

A stylized map of Canada is shown in the background. The map is light gray and is partially covered by a large, curved teal shape that sweeps across the top and left sides of the page. The title text is centered within the teal area.

Defining Indigenous Businesses in Canada SUPPLEMENTARY PERSPECTIVES FROM THE INDIGENOUS PROCUREMENT WORKING GROUP

April 2021

Acknowledgements

At a video conference meeting held on March 23, 2021 the following organizations and individuals representing the Indigenous Procurement Working Group provided the information contained in this document.

Aaron Barner
Senior Executive Officer, Métis Nation of Alberta

Christian Spence
Policy Advisor, Inuit Tapiriit Kanatami

Dawn Madahbee Leech
Vice-Chair National Indigenous Economic Development Board
General Manager, Waubetek Business Development Corporation

Karen Hunter
Special Projects Coordinator, Assembly of First Nations

Mark Dokis
Senior Advisor, National Aboriginal Capital Corporations Association

Patrick Watson
Director of Public Policy, Canadian Council for Aboriginal Business

Shannin Metatawabin
CEO, National Aboriginal Capital Corporations Association

Steven Morse
CEO, Métis Voyageur Development Fund Inc.

Tabatha Bull
President and CEO, Canadian Council for Aboriginal Business

William David
Director of Economic Development, Assembly of First Nations

CONTENTS

SUMMARY	1
IPWG OBSERVATIONS AND RECOMMENDATIONS	2
General	2
Foundational Statements and Recommendations	2
Qualitative Criteria	3
Proposed Indigenous Business Definitions	4
Comparator Definitions of Indigenous Businesses	5



Summary

In February 2021, a Report entitled *Defining Indigenous Businesses in Canada*, was commissioned by the National Aboriginal Capital Corporations Association on behalf of national Indigenous organizations who comprise the National Indigenous Procurement Working Group (NIPWG).

Developed by a Core Working Group (CWG), the Report drew on national and international descriptions to formulate and propose definitions of Indigenous Businesses in Canada.

The Core Working Group recognized that while there are many businesses that have Indigenous ownership or which provide social returns such as employment, the intent of the definitions presented was to provide competitive advantages to majority owned Indigenous businesses.

The Report also included a literature review which discussed the critical need for the ethical and effective engagement of governments and industry with Indigenous owned and operated businesses.

The Core Group who worked on these definitions identified that, ultimately, many voices need to be engaged in developing a definition of Indigenous businesses in Canada.

The foundational statements and recommendations presented in the February 2021 Report were designed to guide the development of policies and processes related to financing and procurement from Indigenous businesses. These statements comprised a set of recommendations for implementation by governments, corporations, and others who value collaborating, partnering, and procuring from legitimate Indigenous businesses that meet the outlined definitions and authenticity criteria.

On March 23, 2021, The Indigenous Procurement Working Group (IPWG) met to discuss the February 2021 *Defining Indigenous Businesses in Canada* Report.

This document is a compendium of the comments and recommendations discussed by the IPWG at the March 2021 meeting.

The information contained in this document has not been utilized to modify the original Report of the CWG. Some members of the IPWG also served on the Core Working Group.

For contextual purposes it is recommended that this document be read in conjunction with the February 2021 *Defining Indigenous Businesses in Canada* Report.

CORE WORKING GROUP

Dawn Madahbee Leach
National Indigenous Economic Development Board

Dr. Marie Delorme
National Indigenous Economic Development Board

Kelly Lendsay
Indigenous Works

Sandra Sutter
National Indigenous Economic Development Board

Shannin Metatawabin
National Aboriginal Capital Corporations Association

Tabatha Bull
Canadian Council for Aboriginal Business

Victoria LaBillois
National Indigenous Economic Development Board

The intent of the definitions presented by the CWG was to ensure that procurement opportunities and financing for Indigenous people are directed to Indigenous businesses rather than to contrived businesses that merely provide “Indigenous” as a label of convenience. Establishment of an Indigenous controlled Certification and Compliance Body is critical to maintain the integrity and accuracy of an Indigenous business registry through ongoing re-certification.

IPWG Observations and Recommendations

The purpose of the March 23rd IPWG discussion was to gather comments from members. Those observations are presented as excerpts from the recording of the video conference. The verbatim remarks are edited for brevity and clarity while not compromising the essence of the statements.

General

The IPWG discussed whether the Report should be released for broader engagement and input. Shannin Metatawabin explained that this was a first draft and should be taken back to the groups represented by IPWG members for review and comments.

Foundational Statements and Recommendations

CWG Report	IPWG Comments
<p>The CWG Report presented a set of foundational statements, one of which stated:</p> <p>Develop legislation and regulatory requirements regarding engagement with Indigenous businesses.</p>	<p>A. Barner: <i>Add language co-development. Also, a statement about holding government accountable in a transparent manner for reporting back on progress in a meaningful way.</i></p>
<p>In addition to the legislation and regulatory statement, the Report included six other statements focused on: establishing an Indigenous controlled certification and compliance body; ensuring that Indigenous businesses are not placed in a position of disadvantage; collaborations and partnerships with Indigenous businesses; building on best practices; collaboration on standards and developing leading practices.</p>	<p>S. Morse: <i>The details required include how to operationalize these principles, and whether we're turning over a set of recommendations to what is essentially a government body to flesh out operational parameters.</i></p> <p><i>With respect to the Indigenous certification and compliance body, it has to be a quasi-autonomous body. Once certification criteria processes are set, can these be unilaterally changed by government. It has to be something written that they have to go back on a nation to nation basis. This process is going to be critical. Are we looking at government department or are we looking at something that has a little more meat to it from Indigenous governments?</i></p>

Business Definition Report

The proposed Indigenous certification and compliance body structure, scope of authority, and relationship with federal, provincial, and territorial government all need to be developed. The IPWG recommendations can be utilized to inform that process.

Qualitative Criteria

CWG Report	IPWG Comments
<p>The CWG Report presented four qualitative criteria designed to ensure that business are legitimate Indigenous entities. Recognizing that it is not possible to anticipate every unique circumstance, an independent Indigenous managed and controlled certification body is required. This entity would assess businesses in relation to the criteria and adjudicate each situation accordingly.</p>	<p>A. Barner: <i>How would one person know Indigenous person is just starting off their business and their key target market is the federal government. How do they fit into that quality criteria, or can we make some comments around them?</i></p> <p>D. Madahbee Leach: <i>The appropriate credentials and experience are needed to move away from scenarios where the business is contrived for procurement purposes by a non-Indigenous individual or entity.</i></p>
<p>The qualitative criteria outlines the requirement for an independent Indigenous managed and controlled certification body is required. This entity would assess businesses in relation to the criteria and adjudicate each situation accordingly.</p>	<p>S. Morse: <i>I'm not sure that visiting every business is going to be possible, but definitely really interesting approach.</i></p>

Business Definition Report

The CWG considered the challenges related to qualitative criteria. The criteria is presented as guidelines and a starting point as a second tier way to evaluate the legitimacy of an Indigenous business. The proposed Indigenous certification and compliance body would evaluate each situation and apply the qualitative criteria on a case-by-case basis. Guidance on how to address these situations can be found in practices from other jurisdictions, including Australia's Supply Nation. The primary rationale for qualitative criteria is to ensure that businesses are truly Indigenous and not contrived entities.

Proposed Indigenous Business Definitions

CWG Report	IPWG Comments
The CWG Report presented a table of businesses including: Corporations, Partnerships, Cooperatives, Joint Ventures, Sole Proprietorships, Micro-Enterprises, Non-Profits and Not-for-Profits, and Charitable Organizations	S. Morse: <i>In Ontario, you can have a not for profit corporation, a for profit corporation, you can have a for profit corporation that reports as a not for profit, and you can have a corporation that legally is neither a for profit nor not for profit. There may be other cases, equivalent to that, in other jurisdictions. We don't want to prescribe what form business should take in order for it to be able to sell goods and services to the federal government. We want to make sure that there is a comprehensive list for each province.</i>
The proposed definitions outlined that Indigenous businesses must have a minimum of 51% Indigenous ownership by Indigenous Nations, organizations, or people.	S. Morse: <i>Some of our documentation with other levels of government speaks to, just the majority, if there's 10,000 shares 5100 versus 5002. You still have a majority of 5002 but you don't get 51%. The language in many other government procurement programs is a majority over 50%.</i> W. David: <i>There are also issues in the case of business or corporation but classes of shares. So, if you want to make sure that their voting shares are recorded majority is versus having a lot of indigenous shares outstanding, to non-voting numbers of preferred shares. Similarly, you can do a class dilution and non-profit membership. There are small technical things that we can learn roll up easily.</i>

Business Definition Report

The CWG agrees that each business category has sub-categories as identified by the IPWG. The intent was to provide general categories as a starting point for the Indigenous certification and compliance body. However, 51% was common to each of the many domestic and international definitions researched. The new Indigenous-led entity would have to consider all information related to types of shares, corporate structures, and other factors as part of an in-depth review to certify an Indigenous business.

Comparator Definitions of Indigenous Businesses

CWG Report	IPWG Comments
The CWG Report presented a sampling of Canadian and International comparator definitions. The latter included Australia, New Zealand, and Hawaii.	W. David: <i>The USA Federal Procurement system can also be used as a comparator. It has any number of set asides and fairly complex criteria and rules. Alaska Native corporations can access set asides even though they are not structured as federally recognized tribes. The Small Business Administration Bureau in the US is not necessarily an alternative approach to a certification body, but some of the qualitative criteria could consider some of these criteria, particularly in distinction based approaches.</i>
Australia's Supply Nation was included in the Report as an International comparator.	T. Bull: <i>In Australia, they actually have two different definitions, one that the government uses and then one that they use. From my understanding this came from a perspective that the government wanted something that was different than what Supply Nation understands is the correct definition. This might be something we have to consider to answer the questions of what happens if the government wants to change the policy.</i> D. Madahbee Leach: <i>The Australian government defined Indigenous business even before Supply Nation was established. The organization has been trying to change this since, with some success. These loopholes have resulted in "black-cladding".</i>

Business Definition Report

The international comparators were not intended to be exhaustive, but rather a sampling of organizations and entities focused on defining and/or certifying Indigenous businesses. It is anticipated that the proposed Indigenous certification and compliance body would engage in additional research for guidance on leading practices.

Black-cladding or Indigenous-cladding is a term that originated in Australia. It refers to falsely claiming Indigenous identity and is more fully explained in the February 2021 *Defining Indigenous Business in Canada* Report under the section "Race-shifting, False Identities, and Indigenous Cladding."



Report by

