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Policy ViewPoint

Keys to Successful Indigenous Partnerships

Gaining knowledge, building trust and showing respect are critical when working with Indigenous partners.

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POLICY VIEWPOINT

Highlights

- > Indigenous businesses and communities are increasing their contribution to Atlantic Canada's economy, benefiting from policy and legal changes that increase their access to capital and foster economic sovereignty.
- > Partnerships with non-Indigenous firms provide opportunities for mutual benefit, pooling resources, skills, values and viewpoints. Innovation is key.
- > Non-Indigenous partners should start early in investing time to build knowledge, friendships and trust.
- > Each Indigenous community may have different priorities and capacity. Understanding their interests and potential need for specific business structures is important.

Keys to successful Indigenous partnerships

The Atlantic Economic Council recently estimated the size of the Indigenous economy in Atlantic Canada to be worth \$4 billion in direct Gross Domestic Product (GDP). Almost 1,800 Indigenous-owned businesses with employees operate in the Atlantic region. When indirect and induced effects are included, these Indigenous-owned firms and their communities support \$6.2 billion in GDP (4.5% of regional output) and almost 90,000 employees, including 26,000 non-Indigenous jobs. They generate \$2.1 billion in tax revenues across the Atlantic provinces.

Our earlier Indigenous research reports discussed several opportunities for future growth of Indigenous firms and communities. They also highlighted some of the challenges that must be overcome.

The Council emphasized the importance of sustainable and equitable partnerships between Indigenous and non-Indigenous organizations in its report and webinar in June 2022. This topic was also the subject of panel discussions at the Council's Building Atlantic Canada Conference in May 2024, which included perspectives from Indigenous representatives and lawyers with McInnes Cooper.

This Policy ViewPoint builds upon this work and articulates some key principles to help non-Indigenous organizations understand the importance of partnerships with Indigenous organizations and communities. It provides practical principles for successfully engaging and working with Indigenous groups. This ViewPoint is presented in an interview format, featuring insights from an Indigenous representative and lawyers who have advised Indigenous and non-Indigenous parties.

Report authors

Chief Terrance Paul is the long-serving Chief and CEO of Membertou. Chief Paul has guided his community and administration into one of the most efficient and economically flourishing Indigenous communities in the country and led to the single-largest investment by an Indigenous group in Canada in acquiring 50% of Clearwater Seafoods – a transaction widely viewed as a model of economic reconciliation in Canada.

McInnes Cooper:

James Gogan is a Partner based in McInnes Cooper's Halifax and Sydney offices. Jim provides strategic advice to various Indigenous communities on complex commercial projects, including negotiations, agreements and financing. This work has included various renewable energy developments, Indigenous/private sector partnerships, mining and fishing sectors projects including the 2021 Nova Scotia Mi'kmaw Nations acquisition of a 50% interest in Clearwater Seafoods Inc.

Jeffery Callaghan is a Partner based in McInnes Cooper's Fredericton office. Jeffery regularly provides advice and guidance respecting commercial and business partnerships with and on behalf of Indigenous communities, businesses and entrepreneurs, including the complex work of utilizing reserve lands for business and commercial purposes.

Q: How have you seen the role of Atlantic Indigenous communities in the economy evolve over the past 40 years?

Chief Paul (CP): Throughout my time as Chief over the last 40 years, I've seen immense changes take place within Atlantic Canada's Indigenous communities. In Membertou, we've built our vision of what a thriving and progressive community should be; ongoing growth and development of community infrastructure, an economic uplifting of our community and people and strong roots in who we are as a community.

Forty years ago, Indigenous communities didn't have the opportunity to be part of big decisions. And, we certainly didn't have any decision-making influence or ownership opportunities. I often say that for Canada's Indigenous communities, we've not started from the bottom – we've started from below the bottom. Discrimination and lack of credibility and trust has contributed, in the past, to our communities staying small. But today, we've seen an incredible transformation where we are organizing, working and building in a position of leadership now.

Indigenous economies contribute greatly to the broader economies of Atlantic Canada, and today, more than ever, we're at the table for opportunity.

The greatest change that's taken place is our position within the landscape of Atlantic Canada's business community. We've reached a pivotal point that has come with decades of hard work and perseverance, and we are proudly working towards self-determination with every passing year.

McInnes Cooper (MC): Indigenous communities have really evolved from being forced to be by-standers and spectators to economic development, to recipients of the legal "duty to consult" (primarily in the context of resource development), to their current role as deep participants in the Atlantic Canadian economy.



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There are of course many drivers of this evolution, but three key drivers are access to capital, several landmark court decisions and legislation.

In the past, Indigenous communities had a limited ability to secure on-reserve assets to obtain financing, in turn limiting their access to capital. Several legislative changes have helped increase Indigenous communities' access to capital by providing them more control over their reserve lands and opportunity to leverage lands and assets for capital – and their ability to participate in projects financially.

We've also seen a legal evolution in Indigenous communities' path to greater self-government and self-determination, which must necessarily include and foster economic sovereignty. Advances by federal, provincial and territorial governments in responding to the Truth and Reconciliation Commission of Canada's 94 calls to action (though perhaps slower than many Indigenous Communities have hoped for) have helped.

Legislative changes increasing access to capital

- > Changes to the *Indian Act* allowed communities the opportunity to designate certain reserve lands for commercial purposes.
- > Enactment of the *First Nations Fiscal Management Act* and its Financing Secured by Other Revenues Regulations mandates the First Nations Financial Authority to raise short and long term financing for its Borrowing Members and provided Bands authority over financial management, property taxation and local revenues and financing for infrastructure and economic development.
- > Enactment of *First Nations Land Management Act* allowed communities to enact their own Land Code, which provides Band Councils with much greater control over and flexibility in managing their Reserve lands, including enabling and fostering commercial development.



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The federal government recently adopted legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Among many objectives, UNDRIP speaks to the necessity of *free, prior and informed consent* by Indigenous communities prior to their traditional lands being taken, occupied, used or damaged. This is driving movement away from mere consultation of Indigenous communities on decisions that affect their territories, to meaningful participation of Indigenous communities in the use of their territories (commonly reflected in equity stakes in projects within their territories).

Canada has affirmed the UN Declaration of the Rights of Indigenous Peoples

The UN adopted the non-binding United Nations Declaration on the Rights of Indigenous Peoples in 2007. By enacting the *United Nations Declaration on the Rights of Indigenous Peoples Act* in June 2021, Canada affirmed the Declaration as an International human rights instrument and established a framework for advancing the implementation of the Declaration at the federal level.

We are seeing other changes advance self-government and self-determination, such as the federal government legislation confirming Indigenous governments' control over Indigenous child welfare to further UNDRIP and meet other reconciliation goals. In 2024, the Supreme Court of Canada upheld that legislation relying, in part, on UNDRIP and the Canadian legislation implementing UNDRIP and its reconciliation goals. We've also seen the Court confirm that First Nations governments created by legislation are subject to the Canadian *Charter of Rights & Freedoms*. These decisions are helping to define the shape of First Nations' self-determination, including economic self-determination, in Canada.

Q: Why is it important to work with Indigenous communities?

CP: When non-Indigenous business works with Indigenous communities, everyone wins. Although our communities only account for approximately 5% of the population in Canada, we contribute \$50 billion to the Canadian economy annually.

Traditionally, our people have been resourceful, resilient, and community-minded. We've kept those values and bring them to each partnership we create. Working with Indigenous communities means you're accessing new skillsets, but also our cultural values and viewpoint. To us, that is reconciliation in action; working together for a common goal, where all parties benefit for the ultimate purpose of growing and building our communities.



MC: There are many, but here are three key reasons.

First, Indigenous peoples aren't mere stakeholders; they hold constitutionally protected rights. Indigenous communities in Atlantic Canada are more aware of their rights and are asserting those rights more vigorously. And there's generally a greater expectation on the Crown, manifested, for example, in stringent and robust consultation requirements as well as funding and grant requirements.

This means failure by governments and non-Indigenous parties to respect those rights carries both legal and practical consequences. For example, let's say you need a licence to make a resource project happen. The responsible government department decides to grant you that licence but it (and by extension you) failed to consult or to consult adequately an Indigenous community your project affects. That Indigenous community could – and likely will – challenge the decision to grant that license and ask the department to add conditions to the licence or ask a court to grant an injunction to delay the project or even to revoke the licence. The practical result: project delay, project costs, and ultimately project jeopardy.

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And again, consultation has evolved where success realistically means a focus on participation of Indigenous communities in the decision-making in, and the benefits to be generated by, a project. In short, if you're not leading with your best foot forward with Indigenous relations, you'll soon be on your back foot with your project goals.

Second, social licence is now even more imperative for businesses to obtain in general. We see this reflected in (or perhaps driven by) the growing adoption of "ESG" (Environment, Social, Governance) strategies. And it's the right thing to do. We think the public has much higher expectations of businesses (particularly those that work in the energy and natural resources sector) with respect to Indigenous relations. And this expectation is specifically reflected in the Truth & Reconciliation Commission Call to Action 92.

Third, Indigenous communities now have competitive access to funding, financing and government contracts. Lending institutions, including the First Nations Finance Authority, Canada Infrastructure Bank, Chartered Banks generally, and notably the First Nations Bank, all typically offer very competitive lending terms to Indigenous borrowers.

Legal duty to consult

There is a legal duty to consult Indigenous groups when the federal or a provincial or territorial government (the "Crown") contemplates actions that may adversely affect their rights under section 35 of the Canadian Constitution.

Truth and Reconciliation Commission Call to Action 92

Call to Action 92 calls on the corporate sector to adopt UNDRIP "as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources" and delineates what that looks like.

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And, for example, the mandatory federal government policy to direct a minimum of 5% of federal government contracts to Indigenous businesses added to the already existing set-asides under the [Procurement Strategy for Indigenous Business](#). This policy took effect for the federal Department of National Defence in 2024; the [2024 federal budget](#) contains over eight billion dollars in defence procurement over the next 5 years. That's over \$400 million in defence contracts alone that will be directed to qualifying "Indigenous businesses". We're seeing transactions positioning Indigenous businesses to take advantage of this opportunity.

Membertou First Nation and the Qalipu First Nation acquire Newdock

A Mi'kmaq partnership of Membertou First Nation and the Qalipu First Nation together with a private sector partner, Horizon Naval Engineering, acquired Newdock (St. John's Dockyard Ltd.) in fall 2024. The Mi'kmaq now hold a 95% interest in the business making it eligible for the mandatory federal 5% Indigenous Procurement Target.

Q: How will Indigenous communities benefit from doing business with non-Indigenous partners?

CP: In Membertou, we have learned significantly from our business partners throughout the years. In partnering with companies with specialized expertise, we've grown our economic development corporation to new heights, and invested heavily back into our community.

Working with partners who bring value on both sides is a win-win situation. In our community of Membertou, we've worked to take advantage at every step of the way to learn, grow, and maintain exceptional partnerships. It's proven to be a recipe for success for us, and we look forward to the opportunity to partner with others who are innovating and developing in our region.

Q: What do you think non-Indigenous businesses need to understand or do better when working with Indigenous partners?

CP: It all begins with a conversation. Some of our best developments have come from a small conversation or outreach from an unknown partner. Putting effort on both sides to foster strong partnerships, and frankly, friendships with our non-Indigenous partners has led to achieving our goals.

Non-Indigenous business should understand that each of our communities have different priorities, different capacities, and different visions for where we want to go.

Our communities are open for business and getting to know each other is often a strong path to partnership.

"I can confidently say that my best friends besides my wife are my lawyer and my accountant. Good business requires good relationships." - Chief Terry Paul

MC: For many, a lot. Here are three ideas.

First, as discussed above, understand they have special rights that set them above any stakeholder.

Second, don't just think in terms of risk; think in terms of opportunity.

Indigenous communities have skillsets, knowledge, and experience to bring to the table – as well really competitive access to lending. The best partnerships are those formed through mutual and reciprocal objectives.

Innovation always wins. The strong projects and strong proponents are the ones that are innovating in this area, exemplified by the 2021 Clearwater transaction.

The 2021 Clearwater transaction, in which Chief Terry Paul led Membertou and a coalition of six other Mi'kmaq communities, with McInnes Cooper acting as lead legal counsel, is a great example of innovation in this space. We are incredibly proud of the impact this transaction had in benefiting Mi'kmaq communities in Nova Scotia and Newfoundland and Labrador now and for generations to come.

Indigenous communities acquire 50% stake in Clearwater

Seven Mi'kmaq communities in Nova Scotia and Newfoundland and Labrador (Membertou, Miawpukek, Paqtnkek, Pictou Landing, Potlotek, Sipekne'katik, and We'koqma'q) formed a coalition, in partnership with Premium Brands (which owns a broad range of leading specialty food manufacturing and differentiated food distribution businesses with operations across Canada, the United States and Italy), and acquired 50% of Clearwater in 2021.

This transaction represents the single largest investment in the seafood industry by any Indigenous group in Canada. It catapulted the First Nations into a leading global position in the seafood industry with the largest holdings of shellfish licenses and quotas in Canadian fisheries.

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Third, understand that Indigenous businesses or communities might insist on specific business structures when partnering with a non-Indigenous proponent and be flexible and open to these needs. Indigenous governments, communities and businesses have unique financial planning considerations – both to maximize tax efficiency and to minimize own-source revenue clawbacks – that often requires they structure their operations and business dealings in a more complex fashion than non-Indigenous businesses do. So, when partnering with an Indigenous community, non-Indigenous proponents need to be flexible and open to these structuring strategies.

Indigenous own-source revenue clawbacks

Own-source revenues are revenues Indigenous governments and communities generate through various means, including taxes, resource development, and tourism. Some Indigenous bodies are liable to clawbacks of government funding based on their own-source revenues.



Q: What are the first steps if a non-Indigenous business is interested in working with Indigenous communities?

CP: Although there are many ways to reach out to Indigenous communities for opportunities to work together, getting to know community leadership is the first step.

Our communities are welcoming and open to new opportunities. It's important that opportunities brought forward to our communities are fair, and create space for our people to rise, too. Mutually beneficial partnerships have bridged an incredible gap in the Indigenous economy, and it's a model that we've seen working in real time for our community of Membertou.

Coming to Indigenous communities for business opportunities should be done with respect and a willingness to learn and grow with the community's leadership.

MC: We've seen non-Indigenous organizations that have put the work in first. And these are the ones that succeed. Again, there are many actions, but here are five we think will help:

1. Start early. This is a journey and it won't happen overnight.
2. Invest the time and energy into cultural education and training.
3. Go into the community – don't expect them to come to you.
4. Send the right people; if you're meeting with leaders, send leaders.
5. Relationships are key. So, build consistency; don't constantly change the people involved.

