Institute On Governance

Policy Brief

Policy Brief No. 4
– May 1999

Building Trust:
Capturing the Promise of
Accountability in
an Aboriginal Context

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The Institute On Governance (IOG) is a non-profit organization founded in 1990 to promote effective governance. From our perspective, governance comprises the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern.

Our current activities fall within four broad themes: citizen participation, Aboriginal governance, building policy capacity, and accountability and performance measurement.

In pursuing these themes, we work in Canada and internationally. We provide advice to public organizations on governance matters. We bring people together in a variety of settings, events and professional development activities to promote learning and dialogue on governance issues. We undertake policy-relevant research, and publish results in the form of policy briefs and research papers.

You will find additional information on our themes and current activities on our website, at www.iog.ca

The following policy briefs are also available:

Policy Brief No. 1: Cabinet Decision-Making in Canada: Lessons and Practices
by Mark Schacter (April 1999)

Policy Brief No. 2: Public Good, Private Gain: Senior Bureaucrats and "Exemplary" Companies in Canada, by Mark Schacter (April 1999)

Policy Brief No. 3: Means… Ends… Indicators: Performance Measurement in the Public Sector, by Mark Schacter (April 1999)

Policy Brief No. 5: Youth Involvement in Policy-Making: Lessons from Ontario School Boards, by Elder C. Marques (May 1999)

Policy Brief No. 6: "Building Capacity": A New Way of Doing Business for Development Assistance Organizations, by Mark Schacter (January 2000)

Background

Accountability is central to democratic governments whether in an Aboriginal or non-Aboriginal context. Citizens grant sweeping powers to their political leaders. They entrust them with responsibility for critical decisions about design and implementation of public policy and use of public funds. In turn, citizens want to guard against abuse of these powers. On a more mundane level, they also want to ensure that their political leaders use theirs power wisely, effectively and efficiently, and that they will be responsive to demands by citizens to change the ways in which it carries out its functions. They expect, therefore, that their political leaders will be held accountable for their actions. There are various means for doing so – the news media, parliament and its committees, independent agents such as auditors general and ombudsmen, redress mechanisms and complaints procedures, the judiciary, non-governmental organizations and of course elections or other means of choosing leaders.

The primary accountability relationship in a democracy is between political leaders and their citizens. But another fundamental aspect of accountability is between levels of governments within a country. Usually this accountability relationship is shaped by one level of government providing funds to another through a fiscal agreement to deliver certain programs or services or, more generally, to provide a level of service comparable to other jurisdictions.   The purpose of this policy brief is to address this aspect of accountability and, in so doing, provide help to the eighty or so tables across Canada involved in negotiating self-government agreements. These agreements will need to address this accountability issue head on.

But why is such assistance needed, given the central importance of accountability to all democracies? Surely by now sound principles and procedures should be self-evident? Unfortunately, accountability has an elusive quality to it. Some reasons why -

*   Political leaders and their officials are involved in a wide variety of accountability relationships, all of which are related and with some pulling in opposite directions. Figure 1 illustrates relationships faced by First Nation leaders:

*   Accountability arrangements differ markedly from one system of government to another. For example, approaches to accountability in a presidential-congressional system – with its separation of powers, undisciplined political parties, and a "politicized' public service –

Figure 1
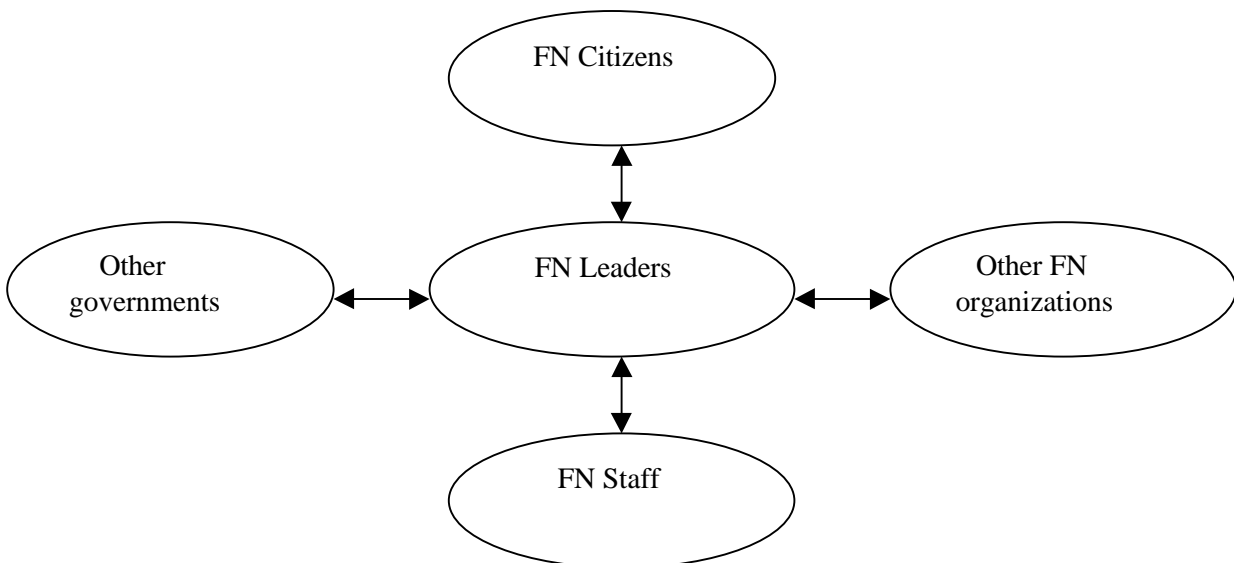
may be inappropriate in a cabinet-parliamentary system.

- Accountability has a cultural aspect to it: in the Netherlands, the frequency of coalition governments - and the attendant need to build cross-party consensus on policies – has influenced the nature of public sector accountability. Statutes are written in general terms on the understanding that political actors will negotiate implementation.

- Finally, accountability regimes must deal with conflicting values. Controls put in place to ensure financial probity, for example, may conflict with efforts to achieve efficiencies or innovation in the delivery of public services. Accountability, therefore, is about achieving appropriate balance among potential conflicting objectives.

One compelling indicator of the elusive quality of accountability is the level of trust and confidence that citizens accord their governmental institutions. Despite significant efforts on the part of all western democracies to add to or improve the array of accountability mechanisms, measures of trust and confidence in public institutions have declined dramatically over the last three decades in Canada, the United States and Europe – just the opposite to what one might have expected[1].

Given the central importance but elusive nature of accountability, how might newly emerging Aboriginal governments attempt to shape their accountability arrangements with other levels of government?

Proposed approaches for shaping new accountability relationships among governments

1. Be clear on what accountability is trying to accomplish

Recent initiatives to improve accountability in the context of Aboriginal governance have been premised on achieving three objectives: greater

transparency, more effective redress and higher degrees of disclosure. But surely these are only intermediate objectives. What is ultimately at stake are longer term goals of sound governance: trust and confidence; legitimacy; equity and fairness; quality public programs. Figure 2 (next page) illustrates the 'logic' of accountability.

The point here is that declining levels of trust should act as an amber light. Could one explanation be poorly designed or poorly used accountability regimes?

2. Manage the relationship and be aware of the interconnections
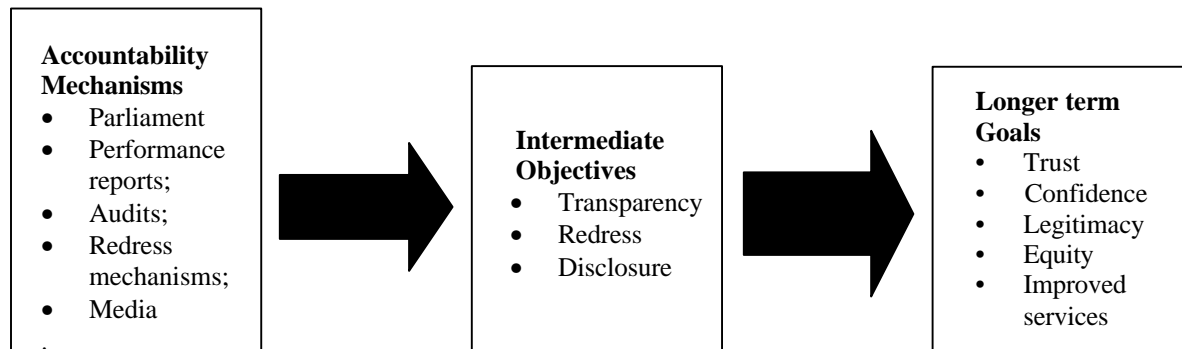
Given the importance and elusiveness of accountability, it is not sufficient for one government simply to provide periodic reports to another with serious discussions occurring only at the expiry of a fiscal agreement. Rather, a serious effort is required on all governments to manage their fiscal arrangements on an ongoing basis. At a minimum this would mean adopting long established practices in the conduct of federal-provincial relations: politicians and officials meet regularly in a series of committees to monitor the relationship, identify emerging problems, undertake joint projects for improving information and data management, and initiate studies to address issues of concern.

In managing this intergovernmental relationship, politicians and their officials will need to understand how relationships among various accountability arrangements work (see figure 1 above). For example, negative media coverage of the grievances of Aboriginal citizens, evidence of waste and inefficiencies, charges of misappropriation of funds – all of these factors will create political pressures on other governments to impose new accountability requirements or tighten existing ones on their Aboriginal partners. On the other hand, the reverse will also apply - the more onerous the conditions at the intergovernmental level, the more difficult it will be to effect sound accountability regimes between Aboriginal governments and their citizens. Balance and good judgement are needed and can best be achieved through ongoing management of these interrelationships.

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[1] See, for example, Neil Nevitte, "The Decline of Deference" , (Broadview Press; 1996); Nye, Zelikov and King, "Why Don't People Trust Government", (Harvard University Press:1997); and The Pew Research Centre, "Deconstructing Distrust: How Americans View Distrust"

.**Figure 2**

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┌─────────────────────┐        ┌──────────────────┐        ┌──────────────────┐
│ Accountability      │        │ Intermediate     │        │ Longer term      │
│ Mechanisms          │        │ Objectives       │        │ Goals            │
│ • Parliament        │   ➤    │ • Transparency   │   ➤    │ • Trust          │
│ • Performance       │        │ • Redress        │        │ • Confidence     │
│   reports;          │        │ • Disclosure     │        │ • Legitimacy     │
│ • Audits;           │        │                  │        │ • Equity         │
│ • Redress           │        │                  │        │ • Improved       │
│   mechanisms;       │        │                  │        │   services       │
│ • Media             │        │                  │        │                  │
│ .                   │        │                  │        │                  │
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3. Take some of the 'negativeness' out of accountability

Accountability carries a negative connotation: control, blame, punishment, culpability are often words used in discussing the outcomes of accountability. Recent commissions of inquiry such as the Krever Commission into the tainted blood scandal and the Somalia inquiry are examples of what appear to be deep-seated urges to fix blame rather than deal with causes. Other accountability mechanisms such as audit reports and the annual reports of other 'watch dog' agencies, while not as extreme as commissions of inquiry in their tendency to highlight culpability, nonetheless come across as negative and critical. These tendencies are aided to a significant degree by competing political parties and the media with their inclinations to amplify criticism.

Developing political systems that are less adversarial is one possible direction to consider. The Government of the North West Territories and the new government of Nunavut are not based on the adversarial party systems so prevalent elsewhere in Canada. And there are many examples internationally of well functioning democracies that rely on more consensual styles of decision-making in comparison to the Canadian system. In short, this appears to be a direction newly forming Aboriginal governments might want to explore.

The role of the news media also warrants consideration. The Institute's Mark Schacter, writing in the Ottawa Citizen, referred to three journalistic "reflexes" that are damaging the

profession's credibility and harming the quality of public life:

❑ Conflict: framing even complex issues in terms of conflict between distinctly opposed positions;
❑ Life as sport: sorting out winners and losers in every situation; and
❑ The reporter as adversary: going on the attack and assuming the worst about public figures and institutions.

He argues that reporters should try more often to emphasize the middle ground – usually where conflict is resolved in Canada – than the extremes; should pay more attention to the line between healthy scepticism about public officials and outright cynicism; and should listen more carefully to more people – not just those who happen to be shouting.

Finally, a more positive, forward-looking connotation to accountability can be built into our definitions of the concept. Returning to Figure 2 above, it would be useful to add the notion of "continuous improvement" to the list of intermediate objectives for accountability regimes. What this might mean in practice are accountability mechanisms such as ethics commissioners and review offices that have the improvement of services, programs or management built into their mandates.

4. Take some of the hierarchy out of accountability

The traditional notion of accountability – premised on the delegation of authority from one party to another – establishes a hierarchical and therefore an uneven relationship. Control, blame

and punishment tend to be natural outcomes of such a relationship.

Some have recognized the problem and are proposing solutions. For example, in a discussion draft of a joint paper by the Office of the Auditor General of Canada and the Treasury Board of Canada entitled "Modernizing Accountability Practices in the Public Sector", the authors propose the following definition of accountability, which suggests a more consensual relationship between the parties: "Accountability is a relationship based on the obligation to demonstrate and take responsibility for performance in light of agreed expectations".

How such a definition might work in practice in a government to government context is illustrated by the recently signed "Social Union Framework", an agreement between the federal government, the ten provinces and the two territories. Among other things, the Framework transforms a one-sided relationship where the federal government distributed funding to the provinces and territories based on a series of conditions to one where there are mutual obligations. For example, all governments, not just the recipient governments, are obligated to "monitor and measure outcomes of [their] social programs and report regularly to [their] constituents on the performance of these programs". Similarly, all governments undertake to have appeal mechanisms for unfair administrative practices and to report publicly on citizen's appeals and complaints.

In the citizen to government context, taking some of the hierarchy out of accountability might mean in practice putting greater emphasis on citizen participation in all aspects of government from developing vision statements to delivering programs. Government becomes not just "for the people" but "by the people" through new forms of partnerships based on mutual obligations.

5. Ensure that Aboriginal governments are fiscally prudent

The mountains of debt accumulated by successive federal and provincial governments over the past two decades and the efforts to deal with chronic deficits have no doubt contributed to the erosion

of trust in government. The level of government that is in the best financial health in Canada is the municipal level – largely because Provinces without exception place strict controls on their borrowing and other financial activities.

Some provinces have developed innovative mechanisms for ensuring the financial health of their municipalities. In British Columbia, the provincial government created in 1970 the Municipal Finance Authority of British Columbia, a statutory body through which regional districts and municipalities finance all long-term capital requirements (the City of Vancouver is the only municipality in the Province which retains the right to issue its own securities to finance capital projects). How this authority is governed and the nature of its functions are described in detail in an Institute study entitled "Exploring Machinery Options in Support of Intergovernmental Fiscal Arrangements". Suffice it to say here that the results of the array of safeguards put in place by this regime include:

❑ Robust fiscal health among all municipalities;
❑ Low borrowing rates (the Authority now has a AAA rating which is higher than that of the Province);
❑ Higher rates of return on short term investments by members; and
❑ Access to other services such as interim financing and attractive leasing arrangements.

With the assistance and encouragement of the Municipal Finance Authority, some 25 First Nations in the province have established an incorporated body called the First Nations Finance Authority. Members have concluded that a legislative base is required in order that their body could establish the type of guarantees and comfort for an investor to parallel those of the Municipal Finance Authority. In the meantime, many of the members have availed themselves of the investment pools established by the Municipal Finance Authority.

Newly forming Aboriginal governments may wish to develop their own version of the Municipal Finance Authority to ensure their long term financial health, a condition that has eluded successive federal and provincial governments

with dramatic consequences. Without such financial health it will be difficult to develop less hierarchical, more positive forms of accountability.

6. Develop effective dispute resolution mechanisms and prevention techniques

Accountability arrangements among governments will be considerably enhanced with effective dispute resolution mechanisms. Canada, thanks in part to considerable experience in crafting claims and self-government agreements, is a world leader in designing dispute resolution systems in an intergovernmental context.

The recent Nisga'a Final Agreement has the most sophisticated dispute resolution system so far designed. (More detail on the three stages that make up this system is contained in the Institute's recent report entitled "Dispute Resolution Systems: Lessons From Other Jurisdictions.) It would be a good starting point for other negotiating tables.

In addition to formal dispute resolution systems, governments can enhance their relationships and ensure more effective accountability – based on more positive, less hierarchical approaches – by adopting a number of preventive measures. These might include the following:

❑ The inclusion in the Financing Agreement of an approach for handling an extraordinary event or circumstance that impairs the financial ability of the First Nation to provide agreed-upon public programs and services;

❑ Avoiding the use of complicated indexing schemes that only experts can comprehend;

❑ The use of joint teams to do research or technical assessments. One area that requires considerable work is developing a series of measures for determining what comparable services might mean in a variety of program areas.

❑ Adoption of a number of procedural rules to ensure there are no "surprises' at the eleventh hour. Examples include:

- Notification before taking action in the case of a default on commitments in the financial agreement; and
- Early notification of new programs or services to be added to any re-negotiated agreement.

Conclusion

Capturing the promise of accountability in crafting new arrangements among governments – arrangements that will lead to trust and the achievement of other longer term goals of sound governance – should rely on the following six approaches:

Building sound accountability arrangements among governments

1. Be clear on what accountability is trying to accomplish

2. Manage the relationship and be aware of the interconnection

3. Take some of the 'negativeness' out of accountability

4. Take some of the hierarchy out of accountability

5. Ensure that Aboriginal governments are fiscally prudent

6. Develop effective dispute resolution mechanisms and prevention techniques