

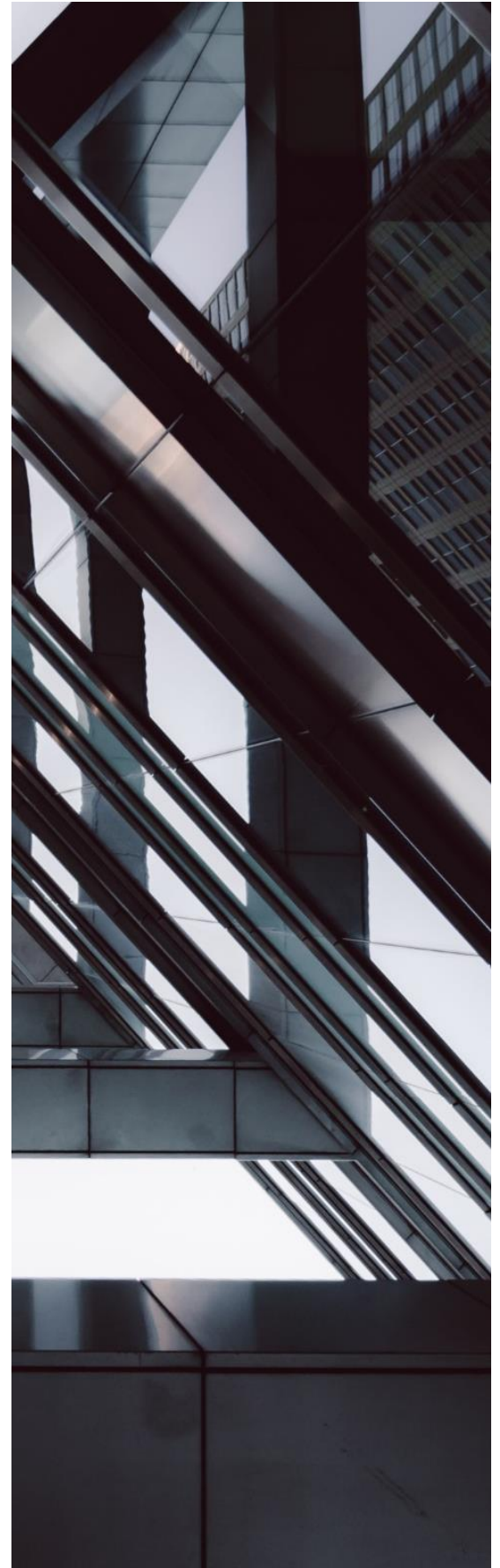


Engagement Findings for a National Indigenous Business Definition

2023

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1.0 - Executive Summary

EXECUTIVE SUMMARY

The Need for Indigenous Business Definitions

Opportunities and Challenges

The Government of Canada is committed to increasing the participation of Indigenous businesses in federal procurement and have created a target to have **5% of federal contracts** awarded to businesses **managed and led by Indigenous Peoples of Canada**. Public procurement in Canada (federal, provincial, municipal) represents approximately \$200 billion in annual economic activity. Of this, federal spending averages \$22 billion per year.

However, there is **currently no consistently applied procurement** practices to determine what constitutes Indigenous businesses. In practice, this has created a financial incentive to make false claims of indigeneity, tokenize Indigenous participation, use shell companies and other modes of obfuscation to gain an advantage in procurement processes, and more - all to the detriment of legitimate Indigenous Peoples of Canada, communities, and businesses.

Indigenous Business Definitions

The Organisation for Economic Co-operation and Development (OECD) identified Indigenous Business Definitions as an asset for improving Indigenous business data, increasing access to finance for Indigenous businesses, and improving public procurement policies targeted for Indigenous businesses. The National Indigenous Procurement Working Group (NIPWG) was formed in part to facilitate the creation of **Indigenous Business Definitions that can provide clarity and consistent structure to procurement processes**. While created initially for use in Federal Government procurement, these definitions are intended for use across all levels of public and private sector procurement to improve economic outcomes for Indigenous Peoples of Canada by engaging in business relationships with legitimate Indigenous owned and operated businesses.

Methodology

Developing Indigenous Business Definitions requires broad stakeholder input, finding common understanding, and consensus building to arrive at a set of definitions that can be used by multiple levels of government procurement and in broader industry applications. Therefore, BDO was contracted to undertake and complete a comprehensive engagement strategy to inform and receive feedback from Indigenous organizations and communities on efforts to create and establish a set of national Indigenous Business Definitions.

Primary research focused on gathering a wide range of opinions, experiences, and input from these stakeholder groups. This included one-on-one interviews, focus groups, and a survey, each of which presented proposed definitions and invited feedback. Respondents were also able to provide their own experiences with Indigenous definitions, the challenges they have faced, the potential hurdles to new definitions, and their recommendations for progressing this initiative.

Starting with 7 types of organizations, and expanding to 8 through stakeholder feedback, the definitions were presented to a wide range of Indigenous stakeholders for discussion with the goal of developing revised definitions for further discussion and iteration with the National Indigenous Procurement Working Group (NIPWG).

This report summarizes the feedback received across all engagement methods. BDO has summarized findings specific to each definition, but also in areas that apply across all definitions. Based on analyzing these findings, a number of potential recommendations have been developed for consideration by the National Indigenous Procurement Working Group and feedback incorporated for several specific definitions.

EXECUTIVE SUMMARY

Final Definitions

Based on the feedback of external stakeholders and workshops with the NIPWG, the following final definitions assess the degree of direct and meaningful participation, ownership, and benefit of Indigenous Peoples of Canada and their businesses or organizations in an entity responding to a procurement process.

Indigenous Sole Proprietorship

“The business is 100% owned by an Indigenous Person who has sole responsibility for making decisions, receives all profits, claims all losses, assumes all risks, pays personal income tax (where applicable) on the net income generated by the business, and does not have separate legal status from the business.”

Indigenous Corporation (For Profit)

“At least 51% of the shareholders of the corporation are Indigenous People, groups, or organizations and together have a controlling interest in the company.”

Indigenous Non-Profit or Not-for-Profit

“The composition of the board of directors is at least 51% Indigenous directors. The non-profit’s mission is focused on the betterment of Indigenous Peoples or advancement of Indigenous issues.”

Indigenous Charitable Organization

“The composition of the board of directors is at least 51% Indigenous directors. The charity’s purpose is to benefit Indigenous Peoples and communities in a way the law regards as charitable.”

Indigenous Cooperative

“Collectively, Indigenous cooperative voting members must comprise at least 51% of the cooperative’s members.”

Indigenous Micro-Enterprise

“See definitions for Indigenous sole proprietorships, partnerships or corporations.”

EXECUTIVE SUMMARY

Final Definitions

The final two definitions were recognized as unique cases for consideration as both Partnerships and Joint Ventures are combinations of individuals and/or organizations rather than single entities to be evaluated. The nature of the relationship between the members became the focus of the definition, particularly since stakeholders noted that Partnerships and Joint Ventures were more commonly used by bad actors to superficially involve an Indigenous entity for the purpose of satisfying procurement requirements with minimal actual benefits realized by the Indigenous entity.

Through discussions with the NIPWG, it was determined that the final definition for both forms should reflect the range of realized benefits that are meaningful to Indigenous Peoples of Canada, their businesses, and the relevant benefits for an Indigenous community organization.

Indigenous Partnerships

Where the partnership is with an Indigenous Person or business:

“The partnership agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits, and majority management control.”

Where the partnership is with an Indigenous Community Organization:

“The partnership agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc.”

Indigenous Joint Venture

Where the joint venture is with an Indigenous individual or business:

“The joint venture agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits, and majority management control.”

Where the joint venture is with an Indigenous Community Organization:

“The joint venture agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc.”

A note on Definitions and Compliance Auditing

The NIPWG held focused discussions on each of the definitions, proposing revisions and arriving at these definitions. While they will continue to evolve over time, at this stage of development is to present definitions that are at once clear, concise, and convey the intent of ensuring legitimate Indigenous organizations are identified as such. By extension, these definitions are the first barrier to entry for illegitimate organizations and bad actors seeking to subvert procurement processes for their own gain.

Another check on bad actors would be **Compliance auditing**. This process would examine awarded procurement contracts to determine if the conditions and requirements had been upheld over the course of the contract and contribute to the ongoing refinement of the definitions, updating registries, and creating a level playing field for all participants.

HOW TO USE THE DEFINITIONS

There are opportunities for all participants in procurement processes to understand, utilize, and spread awareness of the Indigenous Business Definitions. The following are suggestions for how major groups can integrate the Definitions into new and existing practices. These suggestions are not exhaustive, and each group should be innovative and create ways to ensure that Indigenous Peoples of Canada are meaningfully engaged in the economic prosperity of Canada.

Domestic and International Corporations and Small and Medium-sized Enterprises can...

- Incorporate the Indigenous Business Definitions and means of verification into their procurement policies.
- Spread awareness and adoption of the Definitions to partners, Industry, and other stakeholders for use in their procurement opportunities and submissions.
- Build relationships early and engage with Indigenous communities and businesses at the earliest stages of procurement. Involve the Indigenous entity in the work, support their leaderships, and hear their voices.
- Negotiate fairly, with respect, and in good faith, using the Indigenous Business Definitions to support the active participation of Indigenous businesses and communities.
- Proclaim and uphold a culture of security and respect for legitimate Indigenous procurement according to the Definitions. Enforce policies that protect legitimate Indigenous businesses, communities and their members. Extend these imperatives to third-party contractors, audit their activities, and take definitive and transparent action when breaches occur.
- Establish and incentivize your own targets for Indigenous business procurement participation using these Definitions.

Canada's governments can...

- Adopt the Definitions into procurement processes. Increasing Indigenous economic participation would have significant economic benefits for Canada and especially the economy and capacity of Indigenous businesses and communities.
- Protect the integrity of Indigenous procurement participation by requiring the use of the Definitions in procurement processes, verification of legitimate Indigenous businesses, and audit contracts for compliance.
- Develop enforcement mechanisms using the Definitions to ensure bad actors are held accountable.
- Work together to create a consistent and coordinated approach to supporting Indigenous business procurement participation, including sharing best practices and collaborating on initiatives that aim to increase Indigenous participation and build capacity in Indigenous communities.
- Continue to work with Indigenous Peoples to refine the Indigenous Business Definitions and adhere to their obligations under the United Nations Declaration of the Rights of Indigenous Peoples.

Indigenous communities, businesses, and entrepreneurs can...

- Engage in Canada's growth. Indigenous involvement, collaboration, and leadership is a critical component of the economy, the environment, and social structure of the country.
- Participate in the use of Indigenous Business Definitions and push for adoption of the definitions as a requirement for procurement participation at all levels.
- Only take part in business relationships that respect legitimate Indigenous businesses according to the appropriate definition helps protect the integrity of the Indigenous procurement system and discourage bad actors from trying to circumvent these controls.
- Continue to engage with Canada's governments to develop the Indigenous Business Definitions and ensure that Indigenous issues are heard.

2.0 - Background and Approach



PROJECT BACKGROUND

National Indigenous organizations identified a need to create a **National Indigenous Procurement Working Group (NIPWG)** to guide and advance a research agenda to support the development of and implementation of policy and/or legislative frameworks for establishment of a minimum 5% Indigenous procurement target.

Presently **no consistent nationally recognized definition of what classifies as an Indigenous Business exists in Canada**. Many different definitions have been created by various Indigenous organizations nationally and regionally, as well as by Federal and Provincial Governments and private companies. With the existence of multiple different definitions comes confusion and uncertainty.

Having a nationally recognized Indigenous Business Definition will ensure that procurement opportunities and financing for Indigenous People will be directed to Indigenous businesses rather than to non-Indigenous entities or those that are misrepresenting themselves.

To effectively develop the definitions, significant work was completed to understand the current state of Indigenous Business Definitions across Canada and amongst international comparators. The NIPWG:

- Facilitated a series of four virtual Core Group workshops
- Reviewed and compiled existing definitions relevant to the initiative (utilizing Canadian and International Indigenous sources)
- Formulated advice on developing a national approach to defining Indigenous businesses
- Developed a report (see below) outlining key findings and recommendations

Ultimately, the report recommended a set of proposed definitions for various types of Indigenous Business in Canada.



Defining Indigenous Business In Canada:

This report, commissioned by the National Aboriginal Capital Corporations Association on behalf of national Indigenous organizations who comprise the National Indigenous Procurement Working Group (NIPWG), presents proposed Indigenous Business Definitions in Canada.



Defining Indigenous Business In Canada (Supplementary Perspectives from the Indigenous Procurement Working Group):

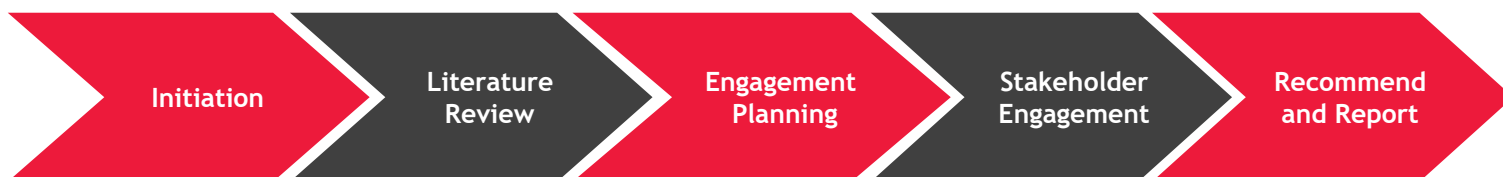
This document is a compendium of the comments and recommendations discussed by the NIPWG at a subsequent meeting.

Draft Definitions Developed For:

- Indigenous Corporation (For Profit)
- Indigenous Partnership
- Indigenous Cooperative
- Indigenous Joint Venture
- Indigenous Sole Proprietorship
- Indigenous Micro-Enterprise
- Indigenous Non-profit or Not-for-profit
- Indigenous Charitable Organizations

PROJECT BACKGROUND

The NIPWG engaged BDO to design and complete an engagement strategy to inform and receive feedback on these efforts to create and establish national Indigenous Business Definitions. Specifically, BDO undertook the process below.



- Engagement planning was completed in conjunction with the project Steering Committee. Interviewees and focus group attendees were identified and contacted as requested by the Committee. Briefing materials were also developed and provided in advance of the engagements.
- Stakeholder Engagement was completed with 55 people through both interviews and focus groups (see the list of organizations below) covering a variety of topics including:
 - Experience with validating status as an Indigenous Business in the past;
 - The fairness and appropriateness of the Indigenous Business Definitions;
 - Changes that may be required to improve the definitions;
 - Challenges in implementing the definitions; and
 - Suggestions to overcome challenges with implementing new definitions.
- Given that this is an issue that impacts many across the country, BDO developed a survey which was provided to the NIPWG members for distribution to any other interested party.
- BDO has developed this summary report with analysis and recommendations stemming directly from the feedback and input of stakeholders.

Primary Research Organization List

- | | | |
|--|---|---|
| • Aboriginal Business & Community Development Centre (ABCD) | • Gestion ADC | • Nunasi Corporation |
| • Aboriginal Finance Officers Association (AFOA) | • Indian Business Corporation (IBC) | • Nunavut Tunngavik Inc. (NTI) |
| • Andrew Leach & Associates First Nations Consulting | • Indian Resource Council (IRC) Inc. | • Nuu-chah-nulth Economic Development Corporation (NEDC) |
| • Assembly of First Nations (AFN) | • Indigenous Services Canada (ISC) | • Office of Small and Medium Enterprises (OSME) - Public Services and Procurement Canada (PSPC) |
| • Cambium Indigenous Professional Services (CIPS) | • Indigenous Works (formerly Aboriginal Human Resource Council) | • Pauktuutit Inuit Women of Canada |
| • Canadian Council for Aboriginal Businesses (CCAB) | • Inuit Tapiriit Kanatami (ITK) | • Rainy Lake Tribal Area Business and Financial Services Corporation |
| • Carvel Electric | • Joint Economic Development Initiative (JEDI) | • SaskMétis Economic Development Corporation (SMEDCO) |
| • Corporation De Développement Économique Montagnaise (CDEM) | • Métis-Dene Development Fund (MDDF) | • Social Awareness Group |
| • dāna Näye Ventures | • Métis Voyageur Development Fund (MVDF) | • Spirit Omega Inc. |
| • Federation of Sovereign Indigenous Nations (FSIN) | • National Aboriginal Capital Corporation Association (NACCA) | • Tahtlan Nation Development Corporation (TNDC) |
| • First Nations Tax Commission | • National Aboriginal Trust Officers Association (NATOA) | • Tribal Councils Investment Group of Manitoba |
| • First Nations Financial Authority | • National Indigenous Economic Development Board (NIEDB) | • Turtle Island Foundation |
| • First Nations Financial Management Board | • National Indigenous Fisheries Institute | • Ulnooweg Development Group |
| • First Nations Major Projects Coalition | • New Zealand Government - Ministry of Maori Development | • Wakenagun Community Futures Development Corporation |

DOCUMENT OVERVIEW

The scope of this project was to gather and analyze feedback on the set of proposed Definitions for Indigenous Businesses. The following section will summarize what was heard in each of these definitions and make recommendations to the NIPWG with respect to potential modifications. These findings and recommendations are presented in **Section 3.0 - Proposed Definitions Findings and Recommendations**.

During the research for this project, interviewees and survey respondents provided insights on several topics that applied broadly across the definitions. This feedback is critical to consider in the successful roll-out of the final definitions. As such, these findings have been gathered and included in **Section 4.0 - Cross-Definition Considerations Feedback and Recommendations**. The **Appendix** provides a quick reference summary of the current definitions, findings, and proposed definitions for further discussion.

Section 3.0 Proposed Definitions *Feedback and Recommendations*

- Indigenous Corporation (For Profit)
- Indigenous Partnership
- Indigenous Cooperative
- Indigenous Joint Venture
- Indigenous Sole Proprietorship
- Indigenous Micro-Enterprise
- Indigenous Non-Profit or Not-for-Profit
- Indigenous Charitable Organizations

Section 4.0 Cross-Definition Considerations *Feedback and Recommendations*

- Definition-Wide Feedback
- Proof of Indigeneity
- Proposed Additions
- Implementation Considerations
- Other Engagement Findings

Appendix A Quick Reference Summary

- Summary of Findings
- Current Definitions and Suggested Revisions



3.0 - Proposed Definitions

Feedback and Recommendations

FIRST DEFINITIONS - CURRENT STATE

The National Aboriginal Capital Corporations Association (NACCA) commissioned the *Defining Indigenous Businesses in Canada* report on behalf of the National Indigenous Procurement Working Group (NIPWG) which created the sample definitions for Indigenous organizations listed below. Each stakeholder was invited to provide feedback on the elements they supported, areas of potential issues or challenges, and their recommendations for future iterations.



Indigenous Sole Proprietorship

The business is 100% owned by an Indigenous Person who has sole responsibility for making decisions, receives all profits, claims all losses, assumes all risks, and pays personal income tax (where applicable) on the net income generated by the business, and does not have separate legal status from the business.



Indigenous Corporation (For Profit)

The majority of the shareholders are Indigenous individuals or groups. They have 51% of the voting rights.



Indigenous Non-Profit or Not-for-Profit

The board of directors of the Indigenous non-profit is comprised of at least 51% Indigenous People. The most senior administrative executive is an Indigenous Person and at least 51% of senior management are Indigenous. The non-profit's mission is focused on the social and economic betterment of Indigenous Peoples.



Indigenous Charitable Organizations

The board of directors of the Indigenous charitable organizations is comprised of at least 51% Indigenous directors. If no board structure exists, the most senior administration executive of the Indigenous charitable organization is an Indigenous Person and at least 51% of senior management are Indigenous. The charity's mission is focused on the social and economic betterment of Indigenous Peoples.



Indigenous Cooperative

Collectively, Indigenous cooperative voting members must comprise a minimum of 51% of cooperative members.



Indigenous Micro-Enterprise

See definitions for Indigenous sole proprietorships, partnerships or corporations.



Indigenous Partnership

The partnership agreement defines the Indigenous partner or partners as majority owners.



Indigenous Joint Venture

The joint venture agreement defines the Indigenous partner or partners as majority (minimum 51%) owners.



INDIGENOUS SOLE PROPRIETORSHIP

Final Definition

“ The business is 100% owned by an Indigenous Person who has sole responsibility for making decisions, receives all profits, claims all losses, assumes all risks, pays personal income tax (where applicable) on the net income generated by the business, and does not have separate legal status from the business. ”

Feedback Themes on Proposed Definition

Within the Indigenous Sole Proprietorship proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

The Indigeneity of the Sole Proprietor is the foundation of the definition.

“The business is 100% owned by a First Nation, Métis, or Inuit person...”

- A common experience for many Sole Proprietors is that they are known within their community and that provides an avenue to get documentation confirming their Indigeneity.
 - In the absence of a standardized registry, communities may have to repeatedly verify individual Indigeneity claims for each procurement process - an inefficient and time-consuming process for procurement groups, communities, and individuals involved.
- Sole proprietors working primarily within an Indigenous community had no difficulty verifying their Indigeneity, although they saw no special value or exemptions from procurement groups outside of their community for Indigenous participation in business opportunities.

In addition to the clause-specific feedback, the following summarizes **general key themes** gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Sole Proprietorship definition.

- Self-declaration by individuals is a non-starter given the financial incentives to abuse this approach.
 - Band Councils and communities were highlighted as key partners in provide verification for individual claims.
 - Indigenous individuals may also find difficult proving their Indigeneity due to gaps in historical records, challenging family history, etc.
- Business registries allow the individual to go through the bureaucratic process of verifying their Indigeneity with a single source that can then be conveniently referenced in the future.

100% of the sole proprietors surveyed agreed with this definition.

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **strong agreement** with this definition. There are no recommended changes based on the engagement completed.



INDIGENOUS CORPORATION (FOR-PROFIT)

First Definition

“The majority of the shareholders are Indigenous individuals or groups. They have 51% of the voting rights.”

”

Feedback Themes on Proposed Definition

Within the Indigenous Corporation (For-Profit) proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

Indigenous representation among the beneficiaries (shareholders) of the corporation

“The majority of the shareholders are Indigenous individuals or groups.”

- As with many definitions, engagement clearly showed that people are in favour of a clause stating majority ownership in the corporation. People generally agreed with the terminology of “majority” or 50% + 1 rather than 51%.
- There were some proponents of greater Indigenous participation want to see more than 51% and advocate for 60% - 85% of control or ownership.
 - Some felt that mandating a minimum 51% or majority Indigenous ownership can lead to companies only trying to reach the bare minimum.
- Others advocated for a lower percentage of ownership provided there is proof of benefits for Indigenous People and communities.

2

Indigenous controlling interest in the corporation (voting rights holders)

“They have 51% of the voting rights.”

- Many interviewees raised the concern that “ownership” is different than “control” with control being more difficult to assess. In this case, there was general agreement that voting rights were a strong metric to use and this clause was supported.
- However, many people preferred the idea of 50% + 1. This could be especially important in the corporate definition as voting rights could be held to a significant number of people resulting in a difference between 50% + 1 and 51%.
- Control over activities of the corporation may also be less important than other factors which could be disclosed, such as whether the financial gains of the corporate are used to benefit an Indigenous community or another Indigenous non-profit, charity or similar organization.
- A majority Indigenous Board of Directors may be a more effective form of holding controlling interest in the corporation and may help ensure that Indigenous communities are benefiting from the proceeds of the corporation.



INDIGENOUS CORPORATION (FOR-PROFIT)

In addition to the clause-specific feedback, the below summarizes general key themes gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Corporation (For-Profit) definition.

- Greater preference should be given to companies that have higher levels of representation (i.e., procurement scoring more points in tender evaluation, linking funding/financing dollars to the percentage of Indigenous involvement) and state either “a majority” or “51% or more.”
- Similarly, the degree to which benefits will flow back to Indigenous People and communities (through wages, employment, benefits agreements, etc.) could inform what constitutes an Indigenous corporation since it contributes to a broader purpose for growing Indigenous participation.
- Indigenous For-Profit Corporations at the community level are always going to be 100% owned by the community. They may benefit from a community tiered definition that would be different than one used by industry.
- There is potentially a challenge in the use of shell corporations or holding companies acting as a front to acquire an opportunity but not actively participating or conveying substantial benefits to the Indigenous owners.

100% of the for-profit companies surveyed agreed with this definition.

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is a **strong consensus and agreement** that this definition is meaningfully correct. However, the following are potential changes that the NIPWG may want to consider as it relates to the definition of Indigenous Corporation (For-Profit):

- Specifying a ‘majority’ of voting rights held by Indigenous shareholders is a prudent solution to the many potential shareholder scenarios that are possible.
- The recommendation that there be a majority Indigenous representation on the corporation’s Board of Directors would be a substantial step toward ensuring the corporation is acting in the interest of Indigenous communities and issues (e.g. deriving financial value for Indigenous shareholders, building Indigenous business capacity, etc.).

Final
Definition

“

At least 51% of the shareholders of the corporation are Indigenous People, groups, or organizations and together have a controlling interest in the company.

”



INDIGENOUS NON-PROFIT CORPORATION

First Definition

“ The board of directors of the Indigenous non-profit is comprised of at least 51% Indigenous People. The most senior administrative executive is an Indigenous Person and at least 51% of senior management are Indigenous. The non-profit’s mission is focused on the social and economic betterment of Indigenous Peoples. ”

Feedback Themes on Proposed Definition

Within the Indigenous Non-Profit Corporation proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

Indigenous control at the Board level

“The board of directors ... is comprised of at least 51% Indigenous People”

- Requiring majority Indigenous representation at the Board level was not viewed as a significant constraint for organizations to meet.
- Indigenous board governance representation is a critical element of the definition that had strong agreement.

2

Indigenous control at the senior management level

“The most senior administrative executive is an Indigenous Person and at least 51% of senior management are Indigenous.”

- Filling leadership/executive roles with Indigenous candidates could be a barrier to growth as it can be difficult to fill specific roles with Indigenous talent in certain cases.
 - Many interviewees stated their specific concerns with this clause as the organization's eligibility relies on one single role within the organization.
 - Including this clause may also constrain capacity-building of Indigenous People within the company learning from non-Indigenous personnel.
- A definition setting hiring requirements is too much into the operations of the non-profit, especially since senior management is directed by the Board of Directors which is a more reasonable level to expect Indigenous representation and control.
 - There was concern that many existing organizations that are recognized as Indigenous today, through their mandate or ownership, would likely be disqualified based on this definition due to their less-than-majority of Indigenous senior staff.
 - This would be very disruptive, particularly as many organizations are working to grow the capacity and skills of Indigenous employees who could eventually move into more senior roles.
- It is more reasonable to require an Indigenous Board of Directors than senior executives / managers. Hiring regulations can provide for the preference of Indigenous candidates over similarly qualified non-indigenous candidates, but they should not preclude hiring the right person for the job regardless of ethnicity.



INDIGENOUS NON-PROFIT CORPORATION

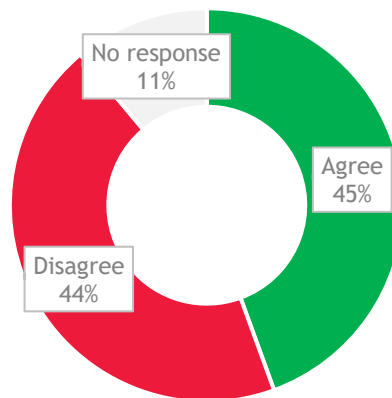
3

The mission and mandate of the non-profit

“...mission is focused on the social and economic betterment of Indigenous Peoples.”

- It was noted that the mandate of non-profits could be focused in broader areas such as environmental preservation, climate change, social issues, etc.

Response to Non-Profit Definition



Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **significant concern** with this definition. The overwhelming majority of concern related to the restrictive nature of the staffing requirements. Below is a summary of these suggestions that the NIPWG may want to consider as it relates to the definition of Indigenous Non-Profit Corporation:

- The restrictive nature of the staffing requirements at the most senior administrative executive and the senior management levels will create difficulties for many organizations and could be removed.
 - Indigenous participation in the workings of the organization should remain a long-term goal as this is one of the best ways to grow capacity, skills, and develop future board members.
- The acceptable missions for the non-profits could be broader than economic and social impacts and still be very important to Indigenous Peoples, with environmental protection being one notable example that may warrant an expansion of the definition in this area.

Final
Definition

“ The composition of the board of directors is at least 51% Indigenous directors. The non-profit’s mission is focused on the betterment of Indigenous Peoples or advancement of Indigenous issues. ”



INDIGENOUS CHARITABLE ORGANIZATION

First Definition

“ The board of directors of the Indigenous charitable organization is comprised of at least 51% Indigenous directors. If no board structure exists, the most senior administration executive of the Indigenous charitable organization is an Indigenous Person and at least 51% of senior management are Indigenous. The charity’s mission is focused on the social and economic betterment of Indigenous Peoples. ”

Feedback Themes on Proposed Definition

Within the Indigenous Charitable Organization proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

Indigenous control at the Board level

“The board of directors ... is comprised of at least 51% Indigenous People”

- Requiring majority Indigenous representation at the Board level was not viewed as a significant constraint for organizations to meet.

2

Indigenous control at the senior management level

“... at least 51% of senior management are Indigenous.”

- A definition setting hiring requirements interferes too much into the operations of the charity, especially since senior management is directed by the Board of Directors which is a more reasonable level to expect Indigenous representation and control.

3

The mission and mandate of the non-profit

“...mission is focused on the social and economic betterment of Indigenous Peoples.”

- The charity’s purpose could be focused on specific subjects, such as environmental preservation or climate change, that may not be related to economic benefits and only indirectly to social issues.
- Non-Profit and Charitable organizations that are Indigenous ran may need to restructure their organizations to make sure their focus is on Indigenous People, and not just a blanket statement that covers all people in their area.

The below summarizes **general key themes** gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Charitable Organization definition.

- Board policies could state that there must be a majority of Indigenous board members to create a quorum.
- Some responses question whether the Board and/or management need to be 51% Indigenous if the charity (or non-profit) serves only Indigenous clients.



INDIGENOUS CHARITABLE ORGANIZATION

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **moderate concern** with this definition. The concern is related to the restrictive nature of the staffing requirements, especially considering charities often rely on volunteers or may struggle to be competitive in hiring. Any limitations on their ability to engage staff should be minimized, although this definition does offer the caveat that Indigenous staffing requirements would only apply in the absence of a Board of Directors. Below is a summary of these suggestions that the NIPWG may want to consider as it relates to the definition of Indigenous Charitable Organization:

- The restrictive nature of the staffing requirements at the most senior administrative executive and the senior management levels will create difficulties for many organizations and could be removed.
- The acceptable missions for the charities could be broader than economic and social impacts and still be very important to Indigenous Peoples, with environmental protection being one notable example that may warrant an expansion of the definition in this area.
 - Notably, the definition should also align with Canadian laws governing registered charitable organizations.

Final
Definition

“

The composition of the board of directors is at least 51% Indigenous directors. The charity's purpose is to benefit Indigenous Peoples and communities in a way the law regards as charitable.

”





INDIGENOUS COOPERATIVE

First Definition

“

Collectively, Indigenous cooperative voting members must comprise a minimum of 51% of cooperative members.

”

Feedback Themes on Proposed Definition

Within the Indigenous Cooperative proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

Control of the cooperative rests with Indigenous members.

“Indigenous cooperative voting members must comprise a minimum of 51%...”

- It was noted that cooperatives are typically open to membership for any person or business, which may pose an issue if the cooperative must restrict membership based on Indigeneity in order to satisfy the definition.
 - Cooperatives that allow any member of the general public to purchase a membership / shares, such as a community grocery store, could make it more difficult to monitor or control Indigenous membership without discriminating in the sale of memberships / shares.
 - Some Indigenous cooperatives may restrict membership to a few Indigenous communities or organizations to ensure proceeds flow back to those specific members.

In addition to the clause-specific feedback, the below summarizes **general key themes** gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Cooperative definition.

- A cooperative is usually formed and structured with a specific audience or community in mind to benefit from its services. Therefore, the mandate, mission, and goals of the cooperative should help determine whether it is an organization created to benefit an Indigenous population.
 - In most cases this relationship between the organization and the population it serves should be fairly clear, such as a grocery store located in an Indigenous community. In a mixed population setting the need for a majority Indigenous membership composition may be required to better define an Indigenous cooperative.
- A common theme among stakeholders was that cooperatives have such a clear mission to benefit its membership that an Indigenous Cooperative should be 100% Indigenous owned. Anything less would be more akin to an Indigenous partnership with non-Indigenous members.
- The various types of cooperatives (e.g. consumer, financial, worker, housing) make it difficult to encapsulate all possible variations of membership under a single definition.
- The definition could also require an Indigenous majority on the Board of Directors as an additional layer of assurance that the cooperative’s benefits accrue to Indigenous communities and issues.



INDIGENOUS COOPERATIVE

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **general agreement** with this definition, but some specific **additions were proposed** to make it more clearly Indigenous focused. Below is a summary of these suggestions that the NIPWG may want to consider as it relates to the definition of Indigenous Cooperative:

- A cooperative should have a clear purpose (i.e. mission, mandate, etc.) to which it strives. Details could be added to the definition that there is a clear statement within the cooperative's guiding documentation that it exists to primarily benefit Indigenous People.
- For cooperatives with less than an entirely Indigenous membership, the definition could require a majority Indigenous representation on the Board of Directors to better ensure that benefit is directed to the Indigenous People of the community / communities it serves.
- Resting the definition on Indigenous membership puts the cooperative in the position of having to verify its members indigeneity.

Second Definition

“ The Cooperation's mission serves the needs of Indigenous People, and a majority of the board of directors are Indigenous. ”

Ultimately, the NIPWG expressed preference for the first definition:

Final Definition

“ Collectively, Indigenous cooperative voting members must comprise a minimum of 51% of cooperative members. ”





INDIGENOUS MICRO-ENTERPRISE

Proposed Definition

“

See definitions for Indigenous sole proprietorships, partnerships or corporations.

”

Feedback Themes on Proposed Definition

The below summarizes general key themes gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Micro-Enterprise definition.

- Not having a Micro-Enterprise definition is a gap.
 - The micro-enterprise was identified as a common form of business for Indigenous entrepreneurs (typically employs <10 people, specializes in goods and services for their local area). They are a very common part of community economies, reflecting a collaborative approach to filling local demand with local resources which may be repaid in money, goods, other services, etc.
 - Typically, these are not formally organized as a business and so may not be a close fit for these business definitions.
 - For example, an individual owns a piece of farm equipment and does the occasional job with it around the community. This informal arrangement is unlikely to be an incorporated business. Like the other business definitions, an Indigenous Micro-Enterprise definition would depend on the individual's Indigeneity.

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **moderate concern** with this definition. Several engagements suggested that a micro-enterprise should have its own definition due to its unique nature and importance within communities.

One aspect that bears further consideration is how a definition would facilitate more engagement between existing procurement or economic processes and micro-enterprises which may typically exist outside of those structures. At a certain point, a micro-business would be more appropriately considered a sole proprietorship, although making that distinction can add new responsibilities. In these cases, supports for small business owners and entrepreneurs can help reduce the barrier to participation as a sole proprietorship, help them carry out proper record keeping, reporting to CRA, etc. This capacity development would ideally enable the individual to develop their skills and participation in more business opportunities as an Indigenous entrepreneur.

Second Definition

“

An Indigenous micro-enterprise is operated by an Indigenous Person or Persons primarily for the benefit of an Indigenous community.

”

Final Definition

“

See definitions for Indigenous sole proprietorships, partnerships or corporations.

”



INDIGENOUS PARTNERSHIP

First Definition

“

The partnership agreement defines the Indigenous partner or partners as majority owners.

”

Feedback Themes on Proposed Definition

Within the Indigenous Partnership proposed definition, some of the engagement feedback was focused on **specific clauses** as outlined below.

1

Indigenous partner(s) have majority ownership.

“The Indigenous partner or partners [are] majority owners.”

- Majority ownership does not necessarily mean that most of the value (e.g. gross revenue, net earnings, employment hours, subsequent/related contracts) go to the Indigenous partner or flow through to benefit an Indigenous community.
- Partnerships of convenience between non-Indigenous organizations and Indigenous partners, particularly when the Indigenous partner is a sole proprietor, are usually too costly to monitor and enforce. However, it is helpful to have opportunities to discuss these situations and concerns toward a more equitable future.

In addition to the clause-specific feedback, the below summarizes **general key themes** gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Partnership definition.

- The Indigenous ownership should be part of the management team to help mitigate partnerships of convenience.
- It can be difficult to enforce the legitimacy of partnerships since it can be relatively easy to form a partnership of convenience for the purpose of boosting a tender submission - an issue also seen with shell corporations, holding companies, and joint ventures.
- The definition should encompass both general and limited partnerships by requiring a written partnership agreement that defines the business relationship and contributions of each partner.
- Creating a template for a written partnership agreement that incorporates the requirements of the definition would help reduce barriers to its use by lowering costs and time needed to create an agreement.
- Depending on the terms of the partnership agreement, the partnership may not have to be majority owned by the Indigenous partner(s), especially if there are other impacts to be considered. This might include significant social or economic benefits to an Indigenous community.
- Some funding or financing organizations will examine the terms of a partnership agreement to ensure that the Indigenous partner(s) are able to meet financing commitments, so it should not be uncommon to expect the partnership agreement to be considered in determining the legitimacy of a partnership.
- If the definition’s requirements are too strict it will create barriers to participation for Indigenous businesses, particularly since forming a partnership is very easy to do. However, if requirements are too lax it will be more prone to misuse and abuse and procurement holdbacks for Indigenous participation will not have meaningful benefits to Indigenous communities and entrepreneurs.



INDIGENOUS PARTNERSHIP

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **moderate concern** with this definition. The concerns are somewhat focused on the various partnership structures that may be utilized. Below is a summary of this issue gathered from engagement and discussed by the NIPWG during a workshop on the definition of Indigenous Partnership:

- Indigenous majority ownership of a partnership would likely reflect that the Indigenous partner has invested most of the capital. However, in a scenario where an Indigenous general partner is managing operations, a definition that requires majority *ownership* may disadvantage the Indigenous partner who merely requires capital to build its operational capacity, gain valuable experience, hire Indigenous workers, etc.
- Recognizing the different types of partnerships (general, limited) that a definition may govern, the definition could require at minimum *either* majority Indigenous ownership *or* Indigenous management of operations.
- A compliance audit could be required for contracts above specific values, such as following the Federal government's threshold of \$25,000 for goods and \$40,000 for services.

Second Definition



“

The partnership agreement defines the Indigenous partner or partners as having either majority ownership or control of operations or both.

”

Through discussions among the NIPWG, the Final Definition was further refined to reflect arrangements involving an Indigenous individual or business:

Final Definition



“

The partnership agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits and majority management control.

”

Partnerships involving an Indigenous community partner were recognized to have a wider range of potential realized benefits for consideration:

Final Definition



“

The partnership agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc.

”



INDIGENOUS JOINT VENTURE

First Definition

“

The joint venture agreement defines the Indigenous partner or partners as majority (minimum 51%) owners.

”

Feedback Themes on Proposed Definition

Within the Indigenous Joint Venture proposed definition, some of the engagement feedback was focused on specific areas as outlined below.

1

The joint venture agreement defines the relationship between entities.

“The Joint Venture Agreement defines...”

- The joint venture (JV) agreement can be used to examine how the parties to a JV are sharing the risks and rewards of a project which could be useful in determining whether the JV is truly significantly benefiting the Indigenous partner.

2

The Indigenous partner(s) control the joint venture.

“... Indigenous partner or partners as majority (minimum 51% owners).”

- Joint ventures can be partnerships of convenience used only to satisfy minimum Indigenous participation requirements. While there would be some benefit to the Indigenous partner in the JV, in these cases the business relationship does little to build capacity and encourage greater involvement in the Indigenous partner in the future.
- The requirement for the Indigenous partner(s) to have managing control of the Joint Venture is a one that some Indigenous financial institutions stipulate in their lending programs.
- Requiring Indigenous control over the JV can be challenging for small Indigenous partners or communities who may not have the capacity or specialized skills needed to manage the project the JV is formed to undertake.

In addition to the clause-specific feedback, the following summarizes **general key themes** gathered from the interviews, focus groups and surveys as it relates to the proposed Indigenous Joint Venture definition.

- In an incorporated JV, the Indigenous ownership should be part of the Board and/or management team and ideally demonstrate significant involvement in governance and activities which would be expected in a joint venture over a mere partnership agreement.
 - A majority Indigenous representation on the Board of Directors could be beneficial to include as a requirement.
 - However, oversight or control of the JV can be a demanding administrative task and may require a skillset that the Indigenous partner does not have or that would be expensive and time consuming to develop.
- Requirements at the RFP stage can also help filter disingenuous JV applicants. Past project references from each partner acting alone or provide an audit of past projects.



INDIGENOUS JOINT VENTURE

More than any other definition, interviewees noted that additional proof may be required to ensure that Joint Ventures are not used to circumvent or minimize Indigenous participation. Suggestions included:

- Detailed documentation on operations benefiting Indigenous People (e.g., time sheets, pay stubs).
- Requirements that contracts held by the JV require a minimum percentage of work to be completed by the Indigenous partner.
- A requirement that Indigenous participation be mandated to a certain degree on the Board and having it formalized in policies, bylaws, etc.
- A requirement detailing that a certain percentage of the JV's income go to the Indigenous partner.
- There is a need for **compliance auditing** due to the history of partners manipulating JV arrangements to gain an advantage in procurement processes with little benefit accruing to the Indigenous partner.
- Several business registries use Classes to distinguish levels of Indigenous ownership ranging from simple majority to 100% Indigenous ownership. This approach reflects the continuum of organizations that are building capacity and moving toward greater Indigenous participation over time.
- Majority ownership alone does not mean the Indigenous Partner earns most of the project's value. Procurement conditions should require the division of benefits (e.g., profits, job creation, wages paid, etc.) between the partners be specifically described before a JV can be categorized as Indigenous.

Assessment of the Definition and Potential Changes

Based on the information gathered through the completed stakeholder engagement, there is **significant concern** with this definition, given that it has been used in the past by bad actors and the definition is still open to manipulation, and suggested revisions, including:

- A majority Indigenous ownership stake and majority Indigenous representation on the Board of Directors should establish their ownership, if not day-to-day management.
- The organization's governing documents and policies relating to the minimum benefits (i.e., work completed, benefit allocation, etc.) should specify the benefit(s) to the Indigenous partner and be available for auditing.
- Requirements for regular compliance auditing relating to selected metrics associated with benefit to Indigenous People (e.g., wages, jobs, profits, etc.) and how to conduct auditing without being so burdensome as to discourage Indigenous participation in the business opportunities.

This feedback contributed to the development of a second definition, which NIPWG further refined into a third iteration:

Second Definition

“ The joint venture agreement defines the Indigenous partner or partners as majority owners and, when applicable, the composition of the Board of Directors is also a majority of Indigenous directors. ”

Third Definition

“ The joint venture agreement defines the Indigenous partner or partners as having majority ownership, control of the Joint Venture, and realized benefits, which includes the value of the contract for goods and services, value of sub-contracted work, and similar economic benefits. ”



INDIGENOUS JOINT VENTURE

The NIPWG discussed the proposed definitions for Indigenous Joint Ventures and focused on the nature of the relationship between the parties to the JV as the key measure of validating the organization. Like Indigenous Partnerships, the intention of the joint venture agreement should be to ensure that the Indigenous entity is realizing meaningful benefits from the arrangement, not merely being used to satisfy Indigenous participation.

The result was a definition specific to Indigenous individuals or companies in a Joint Venture:

Final Definition

“ The joint venture agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits and majority management control. ”

A second definition is specific to Joint Ventures where the Indigenous partner(s) is an Indigenous Community Organization:

Final Definition

“ The joint venture agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc. ”





4.0 - Cross-Definition Considerations

Feedback and Recommendations



DEFINITION-WIDE FEEDBACK

Overview

Interviewees were provided with the definitions and were given the opportunity to give feedback definition-by-definition. However, they were also given the opportunity to provide their overall feedback on the definitions as a whole. In those discussions, the below themes became clear.

Theme One:

Interviewees generally believe that the definitions are close to correct and will be quite helpful in directing benefit to Indigenous businesses

Interviewees were given the opportunity to review the definitions before any discussions and provide their thoughts. Generally, there was alignment that they are close to correct with some slight changes potentially being helpful. A summary of the key points from the interviews is below.

- The definitions were described as “fair,” “transparent,” and “consistent” by a wide range of interviewees including business owners themselves.
- Other interviewees noted that they cover the required details, and that they’re the best version that they’ve seen to date.
- It was also mentioned that this process and these definitions will help exclude bad actors and therefore may cause some conflict with businesses that may be excluded.

Theme Two:

There was debate with respect to the 51% figure with opinions that it could be higher and better defined

Interviewees had a wide range of opinions on the 51% figure used in many of the definitions with some feeling it could be more precise. A summary of the key points from the interviews is below.

- Many engagements pointed to the 51% figure being either correct or close - several interviewees felt that the figure 51% should be repositioned as 50% + 1 (share / employee / vote / etc.) as this can make a significant difference when it comes to larger businesses.
- Some people had the opinion that 51% was too low and there should be incentives or benefits to being at a higher percentage - the idea of adding the term “minimum of 51%” or simply “a majority” was proposed to be included across all definitions.
- Respondents suggested various options including 60%, 75%, 80% and 100%, given that specifying a minimum 50%+1 was not aspirational or that procurement should place higher value on larger Indigenous majorities.
- Others felt that the 51% figure was too restrictive in the cases that there is minority Indigenous ownership / control, but there are significant benefits gained by Indigenous People or communities through the business.



DEFINITION-WIDE FEEDBACK

Theme Three:

Forcing a minimum percentage (e.g. 51%) may negatively impact some companies that provide benefit to Indigenous People or communities

Interviewees regularly provided their thoughts regarding how there could be businesses that provide significant benefit to Indigenous People and communities that may not be Indigenous-owned or controlled. A summary of the key points from the interviews is below.

- Partnerships exist that are not majority Indigenous-owned but still provide significant benefit to Indigenous communities.
- An Indigenous Person or community may own a minority of the business, but the benefit they provide to the community may be huge in comparison to another business that is Indigenous-owned.
- It was suggested that there could be a method to grant some sort of exceptions for these businesses (e.g. does not meet ownership percentage but hires a high percentage of Indigenous workers), but the Indigenous community / communities impacted would have to be consulted and involved.

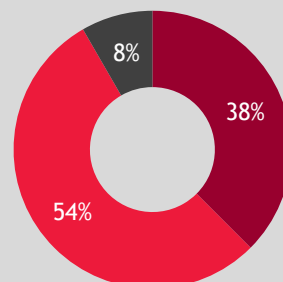
Theme Four:

“Control” of the business is important to understand, but is more difficult to define than “ownership”

Interviewees highlights their concerns about how there may be a 51% **ownership** of a business, but **control** is not held by Indigenous People. A summary of the key points from the interviews is below.

- Control is not as easy to define as ownership, but some interviewees felt that simply defining a percentage of ownership wasn't enough.
- It is relatively simple for a bad actor to show majority Indigenous ownership, but have majority control of the business.
- It was also mentioned that if a non-Indigenous parent company controls an Indigenous subsidiary that this could present a problem as the subsidiary has limited control in the relationship.
- It was noted that New Zealand is now dealing with the ownership vs. control topic and working to determine what changes may be required to their definitions.

When asked to provide their opinion on the complexity of the final definitions, respondents were relatively split. A slight majority (54%) preferred that the definitions be “simplified and straight-forward” with 38% believing they should be “detailed and comprehensive” to mitigate against bad actors.



- Detailed and comprehensive
- Simplified and straight-forward
- No strong opinion



PROOF OF INDIGENEITY

Overview

Interviewees were very clear that they had concerns relating to how people would prove their Indigeneity in order to qualify as an Indigenous Business. Based on what was heard during discussions, the primary approaches are shown below.

First Nation Certificate of Indian Status, Secure Indian Status Card and First Nation Citizenship Cards issued by:

- First Nation as listed on the official Government of Canada website
- Modern Treaty Holders and Self-Governing First Nations in Canada as listed on the official Government of Canada website
- Indigenous Services Canada

Inuit Beneficiary Cards issued by:

- Nunavut Land Claim Agreement (Nunavut)
- Inuvialuit Final Agreement (Northwest Territories)
- Labrador Inuit Land Claims Agreement (Nunatsiavut)
- James Bay Northern Quebec Agreement (Nunavik)

Métis Citizenship Cards issued by:

- Métis National Council affiliates (Métis Nation of Alberta, Métis Nation of British Columbia, Métis Nation of Ontario and Métis Nation of Saskatchewan)
- Manitoba Métis Federation
- Alberta Métis Settlement
- Northwest Territory Métis Nation

Non-Status Indians must be verified through:

- First Nation recognition of the individual under the First Nation's own Citizenship / Membership Code as verified by the First Nation Membership/Citizenship Clerk.
- Verification in writing of recognized biological lineage to the community from an elected leader of the First Nation along with the Membership/Citizenship Clerk of the First Nation.

Self-identification without proof of Indigeneity as listed above will not be accepted or recognized.



PROPOSED ADDITIONS

Overview

Further discussion with Indigenous Peoples, organizations, and other stakeholders will help refine and evolve the Definitions to better achieve its aims over time. At this point, most people surveyed preferred that definitions be simplified and straight-forward. Interviewees had a variety of thoughts as to potential criteria that could be added to strengthen the definitions in an attempt to maximize the benefits accrued by Indigenous People and communities. An overview of the potential additions are summarized below, although they may not be applicable to all definitions and would bear further consideration before inclusion in any definition.

Profit

Controlling things like voting rights does not necessarily translate to ownership of profits.

Adding this dimension could improve the distribution of these funds to Indigenous People and communities.

Multinational Corporations

Adding a definition for this type of business may require different criteria. Thinking about this may enable these larger companies to bring benefits to Indigenous People and groups at a large scale.

Non-Financial Benefits

While the thought of “benefit” is generally used to describe financial benefits, there are other sorts of benefit that can be provided through the operation of a business.

Social Impact Rating

Showing that there are opportunities going back to the community in something that should be considered (i.e. creation of jobs, capacity building, new/improved services, etc.) which could be reflected in a scorecard of sorts.

Cultural Awareness

Adding the requirement for cultural awareness training could help non-Indigenous businesses (e.g. JV partners) better understand perspectives across Indigenous communities and facilitate more equitable working relationships.

Percentage of Contract Work

For specific opportunities pursued by the Indigenous business, it was suggested that there be a minimum standard that they are required to adhere to with respect to the percentage of work that goes to Indigenous parties.

Non-Indigenous Businesses

Some non-Indigenous businesses can provide significant benefits to Indigenous People and communities. It was suggested that a separate definition could be created to capture these businesses.

Expanding to Other Business Types

There are other business types that may require the development of a clear definition, including social enterprises and trusts. The list should be able to expand as required to include relevant types of business.



IMPLEMENTATION CONSIDERATIONS

Overview

Interviewees were asked specifically about the implementation of these definitions and had a significant amount of helpful insight on how to make these definitions succeed once rolled-out. When surveyed, over half of respondents noted that they foresee potential challenges in implementing the new definitions. The key themes that were gathered are outlined below.

Theme One:

The definitions are only one element to the process - incentives should reward going beyond the definitions' minimums

Interviewees stated very clearly that the definitions can not be the single criteria that an Indigenous business should strive to meet. There should be incentives to have them go beyond the definition's parameters. A summary of the key points from the interviews is below.

- Criteria should be used in procurement vehicles to reward Indigenous businesses that exceed the definition minimums and provide more benefits to Indigenous People and communities (i.e. a scorecard with clear and understandable scoring).
- These incentives could give additional opportunities to non-Indigenous businesses that may provide tangible and significant benefits to Indigenous communities.
- While the definitions set the minimum percentage (e.g. 51%), going beyond this minimum should be rewarded (e.g. a 100% Indigenous business should be scored higher than a 51%).
- Beyond the definitions and traditional metrics (e.g. jobs, wages, etc.) a fulsome scope of benefits from an Environment, Social, and Governance (ESG) perspective should be taken into account.

Theme Two:

A well-defined and recurring auditing and review process is crucial to the integrity of the definitions and what they are looking to achieve

Interviewees often spoke about the need for there to be a robust system of auditing and reviews to maintain the integrity of process and adherence to the definitions over time. A summary of the key points from the interviews is below.

- A business can become certified at a point in time, but there will regularly be changes to the structure (i.e. ownership and control) of the company, so regular reviews are required.
- An annual adherence process was suggested given companies are required to submit documentation to the government at least on an annual basis.
- Reviews should be done upon the award of specific contracts (e.g. over a given dollar amount) to ensure that the business meets the definitions and is meeting its benefit commitments.
- A third-party organization could be beneficial in supporting this process to make sure that businesses meet the requirements.
- Verification difficulty gets compounded as definitional requirements are added (e.g. it becomes a much more difficult process when determining the percentage of workers in a business are Indigenous).
- Engaging the Indigenous Businesses and Organizations in the audit or review process should help ensure the effects of the Definitions are understood and that opportunities to refine and improve the Definitions are identified.



IMPLEMENTATION CONSIDERATIONS

Theme Three:

Indigenous businesses will benefit from coaching and support in setting up their businesses

Interviewees spoke about the importance of education and support being made available for Indigenous People looking to create businesses. A summary of the key points from the interviews is below.

- Some business structures (mainly partnerships and joint ventures) can and have been used by people for the wrong reasons. Providing support to Indigenous People in the development of these structures would help mitigate against getting into these situations.
- Setting up some structures can be complex and the provision of legal advice to Indigenous People in developing their businesses in the right manner is critical to their success.

Theme Four:

The success of the definitions will depend on building awareness amongst those impacted

Interviewees spoke about the importance of providing sufficient communication to both Indigenous and non-Indigenous groups as to the definitions and the processes that surround them. A summary of the key points from the interviews is below.

- There is currently some lack of understanding about what constitutes an Indigenous business. It will be critical to build awareness of the definitions that are ultimately determined.
- This communication needs to extend to the broader procurement community since the decision-makers need to be aware of the definitions and the policies / processes around them.

Theme Five:

This process will result in backlash, but clear policies and processes will mitigate the issues

Interviewees raised their concerns that developing these new definitions will inevitably result in some disagreements - regardless of their content. A summary of the key points from the interviews is below.

- There will be disagreements with the final definitions as they will inevitably impact some people (legitimate actors or bad actors) in a negative way. This could include legal challenges.
- Developing clear and transparent policies will both create clarity amongst stakeholders and mitigate any challenges that are made by those negatively impacted
- These definitions may need to slightly evolve in the future depending on the magnitude and legitimacy of challenges. It is important that these definitions continue to be revisited to adapt to the changing world.



OTHER ENGAGEMENT FINDINGS

Overview

In addition to the topics covered previously, the below were findings that were brought to light during either interviews and/or surveys during the stakeholder engagement for this project.

Restrictive Procurement Requirements

Indigenous businesses often are not as large as competing firms and some procurement terms may indirectly direct procurements away from Indigenous businesses. For example, the procurement documents state that the successful proponent must complete all of the work (i.e. all or nothing). An Indigenous business may be able to complete a portion of the work, but not have the existing capacity to take on the complete scope of work.

Conscious and Unconscious Bias

Opportunities for Indigenous businesses are still being restricted through bias (either conscious or unconscious). Elements of procurements may limit Indigenous participation, making the 5% target more difficult to reach. Further education and change is required to move the needle.

Public Sector Inflexibility

Federal systems and policies are quite slow to change and this may be an impediment in meaningfully improving outcomes for Indigenous businesses. Industry is much more forward-thinking and faster to react. Working with industry may produce quicker results and government could learn from industry's practices.

Nationally Recognized Registry

Forming a nationally-recognized registry of qualifying businesses will be critical and very helpful for Indigenous business across the country. Setting up and maintaining such a directory is a difficult process, but putting the resources into it up-front is critical to its success. The benefits of being included need to be clear and communicated to Indigenous businesses. Ideally the directory will be harmonized to include all Indigenous businesses and provide the required level of detail (i.e. industry, products, capabilities, etc.).

Indigeneity of Staff

There were concerns with respect to mandating a certain percentage of staff to be Indigenous. It was mentioned that there are a number of non-Indigenous senior personnel in positions with organizations that are focused on supporting Indigenous People and communities. Their presence in these roles may disqualify the organization from qualifying as an Indigenous business.

Others spoke to the fact that it may not be possible to fill certain skills gaps with Indigenous People at a given time.

Access to Resources

On-reserve businesses find it difficult to compete for opportunities as they are limited in the resources that they are able to access (e.g. bonding for performance, insurance, tools, human resources, etc.)



Appendix A
Quick Reference Summary



SUMMARY OF PROPOSED REVISIONS

This Appendix provides an at-a-glance summary of the definitions presented to stakeholders, and the iterations developed based on the feedback of both external stakeholders and the NIPWG Working Group. The Second Definition was proposed by BDO based on feedback from stakeholders, while the Final Definition indicates the preference of the NIPWG Working Group based on their review of the full context of the report.

	First Definition	Feedback or Second Definition	Final Definition
Indigenous Sole Proprietorship	<p>“The business is 100% owned by an Indigenous Person who has sole responsibility for making decisions, receives all profits, claims all losses, assumes all risks, pays personal income tax (where applicable) on the net income generated by the business, and does not have separate legal status from the business.”</p>	<ul style="list-style-type: none"> Strong consensus and agreement, no recommended changes based on the stakeholder feedback. 	<p>“The business is 100% owned by an Indigenous Person who has sole responsibility for making decisions, receives all profits, claims all losses, assumes all risks, pays personal income tax (where applicable) on the net income generated by the business, and does not have separate legal status from the business.”</p>
Indigenous Corporation (For Profit)	<p>“The majority of the shareholders are Indigenous individuals or groups. They have 51% of the voting rights.”</p>	<ul style="list-style-type: none"> Generally strong consensus and agreement 	<p>“At least 51% of the shareholders of the corporation are Indigenous People, groups, or organizations and together have a controlling interest in the company.”</p>
Indigenous Non-Profit or Not-for-Profit	<p>“The board of directors of the Indigenous non-profit is comprised of at least 51% Indigenous People. The most senior administrative executive is an Indigenous Person and at least 51% of senior management are Indigenous. The non-profit’s mission is focused on the social and economic betterment of Indigenous Peoples.”</p>	<ul style="list-style-type: none"> Significant concern with definition, particularly with the restrictive nature of the staffing requirements. 	<p>“The composition of the board of directors is at least 51% Indigenous directors. The non-profit’s mission is focused on the betterment of Indigenous Peoples or advancement of Indigenous issues.”</p>
Indigenous Charitable Organization	<p>“The board of directors of the Indigenous charitable organization is comprised of at least 51% Indigenous directors. If no board structure exists, the most senior administration executive of the Indigenous charitable organization is an Indigenous Person and at least 51% of senior management are Indigenous. The charity’s mission is focused on the social and economic betterment of Indigenous Peoples.”</p>	<ul style="list-style-type: none"> Moderate concern with definition, particularly with the restrictive nature of the staffing requirements. 	<p>“The composition of the board of directors is at least 51% Indigenous directors. The charity’s purpose is to benefit Indigenous Peoples and communities in a way the law regards as charitable.”</p>



SUMMARY OF PROPOSED REVISIONS

First Definition

Feedback or Second Definition

Final Definition

Indigenous Cooperative

“Collectively, Indigenous cooperative voting members must comprise a minimum of 51% of cooperative members.”

“The Cooperation’s mission serves the needs of Indigenous People, and a majority of the board of directors are Indigenous.”

“Collectively, Indigenous cooperative voting members must comprise at least 51% of the cooperative’s members.”

Indigenous Micro-Enterprise

“See definitions for Indigenous sole proprietorships, partnerships or corporations.”

“An Indigenous micro-enterprise is operated by an Indigenous Person or Persons primarily for the benefit of an Indigenous community.”

“See definitions for Indigenous sole proprietorships, partnerships or corporations.”

Indigenous Partnership

“The partnership agreement defines the Indigenous partner or partners as majority owners.”

“The partnership agreement defines the Indigenous partner or partners as having either majority ownership or control of operations or both.”

Where the partnership is with an Indigenous individual or business:

“The partnership agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits, and majority management control.”

Where the partnership is with an Indigenous Community

“The partnership agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc.”

Indigenous Joint Venture

“The joint venture agreement defines the Indigenous partner or partners as majority (minimum 51%) owners.”

“The joint venture agreement defines the Indigenous partner or partners as majority owners and, when applicable, the composition of the Board of Directors is also a majority of Indigenous directors.”

Where the joint venture is with an Indigenous individual or business:

“The joint venture agreement defines the Indigenous partner or partners as having the relevant credentials in the industry and/or experience in operating a business, at least 51% ownership, majority of realized economic and monetary benefits, and majority management control.”

Where the joint venture is with an Indigenous Community Organization:

“The joint venture agreement defines the Indigenous community partner or partners as having at least 51% ownership, majority management control, and majority of realized socio-economic benefits, such as: economic and monetary benefits, Indigenous business procurement, recruitment and employment, skills training, initiatives for women; youth; and management capacity development, etc.”



Engagement Findings for a National Indigenous Business Definition

September 2023