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Do Tripartite Approaches to Reform of Services for First Nations Make a Difference? A Study of Three Sectors.

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Abstract: *First Nations in Canada have developed tripartite arrangements with federal and provincial governments in a range of service areas. Some scholars classify the arrangements as "mere" devolution; others debate whether they mark an emerging, more collaborative Crown/Indigenous relationship. There is also the pressing question of impact. Do tripartite service arrangements promote positive changes for affected First Nations and their members?*

This paper examines the character of these arrangements, as well as their impact on both services and relationships among the signatories. Analysing regional tripartite arrangements concluded over the past decade in First Nations policing, child welfare, and primary/secondary education, it then draws on evaluations, and scholarly and other "grey" literature to identify common challenges and successes. Throughout, the paper seeks to discern potential lessons from the past decade for negotiating and implementing tripartite service arrangements in the future.

"It is time for Canada to have a renewed, nation-to-nation relationship with Indigenous Peoples." The Liberal Party of Canada restored this statement, after almost a decade of disuse, to its 2015 federal election platform. Once in government, it restated this intention in the mandate letters to all federal ministers. Most formally to date, the Department of Justice featured it in the preamble to its set of principles to guide the federal Crown's relationship with Indigenous peoples (Department of Justice 2017).

On its face, the term "nation-to-nation" implies a single, binary relationship of the Indigenous party on the one side and a unified Crown on the other. And yet the current government has devoted much attention to developing regional *tripartite* relationships, which also include provincial/territorial governments. As a recent example, in a January 2018 statement, Minister of Indigenous Services Canada Jane Philpott confirmed that the federal government had established trilateral tables in every province and territory working toward Indigenous service reform. The new department's goal, Deputy Minister Jean-François Tremblay stated, would be to eradicate itself, ceding control of service delivery to Indigenous service organizations. "How do we get there?" he asked. "Doing more tripartite agreements, more self-government agreements, working with [Indigenous service organizations], building institutions and making sure that at some point they will take over those services" (MediaQ, 2018).

Why would nation-to-nation relationships need to be tripartite? Tremblay's statement acknowledges key cultural, legal and political realities on both Indigenous and Crown sides. For one, the constitutional categories of First Nations, Métis, and Inuit encompass over 70 distinct Indigenous nations inhabiting distinct regions of the country. There is no single

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"Indigenous" party. For another, the Crown has been divided since Confederation into two distinct orders (McNeil 2015). While the *Constitution Act, 1867* assigns legal jurisdiction over "Indians and lands reserved for Indians" to the federal government, jurisdiction over many key service areas falls to provincial ones. The nation-to-nation rhetoric is binary, therefore—but the relationships needed to realize it will be many. And in most cases involving service delivery reform, those relationships will necessarily involve two Crown parties in addition to an Indigenous one.

And in fact, Indigenous groups have entered into tripartite arrangements with federal and provincial governments in a range of service areas since the 1970s. Historically, tripartite agreements have varied widely in their goals, scope and complexity. Some, including treaties and self-government agreements, have involved transfers of legal jurisdiction. Others have been administrative, leaving existing legislation, policies, and program authorities intact to focus on improving services within them.

This paper investigates a sub-set of the latter group of tripartite arrangements. Specifically, it investigates time-limited, incremental agreements of regional groups of First Nations, federal, and provincial governments in three service sectors: policing, child welfare and education. The intent is to see whether these agreements helped the parties to achieve their stated objectives—usually improved outcomes, service coordination, and delivery capacity for First Nations—as well as the related objective of improving Crown/Indigenous relationships.[1] Notably, the agreements examined here were concluded from 2006 to 2015, a period that could be called "post-Kelowna." That era was marked by the approach of the Conservative-led federal government, which explicitly rejected the cross-sectoral, multi-jurisdictional sweep of the 2005 Kelowna Accord in favour of temporary, incremental agreements concluded on a regional basis.

Agreements of the kind studied here have received little academic attention to date. As will be seen, the few scholars who have examined them debate whether they mark an overlooked instance of multi-level governance, or simply represent a further variation on the devolution of administration, ongoing since the 1970s. This paper considers that question, while also addressing the crucial question of impacts. Specifically: Did the tripartite agreements negotiated in this period achieve their stated objectives? Did they achieve anything at all? What lessons from the experience of their negotiation and implementation could inform future policy and practice?

The research examined agreements in First Nations policing, child welfare, and education.[2] For each sector, it analyzed both agreements themselves and notable successes and challenges in developing and implementing them. The limited scholarly literature on the topic was helpful for providing a theoretical orientation, especially on the question of

1 The current paper, which represents solely the author's views, was funded by the Department of Indian Affairs and Northern Development (DIAND). The author is grateful for comments received from panel chair Graham White of the University of Toronto at the 2016 annual conference of the Canadian Political Science Association. Thanks are also due to Martin Papillon of the Université de Montréal and Chris Alcantara of Wilfred Laurier University, who shared their own research and insights during the drafting, and to two anonymous reviewers whose comments helped further improve the piece prior to publication.

2 The original research project also investigated a fourth sector: health. The findings were consistent with—and even amplified—those of the other three, but could not be presented here due to space restrictions.

whether the agreements mark an accommodation of First Nations right claims within a federal constitutional framework. Yet that literature proved to be of little help in identifying some of the challenges of implementation, and no help at all on the question of assessing impacts. To gain some understanding of these, the study consulted audits, evaluations, and other publicly available "grey" literature for each sector.

The sector-based sources constitute a limitation in one sense and a strength in another. The limitation was that little of the literature focused on the tripartite approach as such. Lessons of relevance to negotiating and implementing tripartite agreements had to be extracted from discussions of federal programs. And yet the "embeddedness" of the findings in this literature was also a strength—for laying bare some of the typical pitfalls that such agreements encounter once flattened into the constraints of a federal program.

Where the project parameters did not permit key informant interviews to supplement the significant gaps in the available research, this study must be regarded as preliminary. For this reason, it does not map its findings onto a schematic framework of a kind that would presume conclusions more definitive than those attained. And yet again: though they are tentative, the conclusions might help inform not only an agenda for further research but also important policy discussions of what to do—and not to do—when negotiating and implementing tripartite agreements in the future.[3]

Appropriately, the paper proceeds in three parts. The first presents the landscape and character of tripartite arrangements for services to First Nations in these three service areas (I). The second part analyzes specific agreements concluded in the past decade, drawing out any particular successes and challenges arising from the literature in each sector (II). The third part attempts to draw a balance of the achievements and limitations of incremental tripartite approaches in these three sectors, at least as far as the available evidence allows (III). Based on publicly available evidence alone, it was impossible to discern whether these agreements contributed to their goals of improving outcomes, service coordination, and First Nations capacity. And yet there were also clear instances of progress on the institutional and relationship front. In a difficult political environment, some of the agreements acknowledged a right of First Nations to lead in delivery of the service and committed the parties to mutually accountable governance of it.

I. Landscape and Character of Agreements

We turn first to the landscape of the agreements. Its most striking feature is a steadily growing interaction between Indigenous groups and provincial/territorial and local levels of government. From 1995 to 2014, Papillon identified at least 805 bilateral, trilateral, or multilateral agreements concluded between Indigenous governments or organizations and

3 The paper could be seen as supplementary to the 2016 study by Alcantara and Nelles on conditions favouring the emergence of Indigenous/non-Indigenous partnerships in local contexts (2013, 2016), as well as to the original work of Papillon, who was the first to apply the multi-level governance literature to regional Indigenous-Crown bilateral and tripartite agreements in the Canadian federation (2011, 2012, 2015).

provincial governments in a range of sectors (2015, 16; 2011, 303).4 At the local level, Nelles and Alcantara found a marked growth in the number and type of municipal/First Nations bilateral agreements concluded over the course of the past two decades (2011, 326). Set in this context, the Kelowna Accord appears as a large milestone in a pre-existing trend of Indigenous/Crown relationships concluded at regional and local levels.

Why the growth in First Nations/provincial/territorial working agreements? Specific reasons vary by region. One major factor throughout was demographic. The First Nations population is both growing and mobile; increasing numbers of First Nations people obtain services in both provincial jurisdictions and their home communities (Cooke & O'Sullivan 2015, 373–74). Though the federal government still controls funding levels for services provided on reserves, First Nations and regional support organizations have long been responsible for delivering those services themselves. Federal rationales for encouraging such agreements in the 2006–2015 period often focused on the benefits to First Nations of pooling their resources and sharing their expertise with their provincial counterparts. Yet quite apart from efficiency arguments are arguments based on right. As will be seen in these three examples, First Nations have long asserted their right to *govern* the services they provide. This rationale has gained traction since 2006, when both the Calls to Action of Canada's Truth and Reconciliation Commission (2015) and the *United Nations Declaration on the Rights of Indigenous Peoples* (in particular, Article 23) called for Indigenous-led service delivery through their own institutions.

Related to this, a further likely factor has been Section 35 of the *Constitution Act, 1982*. Recent Supreme Court decisions have found that provinces must relate directly with First Nations in matters concerning Section 35 treaty and Aboriginal rights, altering to some extent the longstanding view that the Crown/First Nation relationship is—or ought to be—tended solely by the federal Crown. Pertaining to land and resource projects, the Supreme Court's findings of a provincial Crown obligation may not bear directly on the service areas discussed here; but it does add additional momentum to an approach that favours direct negotiated arrangements with indigenous groups. And indeed, British Columbia—at issue in many Section 35 decisions—is by far the most active jurisdiction in concluding bilateral and tripartite agreements with First Nations. Notably, this holds in social policy sectors as well as land and resource governance (Papillon 2015, 11–12, 16; Kelly 2011, 5–8).

Turning from the general landscape to the character of the agreements studied here, they all shared certain key characteristics. They all:

1. *Involved three parties:* Often (but not always), signatories were federal and provincial ministers and First Nations political representatives. In strictly legal terms, the First Nations signatory might have been an *Indian Act* band

4 Specific to First Nations, Papillon cites close to 150 agreements from 2000 to 2010—more than triple compared to the previous decade. Sectors beyond those examined here include health, economic development, training and employment, housing and infrastructure, land and natural resource management, and social assistance. Notably, Papillon does not distinguish tripartite from bilateral agreements between Indigenous groups and provinces or territories.

(or group of bands) or—for some First Nations service agencies—a society or corporation under provincial or territorial legislation. Yet the First Nations party still negotiated and signed the arrangement as an entity formally distinct from either Crown party.

2. *Entailed two Crown jurisdictions*: For the service areas reviewed here, legal jurisdiction falls to the provinces. Yet Section 91(24) of the *Constitution Act, 1867* assigns exclusive legislative jurisdiction over matters relating to "Indians and lands reserved for Indians" to the federal government. A key purpose of the agreements was to improve service coordination across jurisdictions—on such practical matters as data and information sharing, client tracking and referrals—where roles and accountabilities had long been mired in constitutional ambiguity.

3. *Involved First Nations as key players*: First Nations or their regional support organizations were key signatories to the tripartite agreements reviewed here. Their centrality to the agreements arises from two—partly contradictory—factors. One is devolution, whereby First Nations or regional service organizations receive federal (and, in some cases, provincial) funds to deliver services to their people. The other is self-determination, whereby First Nations have long claimed an inherent right to govern these same services (Papillon 2012).

   As will be seen, the First Nations signatories saw themselves as entering these agreements as the rightful delivery agents with an independent source of authority. Some of the agreements examined reflected this understanding. Others reflected a rationale solely of devolution.

4. *Were negotiated (at least in principle)*: The need for negotiated agreements arose both where First Nations were the primary service delivery agents and where First Nations justifiably could claim a right to govern those services. A third reason—the abject failure of unilaterally imposed services in the past—also loomed large. Historically, the "solutions" of other governments had yielded not only negative outcomes but systematic human rights violations that other governments have since been forced to acknowledge (Truth and Reconciliation Commission of Canada 2015).

   Alongside the rights claim and the practical reality of devolution, therefore, the history of each sector made negotiated approaches to reform imperative. That said, as will be seen, the practice fell far short of meaningful negotiation for several of the agreements reviewed here.

5. *Were non-legislative, temporary agreements*: Based in existing laws, the agreements examined left existing jurisdictions intact. Many were developed under existing policies and program authorities and were set to expire after a fixed period. Most could be altered by written agreement of the parties at any time, or even cancelled by any one signatory.

Such temporary, non-legislative agreements are a subset of a broader set that includes treaties and self-government agreements. And in fact, some earlier policy frameworks presented non-legislative agreements as practical means to advance toward self-government. By contrast to these, most of the federal rationales from 2006 to 2015 called solely for clarified accountabilities within pre-existing policies and authorities.[5]

The shift in emphasis may contribute to a sense that such temporary, non-binding tripartite agreements represent alternatives to self-government. Yet this is not obviously the case. Indeed, it might even be that self-governing First Nations—due to their recognized legal authority (and likely also greater capacity) compared to First Nations under the *Indian Act*—would benefit from agreements of the type discussed here. It is equally possible that such agreements could provide practical milestones on the path to the recognition of First Nations' jurisdiction entailed in self-government agreements.

6. ***Might*** *represent instances of multi-level governance*. Some tripartite arrangements examined here had at least potential to promote multi-level governance, a decision-making process whereby governments engage with "actors embedded in different territorial scales to pursue collaborative solutions to complex problems" (Alcantara and Nelles 2013, 185). Papillon (2011, 2012, 2015) has argued that the negotiated character and mutual accountabilities of such agreements may signal a shift toward more collaborative governing partnerships—in other words, toward co-governance. Others have argued that agreements like these are essentially devolution, "driven less by collaborative processes and more by federal interests in reducing costs and improving the efficiency of service delivery" (Alcantara and Nelles 2013, 185).

   Did these temporary, incremental tripartite agreements promote genuine co-governance of the sector? Could they have? The question becomes of interest in discerning whether agreements can serve as instruments of meaningful reform in a context that prizes First Nations self-determination and nation-to-nation relationships. We return to that question in the concluding section.

II. The Sectors

First Nations policing, child welfare and primary/secondary education: all three sectors feature human services that seek to promote the safety and flourishing of individuals and communities. All three sectors have long been plagued by much poorer outcomes for First Nations people compared to other Canadians. All three have been objects of recent, often

5 See, for example, the language of DIAND's Report on Plans and Priorities for 2007–2008: "To ensure the effectiveness and accountability for the delivery of programs and services, the department must work with First Nations, Inuit and Métis organizations and provinces and territories to ensure clearly defined roles, responsibilities and accountability relationships."

controversial, efforts at reform—especially in the cases of education and child welfare. A fourth shared feature is this: whether Indian residential schools and the RCMP's long involvement with them, the Sixties Scoop, or the persisting high rates of apprehension of First Nations children, the history of these sectors casts a long shadow. Anecdotally, both mistrust and long colonial habit continue to pervade the negotiation and implementation of agreements in all three sectors.[6]

The sectors lend themselves to comparison for the similarities mentioned above, but also for the vast difference in the kinds of agreements that they feature—ranging from MOUs, to service contracts, to formal agreements enabling co-governed tables, new funding, and new First Nations institutions. As such, they mark a good illustration of the wide variety of agreements that tripartite processes can feature.

The analysis turns now to the specific sectors: First Nations policing, child welfare, and primary/secondary education. Negotiated and administered by three different programs in two different departments on the federal side, the federal policy and program context heavily shaped the character of the agreements. For each sector, the discussion first outlines the rationale motivating a tripartite approach. It then presents the agreements concluded within it in the latest period, and finally addresses key successes and challenges arising from the literature for each sector.

First Nations Policing

A mix of legal, political and social factors contributes to the rationale for a tripartite approach to policing First Nations. The *Constitution Act, 1867* assigns authority for administration of justice, including policing, to the provinces. Yet the Constitution also empowers Parliament to establish criminal law and procedures. A national force, the Royal Canadian Mounted Police, enforces federal laws dealing with such matters as border security and organized crime. The RCMP provides policing services under contract to all provinces and territories except Quebec and Ontario. In addition to the federal Crown's jurisdiction over "Indians and lands reserved for Indians," treaty First Nations point to provisions committing First Nations to work with these "Officers of her Majesty" in enforcing their members' adherence to treaty provisions (Office of the Auditor General of Canada, 2011a; Jones et. al. 2014, 25–29).

Up to the 1960s, the federal government accepted primary responsibility for policing on reserves. However, following disputes on various issues, it withdrew the RCMP from policing First Nations in Ontario and Quebec. One commentator characterizes the period that ensued as one of crisis (Clairmont 2006, 14). Following a series of commissions, task forces, and inquiries in the late 1980s, the federal government introduced the First Nations Policing Policy in 1991.

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6 Where litigation and controversy are ongoing, mistrust might be expected to persist for some time to come. In 2016, for example, the Canadian Human Rights Tribunal found discrimination in the funding of First Nations child welfare to be ongoing (2016, at para 473). The tribunal is now also considering complaints filed in the policing sector (CBC News, 2017a). In education, First Nations have long maintained that funding is inequitable and that the current federal system fails to respect their rights (CBC News, 2011), a claim that the federal government has since accepted (MediaQ, 2018).

The policy's goal was to provide First Nations with access to police services that are "professional, effective, culturally appropriate, and accountable to the communities they serve" and that "meet applicable standards with respect to quality and level of service" (Solicitor General Canada 1996, 1; Public Safety Canada 2016a, 2). The 1996 policy—which still applies today—states a second objective: to support First Nations in "acquiring the tools to become self-sufficient and self-governing." Its third objective is to build "a new partnership … based on trust, mutual respect, and participation in decision-making" (3). Tripartite agreements of provincial and federal governments and First Nations or Inuit communities were cited as the favoured instruments for achieving these objectives.

The Agreements

Since 1992, the federal government has concluded tripartite agreements with provincial governments and First Nations councils/governments for delivery of "enhanced" policing services under the First Nations Policing Program. A 2010 evaluation of that program outlines four kinds of agreements it funded. Three are of interest here: *Self-Administered (SA) agreements* commit communities (or regional groups of communities) to managing their own police services under the *Indian Act*. *First Nations Community Policing Services Framework Agreements* are bilateral agreements of federal and provincial/territorial governments that allow for the signing of individual Community Tripartite Agreements within a given region. *Community Tripartite Agreements (CTAs)* are signed by First Nations or Inuit community leaders, provincial or territorial representatives, and federal ones. These agreements commit an existing police service (usually the RCMP) to provide dedicated police officers to a community (Public Safety Canada 2010a).[7] Funding for SAs and CTAs are cost-shared by the federal and provincial or territorial governments at 52/48 percent. Both First Nations and Inuit communities are eligible for funding under the program.

In 2014, 162 First Nations and Inuit communities managed their own policing services under 38 SA agreements—mostly in Quebec and Ontario. The RCMP provided enhanced policing under a further 122 CTAs (Public Safety Canada 2016, 4; Office of the Auditor General of Canada 2014, 2–3). A web search yielded only two published agreements: the 2014 *Framework Agreement for the Use of the RCMP First Nations Community Policing Services (FNCPS) in British Columbia*; and the 2012 *Community Tripartite Agreement* posted by the Ahousaht First Nation. For self-administration agreements, the author obtained the template agreement for the Quebec region from Public Safety Canada.

The 1996 First Nations Policing Policy focused on building First Nations' policing, governance capacity, and mutual partnerships. Despite this, of all agreements reviewed here, the CTA policing agreements *least* resembled a partnership-style arrangement. First Nations were to benefit from the "enhanced services" provided and were to have a role in establishing policing priorities in their communities. Yet after signing agreements with federal and provincial representatives, their main point of interaction was with the

7 There is also a more recent evaluation of the program (2014/15), but the 2009/10 evaluation provides a more detailed description of the different agreements. A few agreements are "quadripartite," which include municipalities in addition to federal, provincial, and First Nations representatives.

provider, usually the RCMP. CTAs also outlined responsibilities of First Nations signatories to establish a Community Consultative Group to interact with the RCMP, though communities received no funds to establish such a group.

Self-administration (SA) agreements were also tripartite, also entailed cost-sharing of 52/48 percent and also funded "enhanced" rather than core police services—though, as will be seen, many disputed that such a distinction could be made (Clairmont 2006, 22; Office of the Auditor General of Canada 2014, 13). The 38 SAs ranged from tiny complements of only a few First Nations officers to the second-largest Indigenous police force in North America, the Nishnawbe-Aski Police Service operating in Northern Ontario.

Parallel to the CTAs, the template SA agreement for the Quebec region (2014) resembled a strict devolution agreement. Its purpose was to maintain a police service for the First Nations delivered by the First Nations provider, with the respective contributions and terms and conditions of service established in advance by Canada and Quebec.

Successes and Challenges

The First Nations Policing Program is the longest-standing tripartite-based program reviewed here. Concluded with individual communities as well as regional groups of them, agreements grew in number from 81 in 1996 to 172 in 2015. Successive evaluations, audits and reviews upheld its tripartite approach as the appropriate one. First Nations police services have suffered high attrition rates, but those that have managed to survive have developed, at least in some cases, mutually beneficial relationships with their provincial and municipal counterparts. The Ontario Provincial Police in particular were noted as relying on the advice and assistance of First Nations forces (Ipperwash Inquiry 2007, 254–55). This benefit is not to be underestimated in crisis situations like Ipperwash and Caledonia.

Despite some real successes, First Nations policing also encountered significant challenges in this period. Those relating to the tripartite approach appear below:

- NEGOTIATION. The 1996 First Nation Policing Policy set an objective of building partnerships with communities through a process featuring trust, mutual respect, and indigenous participation in decision-making. Yet by 2010, First Nations and Inuit participants in the program's comprehensive review stated they had been presented completed agreements—often at the eleventh hour—and told to sign if they wanted the service. Participants found the "negotiation" process disrespectful, and the agreements "inflexible and non-responsive to actual community policing needs" (Public Safety Canada 2010b, 20). The same issue persisted in 2015, when the 2014/15 evaluation found that the program had not engaged communities sufficiently to achieve the objectives of the First Nations Policing Policy (Public Safety Canada 2016a, ii).

- STANDARDS AND MONITORING. The 2009/10 Evaluation found that Public Safety Canada officials focused almost entirely on negotiating agreements, with little attention to the quality of the resulting service or standards by which to measure it (2010a, 17). No funding was provided, nor was the required First

Nations oversight body—police board or community advisory committee—in place in most cases. With no consistent provincial or territorial role in monitoring the service, there appeared to have been little monitoring at all, aside from of monetary and staff inputs (Office of the Auditor General of Canada 2014, 5–8).

- CLARITY OF KEY TERMS. The Auditor General of Canada pointed out that there were vague or no definitions of key terms in CTA and SA agreements—including such fundamental ones as what constituted a "culturally appropriate" service. The agreements also failed to define what constituted "enhanced" versus "core" service, rendering it impossible to discern what kind of service First Nations self-administered police services in fact provided (Office of the Auditor General of Canada 2014).

- FUNDING. First Nations (and at least some provincial) sources agreed that First Nations police services did in fact provide core services but were not compensated to do so. In addition, the five-year contribution agreements (compared, for example, to the 20-year agreements supporting provincial police service counterparts) placed undue strain on First Nations police units (Public Safety Canada 2010a, 18–20; Public Safety Canada 2010b, 19–21). First Nations leaders often expressed concern in the media about the reliability and adequacy of funding. Citing dangerous working conditions, unsafe and underfunded facilities, and inadequate wages, some First Nations threatened to disband their self-administered services altogether (Anishinabek News 2013; Galloway 2014; Galloway and Baum 2016).

- CAPACITY. By most accounts, even well-respected First Nations police forces struggled to establish their capacity and legitimacy, with no additional program funds for achieving a base level of capacity. The lack of capacity funding has plagued the program from the outset, despite the stated purpose of the 1996 First Nations Policing Policy to promote self-government in policing through the program.

As a general point, twenty years after passage of the 1996 First Nations policing policy, few program participants were found even to be aware of its objectives (Public Safety Canada 2016, ii). If one key lesson emerges from the sector, it is how far a tripartite program—as administered in practice—can undermine the initial policy intention that gave rise to it.

By all appearances, however, the current Liberal government is seeking to resurrect that initial policy intention. Following a national stakeholder engagement on policing in Indigenous communities in 2016/17, it reaffirmed its commitment to the program. In January 2018, the Minister of Public Safety announced a federal investment of up to $291 million for the next five-year period, and that his department would seek provincial funding to maintain the 52/48 ratio (Public Safety Canada, 2018). With an April 2018 due date for renewed agreements, a fresh round of negotiations was underway at the time of writing.

Child Welfare

The discussion now turns to child welfare. Section 88 of the *Indian Act* as amended in 1951 states that provincial laws of general application also apply on reserves. For child welfare, the section is interpreted as meaning that provincial/territorial child welfare laws also apply to status Indians living on reserves. The federal government funds services for First Nations children through programs administered by the Department of Indian Affairs and Northern Development (DIAND 2016a).

First Nations, while agreeing that the federal government is responsible for funding First Nations child welfare, have long maintained that they never relinquished authority over the care of First Nations children. In growing alarm over the high apprehension rates by provincial officials in the 1950s and 60s, they pressed for the creation of First Nations-led agencies in a sector beset by funding disputes between federal and provincial authorities (Sinha and Kozlowski 2013, 4). The aim of First Nations to regain governing control of child welfare services figured large in the *Touchstones of Hope*, principles developed in 2005 to "guide a reconciliation process for those involved in Indigenous child welfare activities" (Blackstock et. al. 2006).[8]

From the 1970s onward, federal, provincial and First Nations representatives signed tripartite agreements for child welfare. By 2015, over 300 child welfare agencies were delivering services in First Nations under provincial or territorial law. At least 80 were First Nations-led (Sinha and Kozlowski 2013, 4–5; Assembly of First Nations 2013). In geographic areas where dedicated First Nation agencies did not exist, DIAND funded provincial or territorial agencies or departments to provide the service.

At the time of writing, First Nations child welfare was still funded through the First Nations Child and Family Services (FNCFS) program. A 2011 review of that program stated its rationale. The program

> assists First Nations in providing access to *culturally sensitive* child and family services in their communities, so that services provided to First Nations children and their families on reserve are *reasonably comparable* to those available to other provincial residents in similar circumstances within program authorities. To this end, the program funds and promotes the development and expansion of child and family service agencies *designed, managed and controlled by First Nations.* (DIAND 2011, v: emphasis added)

Though the sector had featured a tripartite approach to service delivery since the 1970s, a 2008 audit by the Auditor General of Canada found that funding models were "generally not tied to the responsibilities that First Nations agencies have under their agreements with provinces" (Office of the Auditor General of Canada 2008, 14). The audit also concluded that the Department did not in fact know whether the services First Nations children received were comparable to provincial services or met provincial requirements.

8 First among the guiding values of Touchstones of Hope is self-determination. The others are commitments to culture/language, a holistic approach, structural interventions, and non-discrimination.

In response, the Department referred to a 2007 agreement with First Nations and Alberta, which funded First Nations agencies to comply with new provincial legislation, providing a 74 percent increase to First Nations agencies' budgets in that province (Office of the Auditor General of Canada 2008, 14, 16).

From 2007 to 2010, DIAND negotiated further agreements in Saskatchewan, Nova Scotia, Quebec, Prince Edward Island, and Manitoba. The agreements enabled First Nation agencies to access new funding under what the department called an Enhanced Prevention Focused Approach (EPFA). As Cabinet approved successive agreements, allocations grew by just under 50 percent from 2006/07 to 2014/15 (DIAND 2018a).

Agreements

The EPFA framework agreements for Alberta (2007), Saskatchewan (2007), Nova Scotia (2008), Prince Edward Island (2009), Quebec (2009), and Manitoba (2010) were available on the Department's website.[9] Signatories were the Minister of DIAND, the relevant provincial ministers, and First Nations regional representatives (often representative organizations, but sometimes regional child welfare service organizations). Agreements were based on a template developed by DIAND, and tailored to regional circumstances. They began with preambles of varying detail and tone, and then outlined shared visions, beliefs, principles and objectives. With the exception of the 2009 agreement for Quebec, all EPFA agreements featured three "core business" lines that the First Nation agencies opting into them were to pursue.[10] With some variation across regions, they also featured goals of coordinating with other service providers, increasing the capacity of First Nation agencies, and enabling culturally relevant child welfare programming. All agreements affirmed a commitment of the parties to work in partnership and meet regularly to discuss progress.

There was also a notable outlier among the EPFA agreements. The 2009 Quebec Partnership Framework for Enhanced Prevention Focused Approach evinced an intention to pursue more robust multi-level governance, as well as self-determination in the sector. Its preamble affirmed that First Nations would lead in both developing and implementing the enhanced services. The three core business lines and the requirement for agencies to submit business plans were notably absent. Instead, the agreement stated that measures of progress would be based on their relevance to—and ease of generation by—First Nations communities. It further outlined the roles and responsibilities of all three signatories, not of the First Nations party only. Finally, the agreement committed the parties to develop a "follow-up committee that will review and oversee the enhanced focus approach." Negotiated

9 Department of Indian Affairs and Northern Development. 2018. "First Nations Child and Family Services." http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205. As of January 2018, links to the tripartite agreements no longer appear on this webpage.

10 The "core business" lines were general: 1. Promoting the development and well-being of First Nations children, youth and families. 2. Keeping First Nations children, youth and families safe and protected. 3. Promoting healthy communities for First Nations children, youth and families.

by the First Nations of Quebec and Labrador Health and Social Services Commission, the Quebec Ministry of Health and Social Services, and DIAND, this agreement reflected an intention to pursue *both* a First Nations lead in service delivery *and* mutual accountability among the three parties.

Successes and Challenges

The EPFA agreements were negotiated under the shadow of litigation. In January 2016, the Canadian Human Rights Tribunal ruled that, despite the reforms they brought, the federal funding model still discriminated against First Nations children; it failed to ensure a service level substantively equal to that provided elsewhere in the province or territory where they were located (Canadian Human Rights Tribunal 2016, at paras 388 and 389). Accepting that decision, then-Minister Carolyn Bennett confirmed that her department would undertake a full-scale reform of the program (DIAND 2016a). That task has since fallen to Indigenous Services Canada, which—in February 2018—responded to the Tribunal's fourth compliance order to implement its remedial actions (DIAND 2018b).

To inform the next round of reform, key lessons arising from evaluations of the past round—that of negotiating and implementing EPFA agreements since 2007—might be of some help:

- COLLABORATION. One intended goal of the tripartite EPFAs was to improve the collaboration of First Nations child welfare agencies with their counterparts off-reserve. Some saw this beginning at the negotiating tables, yet in many cases the collaborative relationships appear to have predated them; the EPFAs marked only a further step in important bilateral work between First Nations and the province in question. In other cases, such work appeared limited. Pre-existing relationships could well be expected to condition any agreements concluded.

  The agreements further committed the parties to meet regularly to review their progress. In a midterm review of the new approach, 60 percent of First Nations and 46 percent of DIAND respondents stressed the importance of holding regular tripartite meetings. However, the review found regular meetings occurring only in some regions. It noted staff turnover and attrition as factors that impeded effective communication among the three parties (DIAND 2011, 32–35).

- INFORMATION. Barriers to sharing and a lack of information continued to impede both the coordination of services and joint monitoring of the quality of care in the sector. Examples of inadequate collection and sharing arose for all three parties, whether on the First Nations, provincial, or federal side (Annable 2016; DIAND 2010a, vii; CHRT 2016). Considerations of ownership, control, access and possession of information also came into play, as evinced by a 2016 dispute of the Saskatoon Tribal Council and Government of Saskatchewan over sharing of case files (Thomas 2016). In light again of the contested history—and

present—of this service area, concerns about which party could own, access, and use case files concerning placement of First Nations children became acute.

- FUNDING. An overarching purpose of the EPFA was to ensure that First Nations agencies would have sufficient funding to undertake preventive work in alignment with provincial approaches. To this end, DIAND (2018a) reports that total funding for child welfare grew by over $227 million, or over 50 percent from 2006 to 2016. Early on, though, both the Auditor General of Canada (2008, 23) and the Standing Committee on Public Accounts (2009, 10) expressed concern about the fact that funding levels under the EPFA were based on a fixed percentage and that the department did not know whether its funding would allow agencies to meet provincial standards. Successive DIAND evaluations and audits also noted a possibility that funding might not keep pace with provincial increases (DIAND 2010a, vii; 2013b, vi, 30–31; 2013c, vii, 39).
- CAPACITY. After introduction of the EPFA, as before, First Nations child welfare agencies varied widely in their governance, management, and service delivery capacity. During the period studied, one First Nation agency in Saskatchewan achieved independent accreditation (INAC 2013b, 27), while two Manitoba First Nation authorities experienced provincial intervention due to alleged dysfunction (Welch 2014, Annable 2016). Due in part to funding constraints, First Nations contested that retaining qualified and culturally competent staff remained difficult. On the provincial and territorial side, doubts lingered as to whether ministries and agencies actually increased their capacity to work with First Nations—either with children and families or the agencies serving them (see, for example, CBC 2016, Star-Phoenix 2016).

The First Nations child welfare sector remains fraught with jurisdictional and funding disputes (Tasker 2016). The apprehension rate of First Nations children remains notably high. Citing it, the Minister of Indigenous Services held a two-day emergency meeting in January 2018 with her provincial and territorial counterparts to address it (CBC 2017b). In child welfare, as in other sectors, the task of the coming years will be to pursue self-determination of the First Nations provider and cultural safety of the service in a way that also facilitates coordination with provincial providers.

Primary/Secondary Education

The final area of analysis is First Nations primary and secondary education. Though jurisdiction in this sector falls to provinces, relating to "Indians and lands reserved for Indians," the federal government has long exercised its jurisdiction in this sector through the education-related provisions of the *Indian Act*. Several numbered treaties also commit the federal Crown to providing signatory First Nations with schools.[11] Some 518 First Nation bands operate schools in Canada, many of them supported by regional First Nations education organizations. DI-

11 The relevant provisions of the *Indian Act* are now Secs 114 to 117. For an example of the wording of the treaties, see Treaty 1: "Her Majesty agrees to maintain a school on each reserve hereby made whenever the Indians of the reserve should desire it." Similar language can be found in treaties 2, 4, 5, 6, and 7.

AND funds First Nations education on behalf of the federal Crown under statutory authority of the *Indian Act* (DIAND 2012, 3–4, 34). As with child welfare, the sector is now administered by the Department of Indigenous Services Canada.

Provinces have long also been involved in educating First Nations children. Section 114 of the *Indian Act* authorizes the Minister to enter agreements with provincial education authorities to deliver elementary/secondary schooling to First Nations children. At least one-third of First Nations students attend schools under provincial authority (Assembly of First Nations 2012; DIAND 2012, 34). In addition, federal education policy has long required First Nation schools to follow provincially recognized curricula, hire teachers certified by the province, and follow standards allowing First Nations students to transfer to an equivalent grade in their province of residence (DIAND 2012, 3).

On the First Nations side, the education sector provides a classic example of Indigenous rights assertion met with a response of devolution. First Nations re-entered the sector through their rejection of the 1969 *Statement of the Government of Canada on Indian Policy*, or White Paper, which had proposed the transfer of First Nations children's education wholly to provincial governments. In 1972, the National Indian Brotherhood issued *Indian Control of Indian Education*, a position paper insisting on local band and parental control of education services, as well as parental representation on provincial school boards. Then-Minister of Indian Affairs Jean Chrétien ultimately accepted the proposal (Standing Committee on Indian Affairs and Northern Development 1973), a major victory for First Nations.

A 2010 position paper prepared by the Assembly of First Nations reaffirmed the vision of *Indian Control of Indian Education*, while updating it to reflect later jurisprudence on Aboriginal and treaty rights. First Nations regard the right to govern their education as inherent, protected by the Constitution as well as the United Nations' *Declaration on the Rights of Indigenous Peoples* (Assembly of First Nations 2010; First Nations Education Council of Quebec, Federation of Saskatchewan Indian Nations, Nishnawbi Aski Nation 2011).

Owing perhaps to the federal government's very public abandonment of its proposal in the White Paper, a tripartite approach came late to this sector. Responding to declining graduation rates of First Nations students, DIAND introduced a tripartite Education Partnership Program (EPP) in 2008. Part of a larger group of initiatives, the program sought to improve First Nations student outcomes by enabling better coordination with provincial school boards. It supported regional First Nations education organizations in developing and implementing partnership agreements and joint action plans with provincial education ministries (DIAND 2012).

Agreements

Beginning in 2008, First Nation regional organizations negotiated eight MOUs and one Letter of Understanding with representatives of both federal and provincial governments. Agreements arose in New Brunswick (2008), Manitoba (2009), Prince Edward Island (2010), Saskatoon (2010), Alberta (2010), Quebec (2012), the Yukon (2013), Northern Ontario (2013), and Labrador (2015). In addition to the MOUs, representatives signed a

more detailed Tripartite Education Framework Agreement in British Columbia in 2012. The agreement enabled First Nations served by a province-wide First Nations education institution, the First Nations Education Steering Committee, to access new funding under a new "comparable education approach."

Notably, agreements concluded under the EPP are distinct from tripartite education self-government agreements negotiated in British Columbia in 2006 and Nova Scotia in 1998. Recognized in federal and provincial legislation, these agreements recognized the law-making jurisdiction of participating First Nations in the sector.[12] Again, however, the agreements also resulted from tripartite negotiations—and might in fact be seen as formalized results of tripartite processes similar to the ones the EPP supported.

The eight MOUs, one Letter of Understanding, and Tripartite Education Framework Agreement (TEFA) were still available on DIAND's website at the time of writing.[13] Whereas the First Nations signatories varied considerably, in each case, the federal minister of DIAND and provincial education minister (at minimum) signed the agreements.

The MOU partnership agreements all emphasized their contingent, administrative character. Their aim was to enhance collaboration—not to alter any program or jurisdictional responsibilities. The MOUs were not legally binding and could be terminated on short notice: 30 days in most cases, 60 days for the Quebec agreement. The 2008 New Brunswick agreement established wording that also appeared in some later ones: an intention to "work collaboratively, collegially and expeditiously as possible toward improving educational outcomes for First Nation students."

Despite their explicitly pragmatic character, some of the education MOUs suggested a sense of symbolic importance. For example: the preamble of the 2010 Alberta MOU refers not only to shared goals but to treaties, Section 35 rights, and the "authority and autonomy of individual First Nations." Preambles of the Quebec, Saskatoon Tribal Council, and Nishnawbe Aski agreements (all concluded in or after 2010) feature similar language. The Quebec and STC agreements mention prior bilateral collaborations with provincial governments and/or school districts as important foundations for the tripartite work now occurring.

Of note for the prospect of multi-level governance, six of the eight MOU agreements established tripartite tables to oversee progress toward intended outcomes. Most MOUs committed the parties to develop joint action plans in priority areas and some stated a priority to develop culturally sensitive provincial curricula. Thinking again of potential for multi-level governance, these agreements evince—on paper at least—an intention to

12 Due to a disagreement with Canada over own-source revenue funding requirements, no First Nations in British Columbia has yet opted into the *First Nations Jurisdiction over Education in British Columbia Act* (2007). Under the *Mi'kmaq Education Act*, participating Mi'kmaq First Nations in Nova Scotia have exercised jurisdiction over education services in their communities since 1999.

13 See DIAND, "First Nation Education Partnerships and Agreements," accessed January 7, 2018, https://www.aadnc-aandc.gc.ca/eng/1308840098023/1308840148639.

deepen the joint work and mutual accountabilities among the signatories.[14] And yet few of the agreements feature funding commitments from federal or provincial governments.

The 2012 British Columbia Tripartite Education Framework Agreement is of a different character. The federal government announced its intention to provide further funding to BC First Nations if they were prepared to assume jurisdiction under the *2006 Education Jurisdiction Framework Agreement*, which had been passed as federal and provincial law but had not yet gained any First Nations signatories. However, the parties ultimately negotiated a new time-limited agreement—according to the First Nation Education Steering Committee, because the Minister had insisted on retaining the own-source revenue condition for entry into the self-government agreement (FNESC 2012).

The TEFA was concluded in January 2012. Its intent was to facilitate "smooth transitions" between First Nations and provincial schools, as well as ensure "comparable education" for students in a system founded on First Nations languages and cultures. Commencing on September 1, 2012, Canada provided funds under a new funding model. Notably, the agreement stated that any First Nation included in the TEFA would still be free to conclude a self-government education agreement under the 2006 *First Nations Jurisdiction Over Education Act*.

Successes and Challenges

Recalling the 1969 White Paper and reaction to it, it is in some ways surprising that First Nations entered into tripartite agreements in the education sector at all. Yet in 2010, First Nations witnesses testifying before the Standing Senate Committee on Aboriginal Peoples were largely positive about the EPP. The Committee's report states that witnesses saw the "sharing of the resources, knowledge and expertise required to improve and ensure comparability between systems" as crucial (2011, 43). Some stressed the benefits of enhancing the accountability and cultural sensitivity of provincial education systems. Likewise, the 2012 evaluation stated that the program had gained "significant praise" from both government and First Nation respondents (DIAND 2012, 18, 26).

Yet both the MOUs under the EPP and the BC Tripartite Education Framework Agreement were overshadowed by the federal government's announcement in the 2012 budget that it would introduce new education legislation. The announcement, in itself, exposed some challenges to the incremental approach adopted:

- POLARIZING EVENT. The example of education indicates how existing tripartite processes can be knocked off course by an action of one party. Anecdotally, the regional tripartite tables were preoccupied with the impending education legislation as soon as it was announced, placing significant strain on emerging regional relationships. Press releases from First Nations regional education organizations presented the proposed legislation as an affront to the

14 See Nelles and Alcantara, 2011: "a partnership that results in the creation of an intermediary organization with independent authority—such as a joint planning council or a transportation authority—is more intense than an agreement that establishes a commitment to communicate" (323).

inherent right of self-determination (see, for example, First Nations Education Steering Committee 2013; First Nations Education Council 2014).

- NON-BINDING. The Senate Committee's report stresses that the temporary "administrative" nature of agreements like the British Columbia TEFA might be their most significant limitation. Such non-statutory agreements are non-binding, with no legal guarantee of funding and no legislative standards to support a First Nations education system (Senate Committee 2011, 46). Though this is by no means a uniform view, a series of commentators—including, most recently, the Truth and Reconciliation Commission of Canada (2015)—offered that legislation is required as a basis for First Nations elementary and secondary education.[15]

- COMPARABILITY. The term is controversial in a context in which First Nations have striven to establish governance, curriculum content, and pedagogies based on their own cultures and traditions. Though arguments regarding comparability often focused on the comparability of funding levels, First Nations consistently found the "comparability" requirement problematic if the parties were to place a singular focus on First Nation students receiving precisely the *same* services, funding, standards, and assessments as those of provincial or territorial systems (DIAND 2012).

- FUNDING: The tripartite MOUs developed from 2008 to 2015 marked only preliminary steps in addressing funding shortfalls that had mounted for decades. With its incremental mode of proceeding, the approach may have marked a case of "too little, too late." In this context, several First Nations support organizations found it coercive to link a funding increase to the negotiation and implementation of a tripartite agreement—whether a temporary agreement or a self-government one.[16]

In April of 2014, with the support of Assembly of First Nations National Chief Shawn Atleo, the federal government introduced Bill C-33, the First Nations Control of First Nations Education Act. Following weeks of controversy, the National Chief resigned; then-Minister Bernard Valcourt announced that consideration of the bill would be "put on hold" until the AFN clarified its position (CBC News 2014). Four years later, there has been no significant further movement on the legislation front, though the Truth and Reconciliation Commission of Canada did call for co-developed Aboriginal education legislation. Interestingly, though, *regionally-based* reform of First Nations education did survive the political storm

15 Recommendation 10 calls on "the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples." See also the reports of the Standing Senate Committee on Aboriginal Peoples (2011) and the 2011 Report of the Auditor General of Canada (2011).

16 For example, a joint report prepared by regional First Nations education organizations in Saskatchewan, Quebec and Ontario called it "underhanded tactics" to force First Nations in British Columbia to choose either a TEFA, a jurisdiction agreement they found unacceptable, or the status quo with no further funding (First Nations Education Council, Nishnawbe Aski Nation, Federation of Saskatchewan Indian Nations 2011, 84).

over national legislation. In July 2017, for example, the Manitoba First Nations Education Resource Centre announced that it had concluded an agreement with DIAND to lead a school system for ten First Nations in that province (2017). In December 2017, the Assembly of First Nations indicated that it was co-developing with Canada a Memorandum to Cabinet to seek funding for regional tables to conclude regional education agreements (Assembly of First Nations, 2017A).

III. Analysis

It is time now to draw a balance, at least as far as the literature allows. For three sectors—First Nations policing, child welfare, and education—the paper has presented rationales for a tripartite approach. It has analysed agreements concluded in the 2006–2015 period and presented key successes and challenges associated with them. So what did the agreements achieve? What didn't they achieve? What *could* they?

The questions are of central significance in 2018. Tripartite discussions are now underway throughout the country, not only for First Nations policing, child welfare, and education, but also in other sectors, including First Nations health (AFN 2017b). Though this paper did not address agreements with other Indigenous heritage groups, Canada has long relied on regional tripartite tables to work with Métis and Inuit as well. Regional tripartite processes thus promise to loom large in Canada's nation-to-nation relationship with Indigenous peoples. What lessons do these agreements of a prior era convey?

Outcomes and Service Coordination

We first attempt to assess them on their own terms. Whether in policing, child welfare, or education, a significant—indeed, the pre-eminent—goal of these arrangements was to take practical steps aimed at improving outcomes for First Nations people. Commentators remind us that the persisting well-being gap between First Nations and other Canadians has complex causes that cannot be addressed by focusing on changes in a single service area. That said, for agreements whose primary raison d'être is to address service quality—and through it, to improve the outcomes of First Nations people—the success of these types of agreements should ultimately be measured on that score.

As it turns out, publicly available information was lacking across all three sectors and regions. This itself is a finding of note. With the exception of a commitment to tracking First Nation student success under the British Columbia education agreement, it was not clear whether the parties had tracked progress in improving outcomes in any sector or jurisdiction.[17] The difficulty in obtaining the information publicly may arise because it is not being collected. Alternatively, it may arise from claims of collective privacy made

17 For child welfare, the Minister of Indigenous Services stated the situation starkly in January 2018: "No one actually knows how many Indigenous children are in care across the country … No one has good data about the rates of apprehension, where those children are going and why" (cited in *Globe and Mail* editorial, January 6, 2018). The British Columbia Ministry of Education—as part of its agreements with First Nations there—has collected data on performance and satisfaction levels of students who identify as Aboriginal (including on-reserve students) since 2010. See the "How Are We Doing?" reports on Aboriginal performance data on the BC Ministry of Education website.

by First Nations regarding information that concerns community members. And in fact, discussions about ownership, control, and sharing of the information required to measure progress need to be a key component of such agreements (Bruhn 2014).

So what of service coordination? Across sectors, a key goal of incremental tripartite agreements was to promote coordination of delivery across jurisdictions. On this count too, information was lacking. What limited information could be found was anecdotal. Self-administered First Nations police forces in Ontario had developed close relationships with their provincial counterparts. First Nations and provincial child welfare agencies coordinated to widely varying degrees—both before and after the tripartite agreements. Likewise in education. Both before and after conclusion of the agreements, First Nations-provincial coordination differed greatly across regions—and it is difficult to assess to what extent the agreements contributed to further coordination.

Funding

Do tripartite approaches to service delivery improve the funding provided to First Nations? Most, though not all, agreements provided a mechanism for funding First Nations. Funding—both its levels and its unstable basis in renewable, discretionary programs—was the concern the First Nations parties cited most often for all the service areas reviewed here. In some cases, that concern was repeated by prominent provincial figures: the premiers of Saskatchewan and Ontario in the case of education, for example, and the former commissioner of the Ontario Provincial Police in First Nations policing, (CBC News 2013; Kennedy 2015; Standing Committee on Public Safety and National Security 2014, 23).

Likely, the attention of provincial leaders and officials helped raise awareness of funding disparities. And possibly, tripartite processes promoted a clearer understanding of those disparities. Yet there was little evidence that these processes yielded increased funding for First Nations services to the point of parity with provincial counterparts. In child welfare, funding for the Enhanced Prevention Focused Approach fell short of parity within its first five years. The case was similar for policing: speaking to a parliamentary committee in 2014, the then-Ontario Provincial Police Commissioner testified that the federal funding model "is not resulting in the same level of policing in many First Nation communities that is enjoyed in non-First Nation communities" (Standing Committee on Public Safety and National Security, 23). In education, the First Nations Education Steering Committee in British Columbia indicated that the funding enabled by the 2012 TEFA was "consistent with the BC Ministry of Education's funding formula for public schools," but also that "ongoing discussions have been underway to realize the full level of resources outlined in the agreement" (FNESC 2016). These tripartite processes may well have thus brought funding discrepancies to light, but it is by no means a given that they yield parity with provincial levels—or even the commitment to achieving it.

Capacity

One professed goal of the policing, child welfare, and several education tripartite agreements was to promote the capacity of First Nations local and regional service organiza-

tions. Augmenting the case for building capacity, a 2011 audit by the Auditor General of Canada identified *capable regional First Nations organizations* as critical supports to local service delivery (Office of the Auditor General of Canada, 2011, 4–5). The question of capacity-building also becomes critical if tripartite agreements are to advance self-determination in these sectors.

Evaluations in all three sectors indicated that governance, management, and service delivery capacity varied greatly among regions—and this was so both before and after the agreements were signed. As with outcomes and service coordination, no evidence of an effort to track changes in the capacity of First Nations organizations was available in the public domain.

Certainly, though, tripartite processes have at least the potential to augment service capacity on the First Nations side. The most prominent example of this period arose in First Nations health, a sector this paper could not address for reasons of space. Through a succession of tripartite and bilateral agreements—from the 2005 *Transformative Change Accord* to a 2012 *Health Partnership Accord*—the First Nations Health Council created a new First Nations Health Authority with the British Columbia Ministry of Health and Health Canada. Serving 203 First Nations in that province, the authority has been responsible for delivering services formerly provided by the First Nations and Inuit Health Branch in the British Columbia region since 2013.

Within the sectors studied here, it is likely no coincidence that the two standout agreements—the 2009 Quebec Partnership Framework for Enhanced Prevention Focused Approach in child welfare and the 2012 British Columbia Tripartite Education Framework Agreement—were negotiated by long-standing regional organizations with significant capacity and expertise. The organizations were well-positioned to assist not only with service delivery but also with the negotiation of agreements with a view to benefitting member First Nations.

Standards and Legislation

A consistent issue raised was the lack of defined standards for these key services provided to First Nations. Though federal programs require First Nations to deliver services that are "reasonably comparable" to provincial ones, "comparability is often poorly defined and may not include the level and range of services provided" (Office of the Auditor General of Canada 2011, 2). First Nations representatives are understandably unwilling to adopt provincial or federal standards wholesale, wishing to determine them themselves in a way that reflects their own cultures. And yet most also agree that some standards are required as a condition of service improvement.

Service standards have proven an especially thorny issue in navigating First Nations relationships with both orders of government. In the future, tripartite tables might well contribute even to such delicate work as developing national legislation that would enable legal recognition of their regional processes. Holding difficult discussions like these, of course, would require that tripartite forums function well. The point again raises the question of multi-level governance.

Multi-Level Governance?

We recall from the introduction that some scholars were sceptical of what tripartite administrative agreements like those studied here signify, seeing federal/provincial/First Nation "partnerships" as no more than three-way devolution agreements. Others found them to represent possible instances of emerging "multi-level governance" (MLG), a layering of horizontal and interjurisdictional accountability relationships over the still-dominant vertical ones. To the extent it were to prevail in a given relationship, MLG would involve the First Nation party as a governing partner rather than as a subordinate administrator of programs. MLG would also give rise to collaborative forums overseeing progress on jointly established goals.

Did MLG occur through these agreements? This review of three sectors found that most agreements fell far short of it—but also that some sought to initiate it. Though tentative and in its early stages, joint tables created by the Quebec child welfare agreement and some education MOUs showed promise. The forum for the Tripartite Education Framework Agreement in British Columbia marked a more fully developed example. The British Columbia health tripartite relationship, not part of this study, still bears mentioning—as it was likely the most productive relationship of the period. Its process ultimately resulted in *both* a self-determining First Nations institution *and* mutual accountabilities among the three actors, which came over time to regard themselves as partners.

Along with the scholarship of Papillon, Alcantara, and Nelles, assessments of the British Columbia First Nations health partnership (Health Canada, 2013; Kelly 2011) suggest a few central traits of MLG relationships that are capable of delivering meaningful reform:

- *Long-term commitment*. Joint work on significant tasks requires trust and familiarity of the kind that extends beyond budgets, election cycles, and time-limited mandates. There is also a need to formalize the relationship as it deepens, with milestone documents setting out the work accomplished to date and work to be undertaken in the next phase. Such partnerships require political commitment at the highest levels, as well as expertise and continuity of personnel at the more technical tripartite tables.

- *Deepening mutual accountabilities*. If they are to mark genuine MLG, tripartite tables require a "growing interdependency between governing actors who can no longer fully control outcomes" (Papillon 2011, 305). Notably, deepening mutual accountability exists in tension with the accountability of each partner to its own constituency. It thus becomes imperative for each one to keep its constituency informed and address its concerns, as a condition of bringing joint work along.

- *Implementation*. There is a prevalent risk, borne out to a large extent in the agreements reviewed here, that concluding tripartite agreements becomes an end in itself. Most agreements reviewed here encountered their greatest

difficulties in the implementation phase, when the jointly determined goals and actions of three-way negotiated agreements were flattened into the constraints of federal programs. Some agreements were not even monitored, much less achieved their goals. If progress on outcomes, coordination, and capacity is to be achieved, it is imperative to set out indicators early and jointly to measure progress toward objectives. As a precondition of this, reaching agreement on the indicators and data to be used is crucial.

- *Momentum*. Temporary, non-legislative agreements can be useful tools, where they are relatively non-threatening in sectors that are mired in deep disagreement on fundamental questions. But are temporary agreements the desired end state? Easily revoked, they provide no statutory guarantee of funding, set out no binding standards, and leave jurisdictional disputes unresolved. Potentially, agreements like these might best be seen as markers that point beyond themselves—to more lasting frameworks recognizing First Nations jurisdiction and committing to First Nations local and regional institutional capacity within that service sector.

Conclusion

In January 2018, Jane Philpott, Minister of Indigenous Services Canada, outlined the raison d'être of the new department she leads. With an approach based in a "recognition of rights," the department would enable a "fresh start with our Indigenous partners to deliver high quality services and to improve quality of life" (MediaQ 2018). Tripartite agreements are to be a key instrument in realizing that fresh start.

This analysis of agreements concluded in the recent past is offered to help inform future practice. Some scholars classified these agreements as "mere" devolution; others saw potential impacts rivalling land claims and self-government agreements. Based on a more detailed study, this paper has found great diversity in both the character and the purpose of agreements—among regions and even within sectors. Some perpetuated a principal-agent relationship with federal or provincial governments; others did evince heightened attention to First Nations rights and at least potential instances of MLG.

Further research—including a program of qualitative interviews—would be required to lend more certainty to the conclusions reached here. Provisionally, though, the evidence suggests that there is *potential* for positive, productive and respectful tripartite Crown/ First Nations relationships, even if that potential has been realized only rarely to date.

The few successful precedents indicate that such relationships require good faith, sustained commitment, and hard work on all sides. If they are to make a difference on the ground, such relationships need time and staffing continuity to deepen, and should strive to address inequities in funding, capacity, and power early on. Agreements need to balance priorities of service efficiency and coordination with those of self-determination and cultural relevance. Finally—critically—they need to establish regional tables. Such tables should establish clear indicators of success and monitor their progress toward it. It all seems a very large bill to fit. Then again, who said reconciliation would be easy?

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