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Innovative Provincial Aboriginal Funding Programs

Presented to:
Manitoba Aboriginal Justice Implementation Commission

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Background

In November 1999, the Manitoba Aboriginal Justice Implementation Commission (AJIC) was established and given the ambitious mandate of developing an action plan for the implementation of the recommendations of the 1991 Report of the Public Inquiry into the Administration of Justice and Aboriginal People. The AJIC has nearly completed its work and intends to bring forward an Action Plan for how the Manitoba Government can substantially respond to the 1991 recommendations.

The AJIC Report will undoubtedly recommend several areas where the Manitoba Government will have to invest money. In view of the current fiscal realities facing all levels of government, identifying new sources and arrangements for the funding of aboriginal programming will be necessary. The intent of this paper is threefold:

- To provide a survey of innovative financing arrangements in place in other provinces;
- To assess these arrangements; and
- To recommend how AJIC might fund the Action Plan arising from its Report.

Introduction

It is most likely that the AJIC recommendations will entail a number of new provincially funded programs designed to implement the Action Plan. The delivery mechanism for these new programs could be a specially designated institution, existing aboriginal institutions, the provincial government or a combination of all three. The broad purpose of this report is to identify methods for funding these new programs.

In this regard, it is instructive to provide a brief overview of how most government programs[1] receive their funding. The usual route runs like this:

- A government department will identify a need for a program to respond to some social or economic issue.
- A program is developed[2] and the amount of funding required is estimated.
- The department will then attempt to identify sources of funding for the new program. This will usually involve examining existing programming to see if funding can be freed up.
- If new funding is required, the department will seek approval from Treasury Board for the program and permission to access new money.
- New money is obtained through the annual budget cycle. Ultimately, though, new funding is obtained by the issuance of government bonds or other methods of obtaining money from the financial markets.
- In all these cases, the funding for a new program is underwritten by taxes levied on provincial residents.
- In some cases there is an indirect relationship between taxes and government programs. In these cases, programs are funded from general revenues.
- In other cases, there is a more direct relationship between revenues sources and programs. Some examples include fuel taxes used to pay for road maintenance and sales taxes used to pay for social services.

In order to obtain new money for a program, a government usually has to rely on its only source – the taxpayer. The new program funding options for provincial governments are general revenues or dedicated revenue sources. The choices made by provincial governments with respect to aboriginal programs are discussed throughout the provincial survey section. Some options for funding the AJIC implementation plan are discussed in the options section.

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[1] Throughout this paper, "program" will be used interchangeably with "initiative" and "activity".

[2] How a program is developed is outside the scope of this paper. Suffice it to say that program development is often a long and complex process sometimes involving either the general public or the targeted group or sector.

Provincial Survey

It is important that the reader appreciates that the following survey is not an exhaustive listing of every program or service that provinces provide to aboriginal communities or people. Previous attempts to create such an inventory have met with limited success and would be of dubious value given the vastly divergent assumptions of the governments, varying economic and social circumstances and different approaches to definitions of both the aboriginal communities and of provincial responsibilities. Also, many provinces offer similar programs (such as, for example, tobacco quotas), but all instances of these are not captured in this paper as which government offers a program is not important to the question of what can be developed for AJIC.[3]

Newfoundland and Labrador

The Government of Newfoundland and Labrador offers few programs to aboriginal residents. There is only one reserve in the province and virtually all aboriginal funding comes from the federal government directly to the band. In Labrador, the Innu and Inuit communities receive direct funding from Canada while the Newfoundland government provides some additional services and programs. In the Labrador Inuit land claims process however, there is provision for the Inuit to receive varying percentages of resource revenues once the land claims agreement comes into force.

Prince Edward Island

PEI also has few programs targeted at aboriginal people. However, as an economic development initiative, the province is providing a rebate on tobacco taxes from sales on the Lennox Island reserve.

Nova Scotia

The Government of Nova Scotia has entered into agreements with ten of the 13 First Nations in the province to share gaming revenues. From a casino in Sydney, 50 per cent of the profit is returned to the ten First Nations among whom the revenues are shared based on their relative populations. In 1999-2000, this arrangement returned approximately $1.5 million to these First Nations.

This agreement also covers Video Lottery Terminals (VLTs) on the reserves of the ten First Nations. Instead of the revenues from the VLTs accruing to the Atlantic Lottery Corporation,

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[3] For the most part this survey does not discuss provisions of treaties or land claim settlements. The benefits arising from such agreements are usually considerable, but would likely not accrue in the absence of a negotiated treaty. Thus, they would have limited application to the task at hand for AJIC.

these revenues go to the First Nations. Both the casino revenues and those from VLTs that are returned to the First Nations are intended to be used by the bands for economic and community development. There are no specific revenue related expenditures beyond economic and community development.

While there was a high-profile case of one reserve's revenues being apparently misdirected, this could be attributed to the normal "growing pains" of a new financial arrangement. The amount of revenues from on reserve VLTs returned to the First Nations is considerable. For example, in 1999-2000, over $15 million was raised for First Nations by VLTs on reserve.[4]

Like some other provinces, Nova Scotia has also established a quota program for on reserve tobacco sales. First Nations are allocated allowable quotas of tobacco for sale on reserve. First Nations can then choose to not collect any taxes thereby making it attractive to purchase tobacco on reserve. The higher sales revenues are a boon to economic and business development. Alternatively, a First Nation could choose to collect a tax (or fee or other surcharge) on tobacco sales and use these revenues for economic or community development.

New Brunswick

This province has struck Forestry Agreements with the 15 First Nations resident in New Brunswick. These agreements have two main aspects:

- Five per cent of the Annual Allowable Cut in the province is allocated to the First Nations and divided among them on a *per capita* basis. The First Nations could harvest the timber themselves creating employment for band members or they could contract the harvesting to companies and use the revenues from the contract for community purposes. The First Nations could also require the contractor to hire an agreed number of band members.
- The province also returns to the First Nations stumpage collected on timber harvested on reserves. Again, this returned stumpage is to be used for community development.

There are no casinos in New Brunswick, but through Gaming and Taxation Agreements, First Nations retain all revenues from other gaming activities on reserve, such as from the sale of break open tickets. New Brunswick has entered into taxation arrangements with six First Nations whereby gas and tobacco sales to Status Indians on reserve are tax exempt. Additionally, the province returns to the bands the provincial tax collected from sales on reserve of gas and tobacco to non-aboriginal people. This latter initiative returns some $2 million to these six First Nations annually. Developed in the mid nineties, this represented the first sharing of provincial tax revenues with First Nation governments.

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[4] Grant Thornton LLP, "Review of First Nations Gaming Commissions: Sources and Uses of Funds Analysis", September 2000. Prepared for the Province of Nova Scotia, Office of Aboriginal Affairs.

New Brunswick has also recently entered into Education Tuition Agreements. Through the normal course of Kindergarten to Grade 12 education funding for Status Indians, the federal government provides funding to bands, which the bands then use to pay tuition for Status Indians attending provincial schools. The innovative aspect is that if a First Nation chooses to place an additional 15 per cent of the tuition amount into a special fund, New Brunswick will match it. These funds would then be allocated for special curricular activities such as cultural training. Moreover, as the federal government has programs for similar activities – such as through the Gathering Strength initiative – the First Nations could access these federal funds for their contribution to the New Brunswick program.

Québec

In 1998, the Government of Québec created the Aboriginal Development Fund (ADF) with the following objectives:

- Improving the socioeconomic conditions of aboriginal persons;
- Supporting economic and community development initiatives that can have a significant impact for the aboriginal people living outside communities or for all the aboriginal people of Québec; and
- Forging closer ties between aboriginal people and Québec's population as a whole.

The province allocated $125 million over five years to two components:

1. Economic development
2. Community infrastructure development

While in many respects the ADF can be considered to be a traditional program in that the source of government funding is tax revenues, there are a few innovations worth discussing. Communities develop their list of priorities and present these to the government. Along with this, the First Nations must identify other funding sources, as Québec will provide only up to 50 per cent of the required funding for any activity proposed by First Nations. This requirement means that the First Nations must rally other partners for the proposed venture. Sometimes that financial partner will be the First Nation itself using funds it either raises or obtains from the federal government. In other cases, the First Nation will seek partners from the private sector, usually for economic development ventures, or with the federal government directly. This provincial requirement, then, effectively doubles the amount of funding available to First Nations from Québec. Gaining federal money would not decrease the dependence on the public purse for aboriginal funding (given that Canada also uses tax revenues as its source of expenditures). However, using the provincial program to leverage private sector investment provides both a risk-sharing partner and additional financial resources for the First Nations' priorities.

In 1999, Quebec and the Kahnawake First Nation signed agreements related to tobacco, petroleum and alcohol products and on fiscal matters related to consumer goods and services. The purpose of the agreements was to resolve outstanding issues relating to Kahnawake jurisdiction and Quebec sales tax compliance problems. The principles elements of these agreements were:

- Provincial sales taxes collected on the three specified products on Kahnawake from non-First Nation citizens would be transferred to the Kahnawake government through a tax collection agreement. This is very similar to the New Brunswick model.
- Kahnawake members would receive a full Quebec PST exemption on purchases made off reserve.
- Kahnawake members were issued "Smart Cards" to track purchases made off reserve.

Like New Brunswick, there is no information with respect to sales tax expenditures by Kahnawake, but this is an example of sharing tax room between First Nation and provincial governments.

Ontario

The Government of Ontario has also developed an aboriginal economic development strategy. The Building Aboriginal Economies Strategy was created in July 1998 to promote aboriginal business development and encourage aboriginal partnerships with the corporate sector that can create long-term jobs and economic opportunities for aboriginal people. The strategy coordinates some 30 programs and services focused on four main areas:

1. Increasing partnerships;
2. Removing barriers;
3. Creating opportunities; and
4. Improving access.

As with the Québec initiative, the Ontario strategy appears to rely on traditional tax sources from general revenues to finance the program and service activities. The strategy encourages private sector participation by, for example, the Working Partnerships Committee comprising members from the corporate sector, aboriginal businesses and other stakeholders. Some of the initiatives under the strategy also involve the federal government thus making use of Canada's funding and expertise.

In June 2000, the Ontario government and representatives of First Nations signed the Casino Rama Revenue Agreement. Through this agreement some $400 million of net revenues from Casino Rama was transferred to a First Nations Fund and future net revenues will also be contributed to the fund. First Nations will share in the fund based on a number of factors including isolation and population and it has been agreed that the First Nations will dedicate their shares to five areas:

1. Economic development;
2. Health;
3. Education;
4. Culture; and
5. Community development.

Saskatchewan

In 1996, The Government of Saskatchewan established a First Nations Fund to receive and distribute net revenues from casinos in that province. Currently there are four First Nation operated casinos and the government-run Casino Regina. Through this initiative 25 per cent of the net revenues from Casino Regina and 37.5 per cent of net revenues from First Nation casinos are contributed to the First Nations Fund. A Board of Trustees of nominees from the Federation of Saskatchewan Indian Nations appointed by government distributes the revenues to First Nations on a formula basis or, sometimes, funding is contributed directly to a program such as child and family services. More recently, an additional 25 per cent of net revenues for casinos on reserve lands is contributed to a First Nation community development fund.

Initially, over $2 million was contributed to the First Nations Fund by the casinos and this has grown to approximately $10 million in 1999/2000. The agreement governing the fund is due to expire on March 31, 2001, but there are discussions underway aimed at extending the program.

Alberta

This province has also developed a program whereby gaming revenues are distributed to First Nations. Very recently on January 19, 2001, Alberta announced changes to its First Nations Gaming Policy. The major difference in First Nations gaming compared with charitable gaming is in the area of slot machines. The Alberta Lottery Fund (ALF) receives 70 per cent of revenues from slot machines. For First Nations, however, nearly 60 per cent of the ALF share (or 40 per cent of the total slot machine revenues) will be allocated to the First Nations Development Fund. This fund will be available to all Alberta First Nations to support economic, social and community development projects, including addictions programs, education, health and infrastructure. There is no estimate on potential revenue at this point. No First Nation casino facility applications have been accepted, nor will be accepted by the Alberta Gaming and Liquor Commission, until after the Gaming Licensing Policy Review is completed later this year.

The First Nation Development Fund will be set up similar to existing lottery-funded foundations (e.g., the Wild Rose Foundation or the Foundation for the Arts).

The Fund would operate under the aegis of Alberta Community Development. Details about the Fund's operating principles, funding guidelines, administration, etc. will be developed by a joint committee of government and First Nations representatives. Committee membership and meeting details have not yet been determined.

In September 2000, Alberta announced a new Aboriginal Policy Framework called "Strengthening Relationships". Specific initiatives under the framework are in development, but it appears that the thrust is to ensure that aboriginal people in Alberta are provided with the same level of services, access to goods and economic opportunities as non-aboriginal Albertans. One method being employed is to make aboriginal issues part of the core business of every line ministry's business plans. This kind of corporate coordination and "ownership" of aboriginal issues across government may lead to innovative ways of conducting and financing aboriginal programs.

British Columbia

The Government of British Columbia has in recent years dedicated most of its effort in respect of aboriginal affairs to the negotiation and settlement of modern day treaties. With 41 treaty tables in active negotiations and the vast majority negotiating at the complex agreement-in-principle stage, observers can expect to see innovative ways to deal with sustaining modern First Nation governments, assuming that the process continues to its natural conclusion.

Like other provinces, British Columbia does not dedicate specific revenues for spending on aboriginal people or programs. There is, however, an example of a "close cousin" to this. Forest Renewal BC (FRBC) is a provincial Crown Corporation tasked with managing the revenues from forestry activities, receiving some 80 per cent of the stumpage paid to government. Through its Forest Communities Business Loan Program, FRBC has been providing funding to two First Nation Community Futures and to the six Aboriginal Capital Corporations to lend to First Nations for economic development activities relating to the forestry sector.

One benefit of this funding that may not be apparent is that First Nations and First Nation businesses can then use the money received indirectly from FRBC to leverage additional resources from the federal Western Economic Diversification program. Also, the program has no sunset date, so it could conceivably continue indefinitely. Nearly 200 loans – over 18 per cent of all loans made through the program – have been to First Nation enterprises.

In 1969, the BC government had a budget surplus and established a few special funds, including the First Citizens' Fund (FCF). An initial $25 million was injected into the FCF with the explicit provision that the capital portion could not be spent, but that the interest earned on the Special Account may be used by the Minister of Aboriginal Affairs who

> … may pay or lend or provide loan guarantees to an amount equal to the interest calculated on and attributable to the balance in the First Citizen's Fund special account for the purposes of advancing and expanding the culture, education and economic opportunities and the position of persons of North American aboriginal ancestry who are ordinarily resident in British Columbia.[5]

[5] Special Accounts Appropriation and Control Act, RSBC, 1996, Ch. 436.

The FCF has four programs within its ambit:

- Friendship Centre Program: Each of the 23 Friendship Centres receives funding to hire Program Directors to coordinate and deliver social and recreational programming in urban areas.
- Student Bursary Program: Aboriginal students in BC can receive up to $2,000 bursaries for post-secondary education based on academic achievement
- Elder's Transportation Program: Grants of up to $1,000 are available to help cover the costs of aboriginal elders to travel to heritage, cultural and educational workshops and conferences.
- Business Loan Program: The FCF provides funding to the All Nations Trust Company which contracts the loan program out to the Aboriginal Capital Corporations in BC. Business loans of up to $75,000 are available for aboriginal-controlled businesses. Under certain circumstances, the FCF will forgive up to 40% of the loan amount.

The FCF has also established the Native Economic Development Advisory Board (NEDAB) with the mission of:

- Providing policy, program and service advice to the provincial ministries; and
- In partnership with the Ministry of Aboriginal Affairs, to ensure that aboriginal economic development initiatives are achieved in an environment of mutual respect and understanding.

NEDAB has eight regional members appointed by the Minister of Aboriginal Affairs for a maximum of three two-year terms. NEDAB does not, however, take part in decisions to fund or not fund activities under the four program areas outlined above.

For the past several years the FCF has generated $2.9 million annually for these activities. Some years more or less interest is generated depending on the markets and the success of investments by the province.

The FCF appears to be the only example in a provincial government where a perpetual fund has been established for the use and benefit of aboriginal people. The source of the capital in the FCF was initially the taxpayers of BC, but over the past 30 years, approximately $68 million has been generated and spent on aboriginal programming in BC from the initial $25 million investment.

The province of BC also shares gaming revenues from Casinos located on First Nation lands with the host First Nation. There are currently four First Nation casinos either in operation or in development in BC. Each "host" local government receives one sixth of the net gaming revenue from the operation.

Assessment of Aboriginal Program Funding Models

From the foregoing, it would seem an obvious conclusion that there are some innovative ways that provincial governments are generating funding for aboriginal programs and services. Those that exist can be described within four types; gaming, tax sharing arrangements, programs requiring partners and perpetual funds. Each of these is described in more detail below and are summarized by province in the table below:

Provincial Funding Methods for Aboriginal Programs – Summary Table

Province	Gaming	Tax Sharing	Partnered Programs	Perpetual Funds
Nfld.		Possibly Resource Revenue Sharing		
PEI		Provincial Tobacco Taxes		
NS	10 of 13 FNs	Provincial Tobacco Taxes		
NB	Agreements with six FNs for gaming activities but no casinos	Stumpage on reserves, Provincial taxes on gas and alcohol	Education programs	
Quebec		Alcohol, tobacco and fuel tax agreement with Kahnawake	Aboriginal Development Fund	
Ont.	Casino Rama Revenue Agreement		Building Aboriginal Economies Strategy	
Manitoba	Casino Arrangements in Development	Provincial tobacco tax revenue sharing		
Sask.	First Nations Fund for all casinos			
Alberta	First Nation Development Fund		Strengthening Relationships	
BC	Four First Nation Casinos	Provincial tobacco tax with one FN	Forest Renewal BC	First Citizens Fund

Before assessing these revenue sources, a critical caveat must be pointed out. The relationship between any of these revenue sources and expenditure requirements is not strong in any province. This is undoubtedly a result of the poorly defined fiscal relationship between provinces, First Nations and the federal government. In particular, there is a great deal of uncertainty with respect to service and financial responsibility between the three governments. This makes it difficult for provinces to specify expenditures, eligibility criteria and financial reporting requirements for any aboriginal program. Clarifying revenue room and expenditure responsibilities between First Nations, provinces and the federal government is a critical first step towards an improved fiscal relationship of which aboriginal justice would be a component. Since processes are already underway to develop a new First Nation fiscal relationship throughout Canada, the foregoing assessment is made in the status quo fiscal environment and not the evolving new fiscal relationship.

Assessing the suitability of these revenue sources for the AJIC depends on two factors. First the method for delivering the recommendations of the implementation plan – new stand alone institution, existing institutions or through existing provincial departments. This is beyond the scope of this paper and would be properly done after the final report had been released anyway. For simplicity assumptions about institutional design will be stated explicitly where relevant. Second, how should the suitability of the revenue sources be assessed? Four criteria have been chosen – long-term sustainability, accountability, political incentives and economic incentives. These are discussed in more detail below.

1. **Long Term Sustainability** - The financial component of the AJIC implementation plan must ensure a long-term funding commitment. To be successful the funding for the implementation plan must be sustainable and certain. Each broad program funding mechanism will be preliminarily evaluated on its certainty, stability and sustainability.

2. **Accountability** - The financial element of the AJIC implementation plan must have a strong accountability process to promote expenditure efficiency. Through time, the elements of the implementation plan will be evaluated on the basis of value of money. The funding mechanism should promote accountability in the full sense of the word – transparency of the implementation's plan objectives and responsibilities and clarity between revenues and expenditures so that the implementation plan can be evaluated as per its performance. Each funding mechanism will be evaluated on the strength of its inherent accountability incentives.

3. **Political Incentives** – The financial component of the AJIC implementation plan must be saleable to the taxpayer. As provincial taxes are falling in many other provinces, new taxes to support the AJIC implementation would have to have an extremely strong business case. It is more likely that the existing Manitoba fiscal system would have to be used more effectively to support the AJIC implementation plan. Each funding source will be subjectively evaluated on its salability to the taxpayer.

4. **Economic Incentives** - The financial component of the AJIC implementation plan must contribute to the fiscal and economic goals of Manitoba. To receive long term and broad public support the implementation plan must demonstrate how it contributes to the long-term economic development of Manitoba. Each revenue source will be evaluated on the basis of how well it promotes economic development in Manitoba? Attached in the appendix is a summary of the fiscal and economic outlook for Manitoba.

Gaming

This is clearly a growing area of revenue sharing between provincial governments and First Nations. Six of the nine provinces surveyed have some sort of gaming revenue sharing arrangement with First Nations. These range from agreements with individual communities to broad revenue sharing arrangements with all First Nations in the province.

To date, gaming revenues represent an impressive new source of own revenues for First Nations. Moreover, the expenditures of these revenues have been largely discretionary. Sharing of gaming revenues to fund the AJIC implementation plan represents an intriguing funding option in the Manitoba context.

There are three casinos in Manitoba: the Crystal Casino, McPhillips Street Station, and Club Regent. All three are located in Winnipeg, and are operated by the Manitoba Lotteries Corporation (MLC). There are also "gaming lounges" which have Video Lottery Terminals (VLTs) instead of table games, at Assiniboia Downs and Rossburn Parkland Downs race tracks. There are also more than 6500 VLTs scattered across the province.

A First Nations Casino Implementation Committee was established June 20th, 2000. The committee ensures that each of the casino proponents meets the criteria and conditions identified by the selection committee. The committee will also be responsible for overseeing the negotiation of operating agreements between each of the proponents and the Manitoba Lotteries Corporation These agreements will confirm and outline the MLC's responsibilities and authority as required by the Criminal Code of Canada and the Manitoba Lotteries Corporation Act and regulations, as well as the Manitoba Gaming Control Act requirements.

Since 1996-1997, the full year's net income from the Manitoba Lotteries Corporation has been transferred into the own-source revenue division of general revenues for the province of Manitoba. In 2000-2001, this amount is estimated at $220 million. The Manitoba Lotteries Corporation states that the money is used to "support priority social programs and local community activities." Under the Manitoba Lottery Corporation Act 1987, Article 6 allowed the Corporation to either transfer profits to the provincial government, or to directly grant funds to groups or individual for cultural, recreational, or other purposes.

Gaming revenue scores quite well in three of the four evaluative criteria. First, it would seem to be sustainable. Gaming revenues have been growing for all provincial governments. Were it not for rising oil prices, they would be the fastest growing revenue source for provincial governments in Canada. This makes using gaming revenues to fund the AJIC implementation plan potentially more saleable to voters. The public would be much more accepting to allocating the growing part of a pie to new programs than a stagnate component and this would allow the government to maintain existing funding levels for other programs. As for economic incentives, gaming revenues increase if there is an increase in gambling either locally or from foreign sources. The preference for Manitoba is to increase the number of foreign gamblers. This would also be the economic incentive for the institution(s) that was implementing the recommendation. Increased tourism, even if it were gamblers, would be good for the Manitoba economy. Of course, given the recent decriminalization of gaming as a revenue source for aboriginal justice recommendation this would represent an ironic situation, especially if the institution(s) implementing aboriginal justice were promoting gambling.

Gaming revenue does not score as well with respect to accountability. In most provinces gaming revenue becomes general revenue and the line of accountability between revenues and expenditures is blurred. Moreover, there is little pressure from gamblers (the actual taxpayers) or the general public for the efficient expenditure of gaming revenues.

In particular, a debate rages as to whether gaming ought to be a source of revenue for government activities. On one hand, gaming revenues can be seen as funds that are voluntarily provided by those choosing to gamble. Alternatively, gaming is a flat tax. Moreover, governments (be they First Nation or public governments) have to come to terms with the ethics of funding programs and services from an activity that some still view as a vice.

Tax and Revenue Sharing Arrangements

Sharing provincial revenue raising room with First Nations and/or dedicating provincial revenue room to particular Aboriginal programs is a relatively recent but growing phenomenon. Although there are only two formal agreements in New Brunswick and Quebec more provinces and territories are showing interest in expanding these arrangements. In particular, New Brunswick, Quebec, Saskatchewan, the NWT and Alberta have all shown some interest in discussing expanded revenue sharing arrangements within their bilateral and trilateral fiscal relationship processes.

Rising interest in tax and revenue sharing arrangements between First Nation and provincial governments is not surprising given the number of provincial interests it could possibly serve. A short list of three possible interests includes:

- Resolve the uncertainty created by undefined Treaty rights and the undefined "economic interest" affirmed by Delgamuukw. Provincial governments have had the legal basis of their jurisdiction over land and resources diluted by recent court decisions. They are seeking to minimize the extent of the First Nation interest and also to define it as precisely as possible so as to provide investment certainty and a basis for long term planning with respect to land use and resource management. Revenue sharing arrangements may be part of the solution to these issues.

- Resolve “offloading” issues. There are a large number of outstanding disputes between the provincial and federal governments with respect to the financing of services for Status Indians. Tax sharing arrangements encourage First Nation economic development and thus migration to First Nation lands. This reduces federal “offloading”
- Reduce First Nation poverty. First Nation poverty is a considerable cost driver on provincial social services such as health and social services. It will grow considerably with First Nation population growth. Revenue arrangements should promote First Nation economic development.

Revenue or tax sharing arrangements as a means to fund the AJIC implementation plan scores well in all four criteria. First tax or revenue sharing arrangements designated for specific programs promotes accountability. Taxpayers know how their money is being used and evaluate the value for their money. This encourages expenditure efficiency and innovation in program delivery. Second, tax and revenue sharing arrangements promote economic development. If the revenue sharing was a consumption tax on-First Nation land for example like New Brunswick and Quebec, then the incentive for the institution(s) is to increase expenditures on First Nation land. If it were a resource revenue arrangement then there is a First Nation or institutional incentive to increase these revenues. To the extent that the taxpayer can be convinced that tax and revenue sharing arrangements will promote economic growth than they will be more saleable to voters. Finally tax and revenue sharing arrangements should be sustainable in the long term as long as provincial fiscal policies are not changed radically.

Tax and revenue sharing arrangements are not without their caveats. To achieve economic development the relationship between the revenue source and improved economic activity or an improved investment climate must be clear. To ensure accountability and service delivery efficiency the relationship between the revenue source and the expenditures must also be transparent. If these two elements of a tax sharing arrangement are present than it will be saleable to taxpayers and this will provide funding certainty.

There is an example of a revenue/tax sharing arrangement in Manitoba with respect to provincial tobacco taxes. In particular all First Nation communities have entered into an agreement with the Minster of Finance regarding tobacco taxes. The agreement stipulates that the First Nation community levies a tax that is exactly the same as the tax under the *Tobacco Tax Act* on retailers. The tobacco wholesaler collects the tax levied and remits the tax to Manitoba Finance. The First Nation obtains copies of the retailers purchases and then the First Nation receives most of the taxes collected by the retailer through a collection agreement with the Ministry of Finance. The First Nation does not receive that portion of the taxes paid by non-First Nations as estimated by the Ministry of Finance. An estimate of the total value of this tax/revenue sharing arrangement was not compiled for this report.

Programs Requiring Partners

As a matter of policy, many of the activities undertaken by provincial governments relating to aboriginal people require federal financial participation. Without exception the provinces view the federal government as having primary – if not exclusive – responsibility for aboriginal people.

From time to time agreements are entered into between the two levels of public government specifying a cost-sharing ratio or areas where each government will provide services or funding to complement the activities of the other. The Aboriginal Development Fund in Québec is an example of a failure to reach such an agreement. The result of this failure is that Québec will only fund up to one-half of a First Nation activity. While the expectation may be that the First Nations will turn to Ottawa for the remaining funding, this may not always be the case. First Nations could turn to the private sector or even to non-government organizations for matching funding.

The effect of requiring partners is two-fold. First, the available funding can be significantly increased above what is available from a provincial government. Second, by requiring the First Nations to seek out and rally partners this approach may leverage funds that might otherwise be overlooked. Moreover, it encourages the building of business and community relationships that may turn out to be more beneficial to the aboriginal community than the original investments. This means that these funds may encourage economic development and may be politically saleable to voters.

On the other hand partnered arrangements blur accountability and do not create strong incentives for innovative service delivery. Secondly, these arrangements provide little stability and security since they depend on the continued mutual interests of two and sometimes three orders of government.

Perpetual Funds

As noted earlier in this paper, the only known perpetual fund (or trust) for aboriginal people in Canada is the BC First Citizens' Fund. The initial infusion of $25 million has generated nearly three times that investment over the past 30 years yet remains undiminished. There are a number of positives to a perpetual fund:

Perpetual funds are stable and sustainable. While subject to the vagaries of the investment market, avoiding volatile stocks and investing in long-term stable companies and bonds can result in a relatively predictable level of funding. With proper management and a proviso that the initial capital not be removed, a fund of this type could continue virtually forever.

Perpetual funds can also be more flexible than other arrangements. Once established, the uses to which the generated revenues could be put can be changed. Enshrining these uses in legislation would provide a degree of certainty while allowing for adaptations should circumstances or priorities change. This level of certainty and flexibility can be augmented by having a resolution of the First Nations as a requirement for both approval of the initial plan and any subsequent changes.

A perpetual fund demonstrates a long term political commitment to the resolving aboriginal justice issues. A provincial government prepared to set up a perpetual fund would be demonstrating a political will to address aboriginal social and economic issues in the long term. By removing many of the vagaries of the annual budget cycle (of course, the legislature would still have to approve the budget) a provincial government would show a commitment that may otherwise change with the rise and fall of different governing parties. It is noteworthy that the First Citizens' Fund has survived radical changes in governing provincial parties in BC over the past 30 years.

Obviously a perpetual fund has some downsides as well. An initial capital investment is required. Even with good management one should not expect a trust to generate more that 10 per cent per annum. So even if a province desired only $10 million per year a trust with an initial infusion of $100 million would be necessary. It is unlikely that Manitoba could make this scale of contribution and it even if it did it would probably not be well received by voters. The relationship between the perpetual fund and encouraging economic development is weak. The funding from the perpetual fund depends on investment decisions that may or may not impact the economic performance of Manitoba.

The table below summarizes the brief subjective evaluation of these funding sources. The evaluation has been divided into three categories; strong means this revenue source passes the criteria in most program design permutations, conditional means this revenue source passes the criteria if delivery mechanisms and program design is appropriate and weak means this revenue source would not pass this criteria in most program design permutations.

Revenue Source	Certainty	Accountability	Political Incentives	Economic Incentives
Gaming	Strong	Conditional	Conditional/Weak	Conditional
Tax/Revenue Sharing	Strong	Conditional	Conditional	Conditional/Strong
Partnered Programs	Conditional	Weak/Conditional	Strong	Conditional
Perpetual Fund	Strong	Conditional/Weak	Conditional	Weak/Conditional

Based on this preliminary analysis the strongest case can be made for tax/revenue sharing arrangements since properly designed this source would pass all the criteria. A business case, however, can be made for these revenue sources and this is described briefly below.

Funding the AJIC Action Plan[6]

The 1991 Inquiry made a number of wide ranging recommendations touching on virtually every aspect of aboriginal life and the relationship between aboriginal and public governments. Aside from the significant political and legal issues raised by an Action Plan for an Inquiry of this nature, there will undoubtedly be a considerable amount of money required.

There are several dimensions to initiatives for aboriginal people that the Commission should consider in determining how best to precede.

First, the place of the federal government should not be overlooked. The Crown has a special fiduciary duty to aboriginal people in Canada. This duty should be explored and articulated in specific, concrete terms – perhaps not exhaustively, but at least in terms of the issues arising in the Action Plan. Conversely, a lack of action or engagement by the federal government should not be permitted to prevent Manitoba from proceeding with the Action Plan. The absence of a federal/provincial understanding amongst Canada and the provinces on roles and responsibilities has sometimes created voids where neither public government was prepared to act. When Québec found that it could not engage Ottawa on the Aboriginal Development Fund, it proceeded anyway but required that provincial funding could only be used for up to one half the cost of an activity. This approach allows an initiative to proceed while maintaining the integrity of a province's legal and political positions.

Second, it must be remembered that the resolution of the problems giving rise to the Inquiry will take many years. They did not occur overnight and no "quick fix" is reasonable or possible. Thus, any program and funding commitments must extend well beyond the usual three to five year window.

Third, the Government of Manitoba does not have an unlimited cache of funds to dedicate to the Action Plan. While this may seem patently obvious, it is important that the Action Plan suggest areas in which existing programs and/or funding could be reprofiled to meet the plan's objectives. One strategy would be to encourage a government-wide focus on aboriginal issues. The Ontario and Alberta experiences intend to broaden the provincial engagement on aboriginal issues to all government departments. In other words, AJIC should encourage the provincial government to make aboriginal issues part of the core business of every line ministry.

Fourth, the context of aboriginal relations is important to be taken into consideration. There has been a considerable move towards increased aboriginal autonomy and self-government in recent years. Laterally, the federal government is proceeding with greatly increased accountability requirements for First Nations. This tension of responsibility and accountability will likely take

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[6] At time of writing, the AJIC Action Plan had not been released, so some of the assumptions underlying this analysis may prove to be misguided once reviewed in the context of the Action Plan.

some time to balance and will not be without errors and restarts. Tax and revenue sharing and related expenditures could play an important role in resolving these tensions. First Nation service responsibilities are expanded by expanding their revenue raising room and this link between revenues and expenditures leads to greater accountability.

Fifth, the tax tolerance of Manitobans is as subscribed as it is likely to be for quite some time. If this is the case, seeking additional taxpayer-funded resources for the Action Plan is unlikely to find a receptive audience.

Finally, there are few investigations that have had as significant an impact on the lives of aboriginal people as the 1991 Inquiry. Many areas require attention; many areas that have been highlighted by First Nations both before and after the Inquiry. As a result short-term responses or those that can be easily and capriciously cancelled probably will not satisfy the expectations of the aboriginal and non-aboriginal communities in Manitoba.

Options

The AJIC has to explore a number of funding options to resource its Action Plan. The two ideas presented below are for meant for discussion between the AJIC and the province of Manitoba.

Option 1: Explore tax and revenue sharing arrangements related to AJIC recommended expenditures.

This is a complicated option to pursue because it touches as the core of the fiscal relationship between First Nations, Aboriginals and other governments. Provinces are reluctant to share their jurisdiction especially to fund programs that they believe are federal responsibilities. The federal government does not wish to expand its financial obligations to First Nations. First Nations and Aboriginals have little trust in processes that may address provincial and federal interests.

As such a three-step approach is recommended based on the experience in other provinces. First explore and understand the interests of the provincial government in an improved First Nation fiscal relationship. Second participate in a process to build an improved First Nation fiscal relationship. Third utilize this new fiscal relationship to implement the AJIC action plan. Each of these steps is discussed below.

Understanding provincial interests with respect to First Nations and Aboriginals illustrates the need for a new fiscal relationship. For example, the province wants to resolve a number of outstanding issues with the federal government about offloading, investment uncertainty, tax treatment of First Nation peoples, investment uncertainty and Aboriginal Economic Development. Specifics issues includes:

- Issues concerning the proper assignment of service responsibilities for people based on their place of residence.

- Issues concerning the extent of federal service responsibilities for Status Indians residing on First Nation lands.
- Issues concerning the quality of services provided by the federal government on First Nation lands.
- Issues concerning the proper cost of services contracted by the federal governments to provincial service agencies.
- Issues concerning the treatment of the exemption for provincial consumption based taxes.
- Issues concerning the cost of First Nation services. First Nation persons tend to be economically disadvantaged. As a result, their average per capita service costs are often significantly higher. This is particularly true with respect to the major provincial cost drivers; health care, education and social assistance. If not corrected, this could greatly exacerbate the expenditure pressures that are already straining the health care system.
- Issues concerning First Nation economic development. The best solution to the issues raised by First Nation demographic pressures is economic development. However, the offloading issues outlined above, an inadequate land base, and jurisdictional uncertainties amongst other things hinder this.
- Uncertainty is created by unsettled claims, disputes regarding Treaty rights, disputes over the meaning of aboriginal title and disputes regarding the future extent of First Nation jurisdiction and territory. This can deter investment particularly with respect to large scale natural resource projects. This is being resolved partially in Manitoba through Treaty Land Entitlements (TLEs). The major issue for TLEs is dealing with the fiscal impacts of adding land to reserves. Creating new First Nation lands causes often complex fiscal impacts on all orders of government – federal, provincial and local. The impacts on the fiscal relationship between provincial and local governments can be particularly complicated.

All of these provincial issues can be resolved through a new fiscal relationship between the province, First Nations and the federal government. Moreover, many of these interests are mutual interest with First Nations and Aboriginals and will likely be reflected in the AJIC implementation plan.

Building a Manitoba process to build a new fiscal relationship and in so doing implement the AJIC Action plan benefits from the experience of similar processes in other provinces. Trilateral fiscal relationship processes – federal, provincial and First Nations - have been established in BC and Saskatchewan. The First Nation element of these processes is usually a provincially mandated representative organization. In Manitoba, the most likely candidate is the Assembly of Manitoba Chiefs in partnership with representatives from off-reserve First Nations and Metis and Aboriginal organizations. The mandate of this process would be to develop an improved fiscal relationship that (a) resolves service responsibility uncertainty, clarifies revenues rooms and establishes a transfer system to ensure service comparability for First Nation and Aboriginal people and (b) implements the AJIC Action Plan. To establish and fund this process a partnered approach between the federal and Manitoba government would have to be developed.

Building this process will not be an easy task but it represents a truly bold step to resolving long-standing First Nation and aboriginal issues and problems. The key will be to demonstrate how a new fiscal relationship benefits First Nations, Aboriginals, Manitoba and Canada. The National Table on Fiscal Relations and provincial processes in Saskatchewan and BC has already done much of this work. Their work to date has relied heavily on the recommendation of the RCAP report. They have clearly demonstrated the demographic, fiscal and economic realities that render the status quo unsustainable and have illustrated how a new fiscal relationship will build the foundation for sustainable First Nation and Aboriginal governments and communities. A Manitoba fiscal process will benefit from reviewing and utilizing the relevant elements of this work.

In particular, the Manitoba process and the AJIC Action Plan could support the work toward establishing relationships between revenues room and expenditure responsibilities. The AJIC Action Plan can begin to clarify this relationship through its recommendations and institutional design.

Since the AJIC Action Plan will likely specify a number of expanded service responsibilities for First Nation and aboriginal institutions, the challenge will be to identify provincial tax or revenue room that can be shared to fund these services. A start has been made with respect to tobacco taxes collected on reserve in Manitoba. For funding the AJIC Action Plan three possible shared revenue sources could be preliminarily considered:

1. Provincial consumption taxes collected on reserve could be expanded like in Quebec and New Brunswick to include fuel and alcohol or eventually to include all provincial taxable products. This revenue source would score well in all the evaluative criteria especially with respect to encouraging economic development on First Nation lands.
2. Revenue sharing from provincial crown corporations could also be considered. Utilizing existing First Nation property tax authority such revenue sharing arrangements could be based on grants in lieu of taxation. Similar grants in lieu of taxation agreements have been established in BC between BC Hydro and First Nations and in Ontario between Bell Canada and First Nations. These models could be applied to Manitoba Hydro for example. This funding source may achieve a number of mutual objectives but to do this it must improve the Manitoba investment climate and increase revenues in other areas.
3. Resource royalty revenue sharing could also be explored. This option is being considered with respect to stumpage fees collected off reserve in New Brunswick and Quebec. In those places, the provincial interest was to create more certainty and improve the provincial investment climate.

4. Broad tax room sharing may be explored. This could include any of the provincial taxes currently collected. The tax room could be shared based on the geographic jurisdiction of First Nations or population, or program requirements. The design of such an initiative should seek to achieve all of the evaluation criteria.

Option 2: AJIC should encourage the Government of Manitoba, the federal government, the private sector and the aboriginal governments and organizations[7] to establish a perpetual trust fund.

The Government of Manitoba has an arrangement with First Nations respecting VLTs on reserve whereby 90 per cent of the revenues accrue to the First Nations. A similar arrangement for on reserve casinos is currently being worked out with the first casino being likely to open in late 2001. Assuming that using gaming revenues to address aboriginal justice issues does not present insurmountable policy and political issues, AJIC should consider encouraging the parties to place a portion of the revenues into the perpetual trust fund.

It will take some time for significant enough gaming revenues to accrue to the perpetual trust fund to make any real progress on addressing the Inquiry's recommendations. An initial investment from the provincial government would speed up the positive outcomes. This would likely require new provincial funding, but some of it may be made available by reprofiling existing aboriginal funding and programs.

The fund ought to be enshrined in legislation, provincial or both federal and provincial. Similarly, consent resolutions of the First Nation and Métis communities should be part of the construction of the trust fund. This approach is not unprecedented: the BC Treaty Commission was established by complementary federal and provincial legislation and by a Consent Resolution of the First Nations Summit. In this way the parties demonstrate a key political commitment to the fund and "lock in" a good degree of certainty. Like any good arrangement, though, the instrument(s) establishing the fund must have an amendment procedure so that the parties can, by consent, change aspects of the fund to meet changing needs and circumstances.

A management committee of aboriginal representatives should be appointed to oversee the use of the investment revenues from the fund within purposes explicitly set out in the legislation/resolutions. Unlike NEDAB in British Columbia, the management committee suggested herein would be a decision-making body. Whether the management committee should take decisions on each and every funding application or whether it ought to only set out the criteria and measure the effectiveness of the initiatives is a question of approach best left to the parties to decide.

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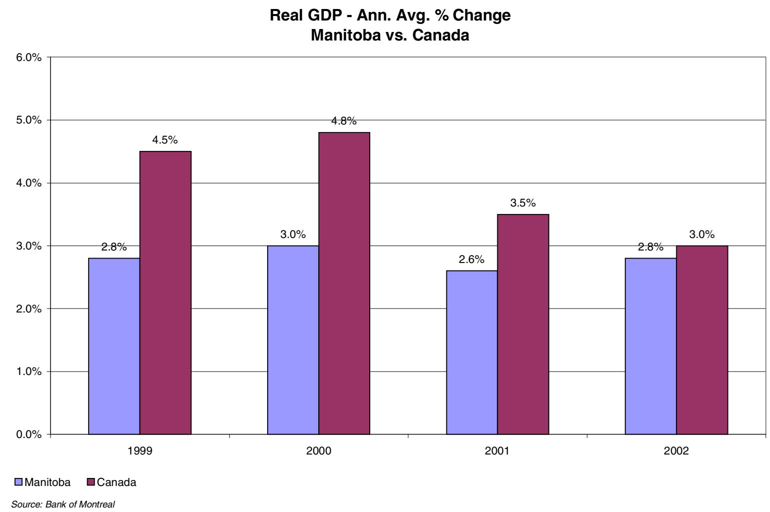
[7] As the Inquiry dealt with issues relating not only to reserve-based First Nations, but also those living off reserve and Métis, the trust fund should be structured to include all aboriginal people residing in the province.

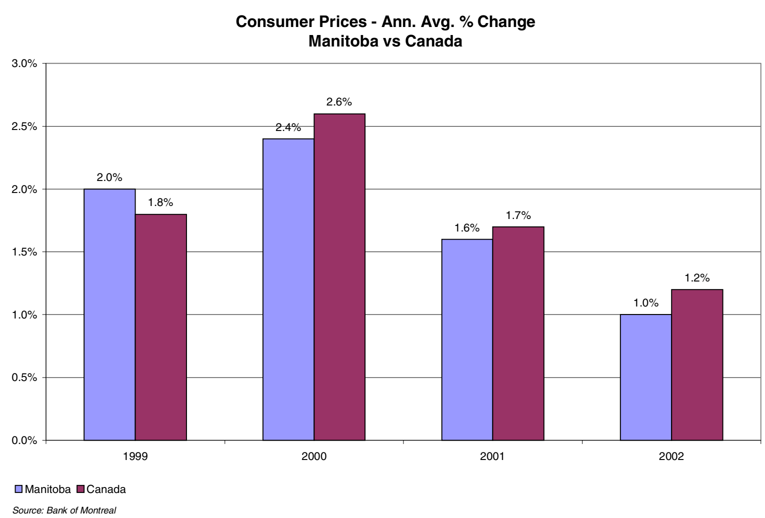
Federal funding would help build the capital base for the fund, but perhaps as importantly will demonstrate a federal commitment to addressing the social and economic conditions of aboriginal people in Manitoba. Perhaps the federal commitment to an aboriginal agenda as expressed in the recent Throne Speech should be capitalized on by AJIC. The other key partner in the perpetual trust fund would be the private sector. If the public governments were to provide some incentives (perhaps tax breaks), the private sector may choose to invest money into the fund. The fund should also permit any person or organization to contribute to its capital base. Of course, First Nations would be permitted to invest their own funding or revenues they receive from – for example – on reserve stumpage (as is the case in New Brunswick).

Appendix A - Manitoba Economic and Fiscal Outlook

In 2000 the Manitoba economy grew faster than it did in 1999, although this growth is predicted to slow over the next two years. Manitoba will continue to lag behind Canada in terms of economic growth, but this spread is predicted to decline as Canadian economic growth begins to slow. Real GDP growth for 2001 in Manitoba is predicted to drop to 2.6% from 3.0% in 2000, and then rebound to 2.8% in 2002. Manitoba will continue to follow behind Canada in terms of economic growth over this period.



The United States accounts for more than 80% of Manitoba's exports, and the economic slowdown south of the boarder is expected to have an adverse effect on Manitoba's economy, with domestic demand not strong enough to pick up the slack. Consumer spending is expected to be weak do to the soft performance of Manitoba's key economic sector, agriculture. The growth in retail sales is also predicted to lag behind the Canadian average, with growth predicted to be 4.3% in 2001, and 4.0% in 2002 compared to 5.4% and 4.7% for all of Canada. Inflation is predicted to remain low for 2001 at 1.6% and dropping to 1.0% in 2002. Only Saskatchewan is predicted to have lower inflation in 2002.



Unemployment in Manitoba is predicted to remain below the Canadian average and hover around 4.5% for 2001. Into 2002 unemployment is predicted to rise to 4.6, but unemployment rates will still remain below the Canadian average, which is predicted to rise from 6.6% in 2001 to 6.8% in

2002. This low unemployment trend is due in part to the relatively slow growth in the provincial labour force. This will gives Manitoba the lowest unemployment rate out of all provinces, although having the second worst job growth rate in 2000.

When ranking provincial fiscal health, Manitoba ranks seventh on the Royal Banks Provincial Fiscal Indicator. Over the last six years Manitoba has been one of the few provinces that has managed to pass surplus budgets. Even so, Manitoba still had the fourth highest Debt to GDP ratio out of all Canadian provinces. In terms of revenues and expenditures, Manitoba ranks six in Canada in terms of total spending and revenues as percentages of GDP.

Provincial Fiscal Indicator

	Fiscal 199/00			Ranking	
	Debt % of GDP	Deficit/(surplus) % of GDP	Index	1999/00	1995/96
ALTA	2.6%	-1.68%	1.00	1	1
ONT	28.6%	-0.16%	2.25	2	4
P.E.I.	33.0%	-0.14%	4.00	3	4
SASK	37.5%	-0.18%	4.25	4	8
B.C.	29.9%	1.00%	4.50	5	2
N.B.	37.8%	0.09%	6.25	6	3
MAN	***43.1%***	***-0.20%***	***6.50***	***7***	***5***
QC	50.2%	0.00%	8.25	8	6
N.S.	49.6%	3.54%	8.50	9	7
NFLD	57.3%	0.28%	9.50	10	9

**the Index is a weighted sum: 3/4 debt, 1/4 deficit/(surplus)*

Source: Royal Bank

Below is a Summary table of key provincial fiscal and economic statistics.

Key Provincial Comparisons

2000 estimates unless otherwise indicated

	Nfld.	P.E.I.	N.S..	N.B.	Que.	*Man.*	Sask.	Alta.	B.C.
Population	539.0	139.0	943.0	756.0	7,368.0	***1,149.0***	1,032.0	3,006.0	4,056.0
Gross Domestic Product ($billions)	13.3	3.2	22.8	19.1	217.9	***32.4***	30.9	123.5	121.9
Real GDP ($92 billions)	12.2	2.9	21.0	16.1	198.2	***29.4***	27.3	108.3	105.1
Share of Canada Real GDP	1.3%	0.3%	2.3%	1.8%	21.5%	***3.2%***	3.0%	11.8%	11.4%
Real GDP Growth (CAR, 92-2000)	3.1%	2.7%	1.9%	2.4%	2.8%	***2.3%***	3.3%	4.7%	2.4%
Real GDP per Capita ($)	22,632.0	20,765.0	22,253.0	22,405.0	26,905.0	***25,590.0***	26,441.0	36,017.0	25,903.0
Real GDP Growth Rate/Capita (CAR, 92/2000)	4.1%	1.9%	1.6%	2.3%	2.4%	***1.9%***	2.9%	2.8%	0.0%
Personal Disposable Income/Capita ($)	16,498.0	16,224.0	17,394.0	17,537.0	18,579.0	***18,839.0***	17,793.0	22,489.0	19,262.0
Employment Growth (CAR, 92-2000)	0.9%	2.0%	1.5%	1.2%	1.5%	***1.3%***	1.0%	2.7%	2.3%
Employment Rate	46.3%	58.1%	55.6%	55.6%	57.9%	***64.9%***	62.8%	68.0%	60.0%
Discomfort Index (Inflation + unemployment)	19.5%	17.4%	12.3%	13.1%	11.0%	***7.6%***	7.4%	8.6%	9.7%
Manufacturing Output (% of Real GDP, 1998)	6.3%	11.4%	11.8%	12.5%	20.7%	***13.3%***	6.3%	9.5%	9.4%
Services Industry Output (% of Real GDP, 1998)	70.3%	74.5%	75.6%	72.2%	66.5%	***70.8%***	61.2%	57.8%	74.9%
International Exports (% of Real GDP, 1998)	32.1%	23.1%	24.9%	31.3%	33.7%	***28.3%***	36.7%	31.0%	27.4%

Source: Royal Bank

Sources of information: *The Royal Bank*, and *Bank of Montreal*