations at the earliest possible stage of a project.

This primer was commissioned jointly by FNMPC and BCBC in advance of a roundtable hosted by Natural Resources Canada on the development of a National Benefits-Sharing Framework. This primer is intended to raise questions for discussion in advance of the National Roundtable on Indigenous Access to Capital in Canada in Vancouver, BC on April 27, 2022.





The First Nations Major Project Coalition (Canada) is a national 85+ Indigenous nation collective working towards the enhancement of the economic well-being of its members, understanding that a strong economy is reliant upon a healthy environment supported by vibrant cultures, languages, and expressions of traditional laws, and in particular to support members to:

- Safeguard air, land, water and medicine sources from the impacts of resource development by asserting its members' influence and traditional laws on environmental, regulatory and negotiation processes;
- Receive a fair share of benefits from projects undertaken in the traditional territories of its members, and;
- Explore ownership opportunities of projects proposed in the traditional territories of its members.

Notable projects in FNMP's portfolio include:

- » Coastal Gas Link Equity Transaction \$6.6 billion (BC)
- » NeToo Hydropower Project \$300 million (BC)
- » Blackwater Transmission Line \$150 million (BC)
- » Tu-Deh-Kah Geothermal Project \$100 million (BC)
- » LNG Newfoundland and Labrador Project \$7-10 billion (NL)
- » Chatham to Lakeshore Transmission \$150 million (ON)

# Challenges in Canadian Economic Leadership and Indigenous Reconciliation

Canada can boost its economic prosperity, including the building of new clean energy infrastructure to meet *Paris Agreement* commitments, by enhancing the deliberate economic inclusion of Indigenous nations in all aspects of economic development. This approach of Indigenous inclusion relates directly to six main issues in Canada today – each of which are discussed below:

1. Canada's economy is slowing, in part because of uncertainty surrounding new economic projects;
2. Canada is at risk of continued weakened levels of business non-residential investment and worsening capital flight/avoidance. We need to de-risk infrastructure and industrial development projects by addressing Indigenous consent;
3. The *Indian Act* and other factors make it difficult for Indigenous nations to participate fully in the economy as owners of assets and thus from having access to capital, generating own-source income and contributing to the economy;
4. Under Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*, Canada is committed to, but is far from achieving, economic reconciliation with Indigenous nations;
5. Canada has committed to both near term and 2050 greenhouse gas reduction targets, which require new clean energy projects built on Indigenous lands;
6. Canada has a mandate and the budget to develop a national benefits-sharing framework.

## 1. Slowing Canadian Economy

Despite having enormous resources to supply the world and Canadians with energy and materials, Canada's economy is no longer competitive in some important sectors – notably natural resources and infrastructure development – and trend GDP growth is slowing, in part because of low levels of business investment. The Organisation for Economic Co-operation and Development (OECD) has predicted that over the coming decade, and likely beyond that, Canada will be the worst performing advanced economy.<sup>1</sup>

Using the metric of real GDP per capita growth, the OECD has predicted that Canada will place last among advanced countries between 2020 and 2030.<sup>2</sup> With foreign direct investment in Canada down, in part because of COVID-19,<sup>3 4</sup> the Canadian economy has potentially missed an opportunity to raise living standards for Canadians because of the lack of new investment to create the tools, assets and infrastructure necessary to meet global market demand for commodities and other traded goods.<sup>5</sup>

<sup>1</sup> Organisation for Economic Co-operation and Development (2021). "The Long Game: Fiscal Outlooks to 2060 Underline Need for Structural Reform." <https://www.oecd.org/economy/growth/scenarios-for-the-world-economy-to-2060.htm>

<sup>2</sup> Williams, D., Business Council of British Columbia. 14 December 2021. "OECD predicts Canada will be the worst performing advanced economy over the next decade...and the three decades after that". <https://bcbc.com/insights-and-opinions/oecd-predicts-canada-will-be-the-worst-performing-advanced-economy-over-the-next-decade-and-the-three-decades-after-that%20&%20https://bcbc.com/insights-and-opinions/opinion-why-canadas-economic-growth-is-expected-to-be-dead-last-among-advanced-countries>

<sup>3</sup> Statistics Canada. 30 August 2021. "Canada's balance of international payments, second quarter 2021". <https://www150.statcan.gc.ca/n1/daily-quotidien/210830/dq210830a-eng.htm>

<sup>4</sup> Campbell, F. and Hillcoat, B. 30 August 2021. Invest in Canada. "Canada's FDI Numbers for Q2 and the Economic Effects of COVID-19". <https://www.investcanada.ca/blog/canadas-fdi-numbers-q2-and-economic-effects-covid-19>

<sup>5</sup> Finlayson, J. and Peacock, K., Business Council of British Columbia. 18 March 2022. "B.C.'s weak economic plan negating economy's strong rebound". <https://bcbc.com/insights-and-opinions/opinion-b-c-s-weak-economic-plan-negating-economys-strong-rebound>

## 2. Capital Flight/Avoidance and Indigenous Consent

*“Canada must act to support a national strategy on Indigenous capital access. Not doing so will increase investors’ risk in Canada and will lead to trends of capital flight and capital avoidance.”*

- Chief Sharleen Gale, House of Commons Canada, March 2021<sup>6</sup>

Canada is at risk for worsening capital flight and/or capital avoidance. Part of this risk is rooted in widespread uncertainties related to the Crown’s constitutional duty to consult and accommodate Indigenous nations regarding major infrastructure projects. The C.D. Howe Institute has identified a pattern of the Federal Court of Appeal quashing projects because of a failure to adequately consult with Indigenous nations – one prominent example of this is the Northern Gateway Pipeline.<sup>7</sup>

A major risk for Canada is that we remain stuck in this patterned approach to Indigenous nations when it comes to the duty to consult and accommodate on new projects, resulting in worsening capital flight from Canada – or perhaps more aptly, capital *avoidance* - where certain capital never comes to Canada in the first place because of the inability to de-risk Canadian infrastructure. Not only can this affect foreign investment inflows; it can also affect the willingness of Canadian companies to invest in new projects at home.

The expectations of Indigenous nations have now far surpassed the Crown’s duty to consult and accommodate, and has moved to an expectation of informed *consent* by Indigenous nations. The definition of consent continues to evolve based on multiple factors including the quality of the relationship and the details of an opportunity. From the perspective of the FNMP and BCBC, Canada will reduce project uncertainty by demonstrating free, prior and informed consent from Indigenous nations from the outset of a project through ensuring Indigenous nations become co-proponents and/or equity holders of major projects.

## 3. The *Indian Act* and other Factors Prevent Indigenous Access to Capital

The *Indian Act* has long prevented Indigenous nations in Canada from reasonable and competitive access to capital for investment and economic development. The *Indian Act* does allow the Minister to issue certificates of possession of land to an Indigenous person as a potential means to provide collateral.<sup>8</sup> However, the certificates are not suitable as loan/investment collateral since they are not equivalent to a “fee simple interest in land” and thus not seen by lenders as collateral/interest in real property.<sup>9</sup> While there are sometimes resource- and time- consuming legal workarounds to these legislated deterrents, businesses on reserve lands have a formidable disadvantage because of the difficulty/ inability to access secured funding/investment.<sup>10</sup>

The *Indian Act*’s obstruction of Indigenous businesses from raising capital exacerbates other hindering factors, such as the relative remoteness of many Indigenous nations/businesses from economic opportunity and far fewer human and financial resources. In concert, these factors put Indigenous equity investment in new projects at a significant competitive disadvantage.

<sup>6</sup> House of Commons Canada, 11 March 2021, Standing Committee on Transport, Infrastructure and Communities, 2nd Session, 43rd Parliament, <https://www.ourcommons.ca/DocumentViewer/en/43-2/TRAN/meeting-21/evidence>

<sup>7</sup> Bishop, G. and Sprague, G., “A Crisis of Our Own Making” Prospects for Major Natural Resource Projects in Canada” (C.D. Howe Institute, February 2019) at 21-24. [www.cdhowe.org/sites/default/files/attachments/research\\_papers/mixed/Commentary%20534%20Compressed.pdf](http://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary%20534%20Compressed.pdf)

<sup>8</sup> *Indian Act*, RSC 1985, c I-5 at s. 20(1).

<sup>9</sup> Macaulay, D., et. al., 28 January 2010. Bennett Jones. “Indian Property - Lien and Seizure Restrictions”. <https://www.bennetjones.com/Publications-Section/Updates/Indian-Property---Lien-and-Seizure-Restrictions>

<sup>10</sup> Ibid.

The FNMPc has firsthand experience with how these legislative and other factors hinder Indigenous access to capital and make Indigenous project ownership unduly difficult: both the Coastal GasLink Pipeline and the Pacific Trails LNG Pipeline were burdened by difficulty accessing loans and a lack of competitive capital offered by the markets. In the case of the Pacific Trails project, the 11 First Nations who negotiated 30% equity interest, but were forced to release their option back to the proponent in exchange for project benefits worth substantially less than the value of the equity interest. Similarly, the Coastal GasLink Pipeline, which has a 10% equity interest exclusively for the 20 First Nations who are impacted by the project, still requires a financing strategy.

#### 4. Unrealized Indigenous Economic Reconciliation

In 2021, Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act* came into force.<sup>11</sup> This *Act* mirrors the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and Canada's intent to implement the declaration.<sup>12</sup> Notably, the *Act* states that:<sup>13</sup>

*Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*

Canada has not yet realized economic reconciliation with Indigenous nations. As a result of colonial policies, actions and legacies, Indigenous peoples in Canada experience higher levels of poverty than non-Indigenous Canadians: 25% of Indigenous peoples in Canada are living in poverty and 40% of Canada's Indigenous children live in poverty.<sup>14</sup> The Government of Canada's own Community Well-Being Index<sup>15</sup> has for decades reported First Nations communities over 19 points lower than the average well-being score for non-Indigenous communities – cited by Indigenous Services Canada as a “significant gap”.<sup>16</sup> There is a clear need for Canada to address on economic reconciliation with Indigenous peoples.

#### 5. The Immediate Need for New Clean Energy Infrastructure

As a signatory to the *Paris Agreement*, Canada is committed to achieving net zero greenhouse gas emissions by 2050 to address climate change through the energy transition of its economies and industries.<sup>17</sup> In addition to the benefit to the global climate from upholding international commitments, the GDP of the Canadian clean energy sector is expected to grow by 58% between 2020 and 2030.<sup>18</sup> Additionally, the global demand for critical minerals for electric vehicle batteries, wind turbines, solar panels and other equipment and infrastructure to support the clean energy transition is poised to increase exponentially – an area where Canada may fall behind depending in part on federal actions in the near-term.<sup>19</sup> (For a detailed discussion of Indigenous net zero please see the FNMPc's *Indigenous Leadership and Opportunities in the Net Zero Transition*<sup>20</sup>).

<sup>11</sup> Government of Canada. 21 February 2022. “Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act”. <https://www.justice.gc.ca/eng/declaration/index.html>

<sup>12</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, RSC, 2021.

<sup>13</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, RSC, 2021 at s. 20(1).

<sup>14</sup> Canadian Poverty Institute. “Poverty in Canada”. <https://www.povertyinstitute.ca/poverty-canada>

<sup>15</sup> The index is comprised of 4 components (education, labour force activity, income and housing).

<sup>16</sup> Government of Canada. 24 January 2021. “Report on trends in First Nations communities, 1981 to 2016”. <https://www.sac-isc.gc.ca/eng/1345816651029/1557323327644#chp3a>

<sup>17</sup> United Nations Climate Action “The Paris Agreement” <https://www.un.org/en/climatechange/paris-agreement>

<sup>18</sup> Clean Energy Canada, June 2021, “The New Reality” [https://cleanenergycanada.org/wp-content/uploads/2021/06/Report\\_CEC\\_CleanJobs2021.pdf](https://cleanenergycanada.org/wp-content/uploads/2021/06/Report_CEC_CleanJobs2021.pdf)

<sup>19</sup> Li, Y. Y., 8 Jul 2020. Bloomberg Quint. “Electric Vehicles Are Starting to Buoy the Global Metals Market”. [www.bloombergquint.com/technology/the-relentless-march-toward-an-ev-future-is-good-news-for-miners](https://www.bloombergquint.com/technology/the-relentless-march-toward-an-ev-future-is-good-news-for-miners)

<sup>20</sup> von der Porten, S., Podlasly, M., and Csicsai, P., April 2022, “Indigenous Leadership and Opportunities in the Net Zero Transition”, <https://www.fnmpcindustryevent.com/primer2022>

Canada's key to meeting these net zero commitments will be Indigenous nations who can be the difference between success and failure in meeting net zero targets. Net zero projects in Canada will, in most cases, be hosted/built on Indigenous lands/territories, and therefore the balance of risks-benefits must be equitable for Indigenous nations through (1) free, prior and informed consent, (2) the centering of Indigenous nations as decision makers on net zero projects, and (3) the option and fair opportunity for capital access and equity ownership of clean energy projects.<sup>21</sup> Tu Deh Kah Geothermal, to which FNMP is closely connected through our Chair Chief Sharleen Gale, is a good example of a project that meets all these criteria.

## 6. Canada's Mandate and Budget to Develop a National Benefits-Sharing Framework

The Government of Canada has already had the Prime Minister's mandate letters to develop a national benefits-sharing framework since 2019 – letters that explicitly mandated Canada to ensure that Indigenous nations directly benefit from major resource projects in their territories (Table 1).

*Table 1 Excerpts from Canadian Federal Minister's Mandate Letters 2019<sup>22</sup>*

Ministry	Excerpt of 2019 Mandate Letters from Prime Minister Justin Trudeau
Natural Resources Canada	“Work with the Minister of Crown-Indigenous Relations and the Minister of Finance to develop a new national benefits-sharing framework for major resource projects on Indigenous territory.” <sup>23</sup>
Crown Indigenous Relations	“Work with the Minister of Crown-Indigenous Relations and the Minister of Finance to develop a new national benefits-sharing framework for major resource projects on Indigenous territory.” <sup>24</sup>
Finance	“Support the Minister of Crown-Indigenous Relations and the Minister of Indigenous Services in developing a new fiscal relationship with Indigenous Peoples.” <sup>25</sup>

<sup>21</sup> von der Porten, S., Podlasly, M., and Csicsai, P, April 2022, “Indigenous Leadership and Opportunities in the Net Zero Transition”. <https://fnmpc.ca/resources/>

<sup>22</sup> Calla, J., March 2021. First Nations Major Project Coalition. “Improving Access to Capital for Indigenous Groups to Purchase Equity Stakes in Major Resource Projects.” [https://secureservercdn.net/45.40.145.201/14x.5f4.myftpupload.com/wp-content/uploads/2021/04/FNMP\\_C\\_Reviewing\\_Access\\_final.pdf](https://secureservercdn.net/45.40.145.201/14x.5f4.myftpupload.com/wp-content/uploads/2021/04/FNMP_C_Reviewing_Access_final.pdf)

<sup>23</sup> Office of the Prime Minister. 13 December 2019. “Minister of Natural Resources Mandate Letter” <https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-natural-resources-mandate-letter>

<sup>24</sup> Office of the Prime Minister. 13 December 2019. “Minister of Crown-Indigenous Relations Mandate Letter” <https://pm.gc.ca/en/mandate-letters/2019/12/13/archived-minister-crown-indigenous-relations-mandate-letter>

<sup>25</sup> Office of the Prime Minister. 13 December 2019. “Minister of Finance Mandate Letter” <https://pm.gc.ca/en/mandate-letters/2019/12/13/archived-minister-finance-mandate-letter>

The mandate for Canada to do this work is clear, and as of 2020, the Canadian Departments of Finance and of Indigenous Services have signaled an interest in engaging on this framework.<sup>26</sup> The Prime Minister articulated the same theme in the post-2021 election mandate letters issued in December 2021.<sup>27</sup>

*“Continue to develop a new national benefits-sharing framework to ensure that First Nations and Métis Nation communities directly benefit from major resource projects in their territories, and that Inuit communities benefit from major resource projects in Inuit Nunangat.”*

The purpose of this primer and the 2022 National Roundtable on Indigenous Access to Capital in Canada is to further advance and encourage Indigenous leadership and involvement in these mandates.

Further, Canada now has the mandate and the budget to develop a national benefits-sharing framework: Canada's Budget 2022 states that “[i]nvesting in partnerships with Indigenous communities early in the development of resources projects can ensure meaningful opportunities for Indigenous participation, as well as greater certainty for investors”. Canada's Budget 2022 has allocated \$103.4 million over five years to “develop a National Benefit-Sharing Framework, and the expansion of both the Indigenous Partnership Office and the Indigenous Natural Resource Partnerships program.”<sup>28</sup>

*“For Canada, inaction poses a risk to the investment climate, in addition to the stagnation of economic growth that would otherwise see a boost from unlocking new activity. For Indigenous communities, inaction means a continuation of the status quo, no increase to standards of living and no advancement towards achieving self-determination.”*

- Chief Sharleen Gale, House of Commons Canada, March 2021<sup>29</sup>

<sup>26</sup> Hajdu, P. “Indigenous Services Canada Departmental Plan 2020–21”. [https://www.sac-isc.gc.ca/DAM/DAM-ISC-SAC/DAM-CORP/STAGING/texte-text/dept-plan-2020-21\\_pdf\\_1583850140731\\_eng.pdf](https://www.sac-isc.gc.ca/DAM/DAM-ISC-SAC/DAM-CORP/STAGING/texte-text/dept-plan-2020-21_pdf_1583850140731_eng.pdf)

<sup>27</sup> Office of the Prime Minister. 16 December 2021. “Minister of Natural Resources Mandate Letter”. <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-natural-resources-mandate-letter>

<sup>28</sup> Department of Finance Canada. 7 April 2022. “Moving Forward on Reconciliation”. <https://www.canada.ca/en/department-finance/news/2022/04/moving-forward-on-reconciliation.html>

<sup>29</sup> House of Commons Canada, 11 March 2021, Standing Committee on Transport, Infrastructure and Communities, 2nd Session, 43rd Parliament, <https://www.ourcommons.ca/DocumentViewer/en/43-2/TRAN/meeting-21/evidence>

# Three Mechanisms for Discussion

Canada can begin to address the challenges enumerated above by building and implementing a national Indigenous access to capital program that promotes economic participation by Indigenous nations in major projects, including via equity participation. With three mechanisms, and potentially others, Canada can accelerate access to capital for Indigenous nations, businesses and communities. There are at least three mechanisms related to Indigenous access to capital that have promising potential:

1. An **Indigenous Infrastructure Bank** that provides **debt** to projects; and
2. An **Indigenous Loan Guarantee Program** that backs Indigenous **equity** purchases into major projects in their Indigenous territories.
3. Indigenous **business capacity and negotiation supports** for Indigenous nations at the earliest possible stage of a project.

## 1. Indigenous Infrastructure Bank

Canada has already successfully launched a national infrastructure bank: the Canada Infrastructure Bank (CIB) is not Indigenous-specific, but it functions like a typical infrastructure bank, contributing investments “to Canada’s long-term and sustainable economic growth, and support the creation of good, well-paying jobs.”<sup>30</sup> The CIB’s priority sectors (public transit, clean power, green infrastructure, broadband and trade & transportation)<sup>31</sup> fit with Canada’s broad policy objectives, but they are not specific to Indigenous nations.

While the CIB has partnerships with and has allocated funds to support Indigenous nations<sup>32</sup>, Canada has an opportunity to create a purpose-built Indigenous Infrastructure Bank that has characteristics such as:

- » A focus on the priorities and goals of Indigenous nations— including bespoke priorities related to remoteness, which is not the same as national/provincial/territorial priorities.
- » Indigenous advisory in creation, oversight, and funds/debt allocation.
- » Enough monies to meaningfully address Indigenous economic reconciliation.
- » Policy specific requirements specific to Indigenous circumstances, restrictions and legislation.
- » Support from the highest levels of the Canadian Government.

An existing example of Indigenous-dedicated loan support in Canada is the First Nations Finance Authority (FNFA).<sup>33</sup> The FNFA provides “First Nation governments [with] investment options, capital planning advice, and …access to long-term loans with preferable interest rates.”<sup>34</sup> However, an Indigenous Infrastructure Bank would improve on this by being able to provide cash flow for Indigenous infrastructure projects that do not have revenue streams already in place<sup>35</sup> and that do not risk an Indigenous nation’s existing revenues.

<sup>30</sup> Government of Canada. 15 February 2022. “Canada Infrastructure Bank” [www.infrastructure.gc.ca/CIB-BIC/index-eng.html](http://www.infrastructure.gc.ca/CIB-BIC/index-eng.html).

<sup>31</sup> Canadian Infrastructure Bank. April 2022. “New Infrastructure Benefiting Canadians” <https://drdr6d1ec0yd.cloudfront.net/files/Governance/CIB-Partnership-Highlights-04-04.pdf>.

<sup>32</sup> Ibid.

<sup>33</sup> The First Nations Finance Authority (FNFA) is a statutory non-profit organization without share capital, operating under the authority of the *First Nations Fiscal Management Act*, 2005.

<sup>34</sup> First Nations Finance Authority. “About the FNFA” [www.fnfa.ca/en/about/](http://www.fnfa.ca/en/about/).

<sup>35</sup> First Nations Finance Authority. “Eligible Revenues” [www.fnfa.dev4.oracastdev.com/wp-content/uploads/2020/02/Eligible-Revenues-rebranded.pdf](http://www.fnfa.dev4.oracastdev.com/wp-content/uploads/2020/02/Eligible-Revenues-rebranded.pdf).

An Indigenous Infrastructure Bank would also stand apart by being able to support the development/incubation of new or unrealized infrastructure projects. Such support would include:

- » The use of Indigenous organizations that are able to provide business advice and capacity support on an economies of scale or shared services model.
- » Capacity support to make informed business decisions and to aggregate Indigenous interests on linear or large-scale projects.
- » Project lifecycle/negotiation support – a role that the FNMP plays in supporting the commercial interests of its First Nation members.

Finally, an Indigenous Infrastructure Bank could supply Indigenous nations with loans at competitive interest rates for new infrastructure and begin address the six aforementioned challenges (Table 3).

## 2. Indigenous Loan Guarantee Program

An Indigenous Loan Guarantee Program for Indigenous nations would be an important step for Canada to support Indigenous equity purchases of major projects happening within their territories. Typically, purchases are infeasible for most Indigenous nations because of the barriers imposed by the *Indian Act* as well as the aforementioned factors that further inhibit reasonable Indigenous access to capital. A federal-level loan guarantee mechanism would mitigate the high interest rates typically applied by lenders in Canada to Indigenous nations because of these Canadian law and policy constructs.

An Indigenous Loan Guarantee Program could have characteristics such as:

- » A focus on the equity ownership where Indigenous nations become owners or co-owners of infrastructure projects.
- » Indigenous advisory in creation, oversight, and funds/loan allocation.
- » Enough monies to meaningfully address Indigenous economic reconciliation.
- » A focus on Indigenous priorities – including those related to remoteness.
- » Ensuring support for the co-design and development of the business structure under which the equity investment will be made.
- » Support from the highest levels of the Canadian Government.

Three existing examples in Canada of an Indigenous loan guarantee programs include:

Table 2 Existing Indigenous Load Guarantee Programs in Canada

	<b>Alberta Indigenous Opportunities Fund (AIOC)</b>	CCrown Corporation created by of the Alberta Provincial Government, whose investment supports are available for “natural resource projects in Canada that have at least one Alberta-based Indigenous group as an investor”. <sup>36</sup> The AIOC supports Indigenous investments with loan guarantees backed by Alberta.
	<b>Ontario Aboriginal Loan Guarantee Program (ALGP)</b>	ALGP focuses support on Indigenous participation in Ontario for new renewable green energy infrastructure like wind, solar and hydroelectric and other electricity infrastructure projects. <sup>37</sup>
	<b>Saskatchewan Indigenous Investment Finance Corporation (SIIFC)</b>	(In progress) The Government of Saskatchewan introduced new legislation to create the SIIFC which will support Indigenous participation in the province’s natural resource and value-added agriculture sectors. <sup>38</sup>

These three examples (Table 2) of equity support are province-specific and not accessible by Indigenous nations outside of those provinces. An Indigenous Infrastructure Loan Guarantee Program could improve on these Provincial programs by having a national scope, avoiding the displacement of investment capital, and supporting projects earlier in the risk curve. This program could begin to address the six aforementioned challenges in Canada (Table 3).

<sup>36</sup> Alberta Indigenous Opportunities Corporation. <https://www.theaioc.com/>

<sup>37</sup> Ontario Financing Authority. “Ontario Aboriginal Loan Guarantee Program”, [www.ofina.on.ca/algp/faq.htm#p3](http://www.ofina.on.ca/algp/faq.htm#p3)

<sup>38</sup> Government of Saskatchewan, 4 April 2022. “New Legislation to Grow Indigenous Involvement in Saskatchewan Economy”.

<https://www.saskatchewan.ca/government/news-and-media/2022/april/04/new-legislation-to-grow-indigenous-involvement-in-saskatchewan-economy>

Table 3 Challenges Address by an Indigenous Infrastructure Loan Guarantee Program

Identified Challenge in Canada	Indigenous Infrastructure Bank could begin to address this challenge	Indigenous Loan Guarantee Program could begin to address this challenge
Slowing Canadian economy	✓ Yes	✓ Yes
Capital flight/avoidance and Indigenous consent	✓ Yes	✓ Yes
<i>Indian Act</i> and other factors preventing Indigenous access to capital	✓ Yes	✓ Yes
Unrealized Indigenous economic reconciliation	✓ Yes	✓ Yes
Immediate need for new clean energy infrastructure	✓ Yes	✓ Yes
Canada's mandate and budget to develop a national benefits-sharing framework	✓ Yes	✓ Yes

### 3. Business capacity and negotiation supports

Indigenous nations need access to business capacity and negotiation supports at the level required for Indigenous nations to make informed business decisions and to participate in the design of the project and negotiate the structure of the business deal at the earliest possible stage of a project. This capacity/negotiation support mechanism is perhaps the most important when it comes to applying the principles of free, prior, and informed consent to a commercial opportunity. The disparities in the level of business and governance capacity among Indigenous nations varies widely. In many cases, these disparities are large enough for some Indigenous nations to miss an opportunity, or have their interests watered-down, or worse, disregarded, during negotiations.

Indigenous access to excellent business capacity and negotiation supports also builds capacity internally for Indigenous nations and strengthens corporate governance and decision making. It also helps Indigenous nations negotiate a stronger deal based on community interests, reduces risk to all those involved, and maximizes financial returns. A prime example of this is FNMPC's role in facilitating business capacity and negotiation support to 11 First Nations who successfully signed an Option Agreement to purchase up to 10% equity in the Coastal Gaslink Project through a commercial governance body established and controlled by the communities. Indigenous business capacity and negotiation supports also support aspects of the six aforementioned challenges in Canada, most specifically the *Indian Act* and other factors preventing Indigenous access to capital and unrealized Indigenous economic reconciliation.

## Philosophical Shift

The interest of the FNMPC and BCBC in the April 2022 National Roundtable on Indigenous Access to Capital is not only to advocate for these three mechanisms, but to also to encourage a philosophical shift. Such a shift would deemphasize simply upping transfer payments, but rather, would have the goal of delivering a meaningful change in Canada's approach, namely one where:

- » Policy is supportive of Indigenous wealth generation from major projects and treats Indigenous economic prosperity as key to achieving Indigenous self-determination;
- » There is a focus on the opportunity of Indigenous-led projects, not simply the risks;
- » There is well-thought-out policy for the devolution of services to Indigenous nations to administer, thus beginning to correct the social infrastructure deficit (housing, roads, wastewater, etc.) though the wealth generated by equity ownership in major projects;
- » Canada fully employs the legal framework it already has in place to make loan guarantees possible (e.g., Canada's Guarantee of the Guaranteed Debt for Muskrat Falls<sup>39</sup> and/or further leveraging of the Canada Infrastructure Bank for Indigenous projects);
- » In the interest of Indigenous self-determination, any mechanism or program that supports Indigenous access to capital is equitable in meeting the needs of Indigenous nations across Canada, meaning no restrictions on the type or sector of project that could qualify for support;
- » Canada supports Indigenous nations to chart the path that is right for each nation's goals of self-determination, including no restrictions on the *types* of projects that qualify for support;<sup>40</sup>
- » Canada's corporate sector is better equipped to understand what it means to meaningfully engage with Indigenous nations on major projects.
- » Canada embraces the spirit and intent of the *Truth and Reconciliation Commission's Call to Action #92*, and show demonstrable progress toward economic reconciliation

Canada must ground these characteristics of meaningful change to support Indigenous access to capital within a policy framework that is responsive to the urgency and pace of business opportunities and that is not mired in cumbersome bureaucratic regulation.

**The First Nations Major Project Coalition and the Business Council of British Columbia look forward to exploring these matters further with the attendees of the National Roundtable on Indigenous Access to Capital in Canada in Vancouver, BC on April 27, 2022.**

<sup>39</sup> Natural Resources Canada. "Federal Loan Guarantee by Her Majesty the Queen in Right of Canada." <https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www/files/2012-11-29-TL-Churchill-Projects-eng.pdf>

<sup>40</sup> Federal programs should not restrict the types of Indigenous major projects that qualify for loan guarantees and other supports. To adhere to UNDRIP Indigenous right to self-determination, Indigenous nations should be responsible for determining what, if any, categories of major projects should be excluded from these two mechanisms, based on their own values and environmental stewardship.