Defining Indigenous Businesses in Canada

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Summary

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 definitions of Indigenous Businesses in Canada.

Drawing on national and international descriptions, the definitions are comprised of three elements:

1. The requirement for Indigenous business owners, directors of Indigenous companies, and in the case of cooperatives – voting members, to provide evidence of Indigenous identity as demonstrated through a legitimate Indigenous identity-issuing organization or entity.
2. Entrepreneurs and small business owners should also demonstrate that they possess the relevant expertise and credentials to own the business and the capacity to actively engage in operating the business.
3. A minimum of 51% Indigenous ownership.

While it is recognized that there are many businesses that have Indigenous ownership or which provide social returns such as employment, the intent of the definitions presented is to provide competitive advantages to majority owned Indigenous businesses.

These definitions are consistent with comparator definitions of Indigenous businesses sourced from a review of Canadian and international entities.

The literature review is an educational component which discusses the critical need for the ethical and effective engagement of governments and industry with Indigenous owned and operated businesses. Indigenous businesses create jobs, improve local communities, fuel innovation, and contribute to social and economic wellbeing. The more than 50,000 Indigenous owned businesses in Canada contribute $31 billion to Canada's gross domestic product annually. Through procurement, investment, and other support, these businesses could contribute $100 billion.

The Truth and Reconciliation Calls to Action call upon the corporate sector to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework to apply its principles, norms, and standards to corporate policy and core operational activities.

The United Nations Declaration on the Rights of Indigenous Peoples enshrines the rights that constitute the minimum standards for the survival, dignity, and wellbeing of Indigenous peoples. The literature review highlights nine articles that inform the relationship between governments, industry, and Indigenous peoples.

In an era where false claims of Indigenous identity are increasingly common, individuals and businesses who purport to be Indigenous are usurping opportunities that rightfully belong to Indigenous peoples and businesses. The report discusses the realities and dangers of race-shifting, false identities, and Indigenous cladding.

The Core Group who worked on these definitions identified that ultimately many voices need to be engaged in developing a definition of Indigenous businesses in Canada. Although beyond the scope of this project, those voices include: Indigenous communities; legitimate Indigenous entities that validate Indigenous identity; Indigenous Nations; and Indigenous organizations that gather and possess information, statistics, data, and trends.

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

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 and implementation of policy and/or legislative frameworks for establishment of a minimum 5% Indigenous procurement target. Comprised of Indigenous political and economic organizations that are national in scope and have a broad multi-sector approach in the Indigenous economic development field, the NIPWG includes:

- Assembly of First Nations (AFN)
- Inuit Tapiriit Kanatami (ITK)
- Council for the Advancement of Native Development Officers (CANDO)
- Canadian Council for Aboriginal Business (CCAB)
- National Aboriginal Capital Corporations Association (NACCA)
- National Indigenous Economic Development Board (NIEDB)

The NIPWG engaged the Core Group who are working on the National Indigenous Economic Strategy (NIES) to develop a draft a definition of Indigenous businesses in Canada.

Process

A comprehensive process informed the development of a definition of Indigenous businesses in Canada and included:

- A series of four virtual Core Group workshops.
- Review and compilation of existing definitions relevant to the initiative.
- Research utilizing Canadian and International Indigenous sources.
- Formulating advice on developing a national approach to defining Indigenous businesses.
- Draft and final reports outlining key findings and recommendations.

Goals

The purpose of this initiative is to provide recommendations to the Canadian Government and to industry about how to improve economic outcomes for Indigenous peoples by engaging in business relationships with Indigenous owned and operated businesses. The goals of this project included:

1. Developing overarching foundational statements.
2. Developing common definitions.
3. Protecting the interests of legitimate Indigenous businesses.
4. Providing a resource for governments and industry.
5. Addressing the issues of race-shifting, false identities, and Indigenous cladding.
6. Ensuring that business relationships are equitable for Indigenous businesses.
7. Contributing to positive social impacts for Indigenous people and communities.
8. Contributing to developing individual and community capacity.

Foundational Statements and Recommendations

These foundational statements inform the definition of Indigenous businesses in Canada. At a government level, these principles guide the development of policies and processes related to finance and procurement. When adopted by industry the principles provide guidance for procurement, and for developing partnerships and joint ventures with Indigenous peoples and communities. These statements comprise a set of recommendations for implementation by those governments, corporations, and others who value collaborating, partnering, and procuring from Indigenous businesses that meet the authenticity criteria outlined in this document.

- Establish an Indigenous controlled Certification and Compliance Body that also maintains the integrity and accuracy of an Indigenous business registry through ongoing re-certification.
- Ensure that Indigenous businesses are not placed in a position of disadvantage; protect Indigenous businesses from criteria that are not requirements for non-Indigenous businesses.
- Establish mutually beneficial relationships, partnerships, and collaborations with Indigenous businesses.
- Operationalize the leading practices for Indigenous engagement in the context and spirit of the United Nations Declaration on the Rights of Indigenous Peoples.
- Collaborate with Indigenous peoples and groups to define and develop standards for the meaningful engagement of Indigenous businesses.
- Develop leading practices to support positive and productive engagement with Indigenous businesses.
- Develop legislation and regulatory requirements regarding engagement with Indigenous businesses.

Current Realities

Developing a definition of Indigenous businesses in Canada requires consideration of multiple factors and a myriad of players. Many Indigenous organizations, national and regional, have developed a variety of definitions to address the needs of their organizations and those they serve.

Many Indigenous communities have created Constitutions, frameworks, and policies for engaging in business relationships.

Industry players have been challenged with determining ways to distinguish Indigenous businesses from others for purposes of partnerships, collaborations, and procurement.

Many organizations have developed definitions of Indigenous businesses and, depending on the source, multiple definitions exist. In addition, there is a spectrum of definitions and the classifications are sometimes ambiguous.

Indigenous businesses affiliate with non-Indigenous partners and collaborators to secure contracts.

Some organizations use a point-based system to evaluate businesses with whom they engage and there are complexities in the evaluation, monitoring, and measurement of potential suppliers and partners.

Fraudulent misrepresentation of Indigenous identity is endemic in Canada, which presents significant barriers for businesses that are authentically Indigenous. There are over ninety (90) organizations across the country who issue fake Indigenous identity cards, which can be secured for fees ranging from $40 to $1,000 or more.[1]

Definitions of Indigenous Businesses

It is not the intention of these definitions to direct how Indigenous businesses are structured. The definitions are intended to ensure that businesses listed in any registry, and that the services provided, are from legitimate Indigenous businesses.

The intent of the definitions is to ensure that procurement opportunities and financing for Indigenous people is directed to Indigenous businesses rather than to contrived businesses that merely provide "Indigenous" as a label of convenience.

Quantitative Criteria - Proof of Indigenous Heritage[2]

Indigenous business owners, directors of Indigenous corporations, and in the case of cooperatives – voting members, must provide evidence of Indigenous identity as demonstrated by one of the following:

Indian Status Card
Inuit Beneficiary Card
Northwest Territories Land Claim Settlement Beneficiary
Confirmed Alberta Métis Settlement Member
Northwest Territory Métis Nation Citizenship
Métis Nation citizenship as affirmed through the registry of a Métis National Council Governing Member which include the Manitoba Metis Federation, Métis Nation-Saskatchewan, Métis Nation of Alberta, Métis Nation British Columbia, and Métis Nation of Ontario[3]
For Non-Status Indians, recognition of an individual can be verified through a First Nation Citizenship, Membership Code, or verification of heritage in writing from elected First Nation leadership

These quantitative criteria do not consider the unique circumstances of Indigenous people who have been disenfranchised through legislation and policies which have rendered them unable or challenged in seeking Indigenous citizenship. The intent of these definitions is not to exclude these First Nations, Métis, and Inuit business owners. Rather, an independent Indigenous managed and controlled certification body is required to address the unique identity issues of disenfranchised Indigenous. However, in order to meet the certification body's rigorous accreditation criteria, the burden of proof of Indigeneity is on those claiming Indigenous heritage.

Qualitative Criteria

Indigenous businesses must also, through a certification process:

- demonstrate that they possess the relevant expertise and credentials to own the business;
- demonstrate that they possess the capacity and experience to actively engage in operating the business;
- demonstrate that the business structure was not contrived to benefit non-Indigenous business partners; and
- demonstrate that the Indigenous party in the business is receiving equal financial benefit from a business arrangement, contract, and revenues.

These qualitative criteria are designed to ensure that the businesses are legitimate Indigenous entities. In formulating broad definitions, it is not possible to anticipate every unique circumstance. An independent Indigenous managed and controlled certification body is required. This entity would assess businesses in relation to the criteria and adjudicate each situation accordingly.

Proposed Indigenous Business Definitions

This table presents the scope of businesses as defined by the Government of Canada. Each is accompanied by a definition for an Indigenous business. Indigenous businesses must have a minimum of 51% Indigenous ownership by Indigenous Nations, organizations, or people. In addition, Indigenous businesses must meet the Quantitative and Qualitative Criteria identified above.

Government of Canada Definitions	Indigenous Definitions
Corporation (for profit) Shareholders are the legal owners of the corporation. Shareholders can be individuals or other corporations.	**Indigenous Corporation (for profit)** The majority of the shareholders are Indigenous individuals or groups. They have 51% of the voting rights.
Partnership An association or relationship between two or more individuals, corporations, trusts, or partnerships that join together to carry on a trade or business.	**Indigenous Partnership** The partnership agreement defines the Indigenous partner or partners as majority owners.
Cooperative A cooperative is a legally incorporated corporation that is owned by an association of persons seeking to satisfy common needs such as access to products or services, sale of their products or services, or employment. Co-operatives generally fit one of the following four types: consumer, producer, worker, or multi-stakeholder. Co-operatives are incorporated under a provincial, territorial, or federal Act.	**Indigenous Cooperative** Collectively, Indigenous cooperative voting members must comprise a minimum of 51% of cooperative members.
Joint Venture Joint ventures are formed by a contract between two or more entities agreeing to combine resources or expertise with a view to carrying out a specific project or venture with the explicit expectation that the venture does not constitute a partnership. There are no express laws that govern contractual joint ventures as they are governed by contractual law of the jurisdiction selected by parties although courts may view joint ventures as a partnership.[4] The joint venture may be contractual, corporate (limited or unlimited) under federal, provincial, or territorial legislation, or a partnership.	**Indigenous Joint Venture** Individual ownership: The joint venture agreement defines the Indigenous partner or partners as majority (minimum 51%) owners.

Government of Canada Definitions	Indigenous Definitions
Sole proprietorship An unincorporated business that is owned by one individual.	**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.
Micro-Enterprise Generally defined as businesses with fewer than five employees. Micro-enterprises may be sole proprietorships, partnerships, or corporations.	**Indigenous Micro-Enterprise** See definitions for Indigenous sole proprietorships, partnerships, or corporations.
Non-Profit or Not-for-Profit A non-profit corporation is a legal entity separate from its members and directors formed for purposes other than generating a profit to be distributed to its members, directors, or officers. Non-profit corporations are formed pursuant to federal or provincial law.	**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.
Charitable Organizations Registered charities are organizations, public or private foundations that are created and resident in Canada. These organizations must use their resources for activities that have charitable purposes and that fall into one or more of the following categories: the relief of poverty, the advancement of education, the advancement of religion, or other purposes that benefit the community.	**Indigenous Charitable Organizations** 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 administrative executive of the Indigenous charitable organization 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.

Comparator Definitions of Indigenous Businesses

Canadian Comparators

Nunavummi Nangminiqaqtunik Ikajuuti

The Nunavummi Nangminiqaqtunik Ikajuuti Business Registry[5] defines a Nunavut Business as a business, which complies with the legal requirements to carry on business in Nunavut; and on a biennial basis, demonstrated such compliance and that it meets the following criteria:

a) is a for profit limited company with 100% percent of the company's shares beneficially owned by one or more of the following:
   i. a Nunavut Resident,
   ii. a Nunavut Business,
   iii. Nunavut Tunngavik Incorporated,
   iv. The Nunavut Trust,
   v. Regional Inuit Organizations, as defined in the Agreement;

b) Is a co-operative controlled by one or more of the following:
   i. A Nunavut Resident,
   ii. A Nunavut Business

c) Is a sole proprietorship, the proprietor of which is a Nunavut Resident;

d) Is a partnership of which all partners are Nunavut Residents or Nunavut Businesses, and the following (i) through (v) applies to the above (a) through (d):
   i. Maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service-oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business;
   ii. Maintains a resident manager that resides in Nunavut and has final decision-making authority over the day-to-day operations for the subject business in Nunavut;
   iii. Conducts the majority of its operations in Nunavut, including its management and administrative functions;
   iv. Has been registered on the NNI Nunavut Business Registry prior to the closing of a Procurement Process; and
   v. Where applicable, is in a position to furnish goods as are listed on its Nunavut Business registration application and is subject to inspection by the responsible department.

Inuvialuit

In order to entered upon the list of Inuvialuit businesses, more than 50% of the business enterprise must be owned by Inuvialuit. This is a precondition to further consideration (except in the case of IDC sponsored businesses where 50% is sufficient). Applications will be reviewed to determine legitimacy and whether the business contributes to the fulfillment of the goal of developing Inuvialuit capacity. Applications will also be reviewed to determine the legitimacy of the business activity for which listing is sought. In an effort to assist those businesses wishing to achieve inclusion on the list of Inuvialuit Businesses, the following factors will be considered in determining whether an applicant will be successful:

Business Capacity – the enterprise must have the ability to provide substantive elements of the service for which listing is sought. It is not the intention of IRC to limit the methods used by business to provide additional capacity within existing fields of service or to limit expansion into new service areas. Product or service lines which are offered through an Inuvialuit business, but which are substantially supplied by a non-Inuvialuit business will be closely scrutinized. If the Inuvialuit business merely provides a label of convenience, the application will be rejected. Providing ancillary services which would have to be sought from Inuvialuit businesses in any event are not alone sufficient since it does nothing to increase capacity.

Business Presence – the business must have some establishment suitable to its nature. In appropriate circumstances this may mean an office with staff capable of providing substantive support services for the conduct of the business.

Employment – employees (Inuvialuit and non-Inuvialuit) are indicators of business capacity. While not determinative the business should be able to supply with at least some of its own workforce.

Management – the direction and mind of the business is an important element in establishing legitimacy. The extent to which the business sector for which listing is sought is directed by internal management will be weighed in reaching the decision. Once the ownership criterion is satisfied, all other considerations speak to the capacity of the business to provide the service for which it has applied to be listed. IRC has no intention of directing how businesses are to be structured. IRC is concerned that businesses listed, and services provided are legitimate and that they contribute to achieving Inuvialuit participation and capacity and the goals for which the IFA was pursued. It is recognized that the development of new businesses is a process and that businesses will not have total capacity from the start. Where the applicant is a new business or is embarking upon the provision of services not previously provided, the applicant will be required to submit a written business plan detailing how the business intends to develop capacity. There must be initial resources devoted to the business and at no stage will a mere 'pass through' or re-labeling be permitted.

The business will be monitored over time and will be subject to de-listing if it fails to meet the milestones contained in its business plan[6].

Nunavut

With its main purpose to implement Article 24 under the Nunavut Agreement, the NTI Policy & Planning Division is responsible for overseeing and maintaining the Inuit Firm Registry[7].

"Inuit Firm" means an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is:

- a limited company with at least 51% of the company's voting shares beneficially owned by Inuit, or
- a cooperative controlled by Inuit, or
- an Inuk sole proprietorship or partnership

There are three different classes of Inuit ownership within the Inuit Firm Registry that does not reflect in any other capacity outside of this database and the intention of the Inuit Firm Registry.

Class 1 – 51%-75% Inuit Ownership
Class 2 – 76%-99% Inuit Ownership
Class 3 – 100% Inuit Ownership

Nunavik

The Nunavik Inuit Business Directory[8] definition of a Nunavik Inuit Enterprise as pursuant to "An Agreement Respecting the Implementation of the James Bay & Northern Quebec Agreement (JBNQA)". The Makivik Corporation defines businesses the purposes of federal procurement in Nunavik business.

Share Capital Corporation. At least 51% of the company's voting shares must be beneficially owned by one or more Inuit JBNQA beneficiaries or a subsidiary of such share-capital corporation.

Non-Share Capital Corporation. At least 51% of the voting members must be Inuit JBNQA beneficiaries.

Cooperative. The majority of voting members must be Inuit BJNQA beneficiaries.

Partnership Joint Venture. At least 50% of the partnership, joint venture, or consortium must be owned by JBNQA beneficiaries.

Sole Proprietorship. Proprietor must be an Inuit JBNQA beneficiary.

Nunatsiavut

In order to be declared an Inuit Business, the business must meet one of the following criteria:

1. An entity operating for profit or gain that is not 51% owned and controlled by Inuit but which:
   i. has a significant percentage of Inuit employees, and
   ii. has significant Inuit participation in the ownership and control of the entity
2. a not-for-profit corporation without share capital, all of the members of which are Inuit.[9]

Yukon Territory

A Yukon First Nation Business meets one of the following criteria:

- a corporation or not-for-profit corporation where one or more Yukon First Nations is the direct or beneficial owner of 100 per cent of the shares of the corporation;
- a sole proprietorship owned by a Yukon First Nation Person;
- a partnership or limited partnership where at least 50 per cent of the partnership is owned by a Yukon First Nation Person or an organization described in (a) or (b);
- a corporation with at least 51 per cent of the corporation's voting shares owned by a Yukon First Nation Person or an organization described in (a) or (b); or
- a not-for-profit organization in good standing under the Societies Act with at least 51 percent of its membership comprised of Yukon First Nations people.

A sole proprietorship owned by a non-Yukon First Nation Person, which supports a Yukon First Nation spouse or common law partner, and/or a Yukon First Nation family, may qualify as a Yukon First Nation Business. The Government will engage the relevant Yukon First Nation government during its review.

Procurement Strategy for Aboriginal Business (PSAB)

The PSAB is open to all Aboriginal businesses, including sole proprietorships, limited companies, co-operatives, partnerships, and not-for-profit organizations. To be considered an Aboriginal business, the following criteria must be met:

- at least 51 per cent of the firm must be owned and controlled by Aboriginal people, and
- if the firm has six or more full-time staff, at least one third of the employees must be Aboriginal.

If a firm is starting a joint venture, at least 51% of the joint venture must be owned and controlled by an Aboriginal business or businesses. A firm must demonstrate, for the duration of the contract, a level of Aboriginal content amounting to 33 per cent of the value of the work performed by the Aboriginal business.

Canadian Council for Aboriginal Business (CCAB)

In order to qualify as a Certified Aboriginal Business, the business entity must have 51% or more Aboriginal ownership and control.

City of Toronto

A diverse supplier must be certified and at least 51% owned, managed, and controlled by an equity-seeking community or social purpose enterprise. These communities include, but are not limited to, women, Aboriginal people, racial minorities, persons with disabilities, newcomers, and LGBTQ+ persons.

The Canadian Trade Commissioner Service (TCS)

Indigenous businesses are those enterprises that are majority-owned and controlled by Indigenous individuals or communities. Indigenous entrepreneurs are from the three main Indigenous groups (First Nations, Inuit, and Métis), they are present in each province and territory, and are also represented in all sectors of the economy.

Province of Manitoba

At least 51% is owned and controlled by Indigenous people. For the purposes of the Province of Manitoba Directory, Indigenous is defined as a First Nations, Non-status Indian, Metis or Inuit person who is a Canadian citizen and resident in Canada; and if the business or organization has six or more full-time employees, at least one third of them are Indigenous people.

Government of BC

The Government of BC engaged in an initiative to define Indigenous businesses and Indigenous procurement[10]. The feedback from more than 300 Indigenous partners, organizations, community representatives, business owners and others represented a broad spectrum of experience and perspectives. The broad spectrum of responses resulted in an assessment that arriving at a universally agreed upon definition for an Indigenous business might not be possible. Some of their survey respondents identified concerns with the Indigenous business definition of "minimum 51% Indigenous owned being misused in joint ventures where the Indigenous business does not have control of decision making, participation, or benefit from the partnership. Nevertheless, over 78% of respondents indicated that the definition is somewhat or very useful. Similarly, over 70% of respondents indicated that the definition of "minimum 51% Indigenous employed" is useful.

Examples of criteria with respect to ownership, control, and participation included:

Quantitative Criteria:

- At least 51% ownership or 51% control by an Indigenous proponent
- Board composition with at least 70% Indigenous representation (e.g., not-for-profit organizations)
- Active Indigenous ownership, control, participation, or leadership
- Indigenous employment, mission statements, mandates, or language fluencies

Qualitative Criteria - Indigenous Values and Principles:

- Knowledge, relationships, and trust with the community in which goods or services are being delivered
- Founded on Indigenous principles and community involvement or benefit
- Place-based and reflective of lived experiences, with a focus on positive cultural and social impacts

TransMountain

Indigenous business means a legal entity that complies with the legal requirements to carry on business in Alberta or British Columbia and is one of the following:

1. A business or company having a substantial amount of the equity (including shares) directly owned by one or more members of a First nation:
2. A partnership or joint venture having a substantial amount of ownership rights (including any voting rights) of such partnership or joint venture held by one or more First Nation or First Nation communities; or
3. As determined by TMEP in its sole discretion from time to time, any on the businesses with a substantial amount of ownership rights held by one or more Indigenous Businesses or Indigenous People.

Syncrude

Syncrude's definition of an Indigenous business is one that is at least 51 per cent owned by a First Nation, Métis Local, or Indigenous person. The Indigenous owner also must be in control of the daily operations of the business.

Canadian Aboriginal & Minority Supplier Council (CAMSC)

Your business is eligible for certification if:

- The business is 51% or more owned by visible minority(s) or Aboriginal person(s)
- The business is 51% or more managed and controlled by visible minority(s) or Aboriginal person(s)
- The business is a for-profit enterprise
- The business operates in Canada
- The business owner(s) is a Canadian or US citizen
- The business owner(s) is a permanent Canadian or US resident
- The business may be of any size

The business is able to operate as a supplier of products or services to other businesses.

BC Hydro

BC Hydro is committed to supporting the long-term economic interests of Indigenous peoples through direct procurement opportunities that benefit Indigenous communities.

Indigenous business is defined as any business arrangement in which Indigenous individuals and/or communities have an ownership or other interest and includes any business entity identified by an Indigenous community as its designated business partner.

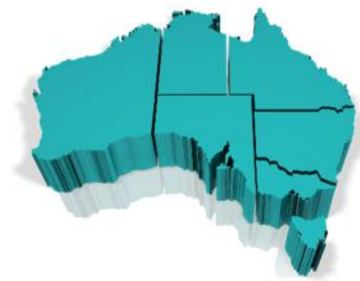
Indigenous inclusion weighting is no longer a separate evaluation criterion; measures are included in contracts as appropriate.

The contracting party may be the Indigenous group with whom BC Hydro has an arrangement or may be a business designated by the Indigenous group to perform the work (a designated business partner). The BC Hydro procurement policy[11] defines Indigenous as First Nations, Inuit, or Métis.

International Comparators

Australia

Australia's Supply Nation[12] defines an Indigenous business as:



> At least 50% owned by an Aboriginal or Torres Strait Islands person(s). This definition is also applied by Federal and State Government and most corporate organisations. Any business that is 50% or ore owned by Indigenous Australians is eligible under the IPP and state-based Indigenous procurement policies. The Indigenous party in the business should receive equal benefit from the arrangement.

Supply Nation also checks to ensure that the business is equitable and the Indigenous party is protected. The registration and verification process is rigorous and ensures that all Aboriginal and Torres Strait Islander businesses on Indigenous Business Direct are not only Indigenous owned but undergo spot checks and are audited annually to ensure continuing compliance and to monitor any changes in business ownership. The veracity and integrity of the businesses is essential to Supply Nation. They only accept and showcase businesses that have provided proof of their Aboriginal and/or Torres Strait Islander ownership.

Classifications of businesses are defined as:

- Sole proprietorship / Trader
  - 100% ownership by an Aboriginal and / or Torres Strait Islander person
- Partnerships
  - Registered: 50% of each class of partnership interest must be owned by an Aboriginal and / or Torres Strait Islander person and such ownership must be reflected in the partnership agreement
    Certified: 51% of each class of partnership interest must be owned by an Aboriginal and / or Torres Strait Islander person and such ownership must be reflected in the partnership agreement
- Corporation / Company
  - Registered: Aboriginal and / or Torres Strait Islander person(s) must own at least 50% of each class of ordinary voting shares issued and at least 50% of each class of all other shares issued.
  - Certified: Aboriginal and / or Torres Strait Islander person(s) must own at least 51% of each class of ordinary voting shares issued and at least 51% of each class of all other shares issued.
- Trust
  - Registered: at least 50% owner(s) of securities or assets held in trust are Aboriginal and / or Torres Strait Islander person(s).
  - Certified: The majority beneficial owner(s) of securities or assets held in trust are Aboriginal and / or Torres Strait Islander person(s).
- Joint Venture
  - Must be at least 51% owned by an Aboriginal and/or Torres Strait Islander either through individual shareholding or cumulative shareholding through a parent or holding company.

New Zealand

The New Zealand Government[13] describes a Māori business as a business that identifies itself as a Māori business. It will be owned by Māori and may be predominantly staffed by Māori.

Typically, it will strongly value Māori culture and tikanga (the Māori way of doing things). Part of its Kaupapa (world view) may be to support particular outcomes for Māori, and te reo (language) may often be used in workplace interactions.

Māori businesses are businesses or enterprises that are:

- owned by Māori, and/or
- fully or substantially controlled by Māori, and/or
- operated according to traditional and/or contemporary Māori culture and values.

Some Māori businesses are owner-operated and some employ people of Māori descent. Others may employ people of diverse ethnicities.

Hawaii

Hawaii's State Small Business Authority (SBA) sets out the parameters for socially and economically disadvantaged small businesses and firms, including Native Hawaiian Organization (NHO) firms[14].

A Native Hawaiian is any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii. Hawaii's SBA has determined that the best evidence of Native Hawaiian status is the individual's birth certificate. Specifically, the birth certificate must show that the individual is at least part Hawaiian. Native Hawaiian identification cards issued by the Office of Hawaiian Affairs are also acceptable to establish Native Hawaiian status.

A NHO is any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

The SBA requires at least 51% of the NHO's members and board of directors to be Native Hawaiian. The NHO must unconditionally own at least 51% of the applicant firm.

Companies acquired by an NHO: the NHO must unconditionally own at least 51% of the company. SBA will assess whether the acquisition was an arm's length transaction and whether the NHO paid adequate consideration for its ownership interest. The consideration paid should have a reasonable relationship to an objective valuation or appraisal of the company in order to be deemed an arm's length transaction. The SBA will review the purchase/sale agreement, terms of the purchase, derivation of the purchase price, etc. An NHO must control the applicant or participant firm. To establish that it is controlled by an NHO, an applicant or Participant must demonstrate that the NHO controls its board of directors.

A native-Hawaiian does not have to be the individual responsible for the day-to-day management of the NHO but a native-Hawaiian must have managerial experience of the extent and complexity needed to run the company.

Literature Review

Indigenous Business in Canada – Now and in the Future

A study from the Brookfield Institute for Innovation and Entrepreneurship outlines that the pandemic has given rise to new international and domestic tensions while impacting broader dynamics such as globalization, international trade policy, and a rise in youth activism. It states that "small businesses and their owners have taken the biggest hit with one in seven at risk of closing and operations less than 30% of normal sales. Brookfield forecasts that in 2030, large companies will grow even larger and a decline in small business may lead to a reduction in entrepreneurship and reduced startup ecosystem and creativity levels.[15] The Canadian Council for Aboriginal Business in a survey of Indigenous businesses found that 79% of respondents experienced revenue decreases of 30% or more during the pandemic; and 53% said their business revenue decreased by 75% or more. Over a third of respondents were no longer generating sales. The CCAB study includes Calls to Action which outline the urgency of the Government of Canada to directly engage with Indigenous businesses as suppliers of products and services.[16]

There are over one million small businesses in Canada, excluding self-employed entrepreneurs. Ninety-eight percent of businesses in Canada have fewer than 100 employees. In the period 2013 – 2017 on average over 96,000 small businesses were created and over 90,000 disappeared.[17] Small and medium sized businesses employ 8.4 million people, 70% of Canada's private labour force. These businesses, run by over 800,000 Canadians, make up 98% of all the businesses in the country.[18]

Collectively, small businesses are a critical component of the Canadian economy. They create jobs, improve local communities, provide over a third of Canada's gross domestic product, fuel innovation, and they inspire competitive growth.[19]

The fastest growing segments of the Canadian market are those that are innovative in disrupting existing processes or introducing new products and services. Future Learn outlines that the fastest growing industries in Canada are in cryptocurrency, precious metal mining, cannabis, eCommerce, primary health care, software development, e-sports and video gaming, renewable energy, social media, and cybersecurity. Indigenous businesses have a presence in all of these industries.

In July 2020, the Financial Post forecasted that recovery from the pandemic-induced recession will be quicker than what was experienced in other downturns. They stated that the Canadian economy could be back to pre-COVID levels as early as the end of 2021.[20] The impact of a sustained pandemic has had a significant impact on Canadian businesses and particularly Indigenous owned businesses.

There are more than 50,000 Indigenous owned businesses in Canada, and they exist in all sectors. According to a University of Waterloo interview with the President & CEO of the Canadian Council for Aboriginal Business, the Indigenous economy contributes $31 billion to Canada's GDP. Through procurement, investment, and other support, Indigenous businesses could contribute $100 billion.[21]

The Organization for Economic Co-operation and Development (OECD) is an intergovernmental economic organization with 37 member countries, founded in 1961 to stimulate economic progress and world trade. In 2020 the OECD released a report on Indigenous communities and regional development in Canada.[22] The OECD findings are directly related to the importance of Indigenous businesses to the well-being and prosperity of Indigenous peoples. These findings include:

- Indigenous peoples are more likely to live in rural areas and experience poorer socio-economic outcomes.
- Gaps in socio-economic outcomes between Indigenous populations are higher in rural areas.
- The Indigenous population is younger and concentrated in rural areas compared to the non-Indigenous youth population. Although young people are increasingly migrating to urban areas.

- Of the 100 lowest ranking communities in the Indigenous Services Canada (ISC) Community Wellbeing Index, 98 are First Nations communities.

The OECD put forth 14 recommendations and 42 sub-recommendations. A number of these pertained to Indigenous entrepreneurship and community economic development and included:

- Better efforts are needed to empower local Indigenous institutions in collection data about businesses.
- Expanding the existing database of Indigenous businesses to include a goods and services search function.
- Developing opportunities to connect local entrepreneurs with Indigenous entrepreneurs and communities in the region.
- Updating performance measures to reflect success for Indigenous businesses and effective engagement with Indigenous communities.

These, and other OECD recommendations, require that governments and industry effectively and reliably identify and engage with Indigenous owned and operated businesses.

The United Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission Calls to Action

At a 2019 meeting of national Indigenous economic development institutions a collective vision was developed to grow the Indigenous economy from $32 billion to $100 billion.[23] At that meeting, the concept emerged that a collaborative effort would include many diverse stakeholders in the Indigenous economy. This initiative would empower better use of resources and growing of institutions sources of revenue through actualization of a collaborative plan between the public and private sectors and non-governmental organizations.[24]

The Truth and Reconciliation Commission's Call to Action #92[25] has significant impacts for industry players, who have a key role in growing the Indigenous economy. This Call to Action states:

> **Business and Reconciliation**
>
> We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples 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. This would include, but not be limited to, the following:
>
> i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
>
> ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
>
> iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The United Nations Declaration on the Rights of Indigenous Peoples[26] is an international instrument adopted by the United Nations in 2007 to enshrine the rights that constitute the minimum standards for the survival, dignity, and wellbeing of the Indigenous peoples of the world. The Declaration is now the product of over 35 years of deliberation by United Nations member states and Indigenous groups.

Article 1 of the 46 Articles contained in the United Nations Declaration declares that:

> "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights(4) and international human rights law."

The Declaration goes on to guarantee the rights of Indigenous peoples to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous peoples have the right to be free from discrimination, and the right to a nationality.

Articles that have significant impact on the relationship between governments, industry, and Indigenous peoples include, in part:

- Article 3. The right to self-determination and to freely pursue economic, social, and cultural development.

- Article 19. The requirement for governments to consult and cooperate in good faith with Indigenous peoples through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

- Article 23. The right to determine and develop priorities and strategies to exercise the right to development and the right to determine economic programs and to administer such programs through Indigenous institutions.

- Article 32. Governments shall consult and cooperate in good faith with Indigenous peoples through their own representative institutions; and the provision of fair redress for development activities and appropriate measures to mitigate adverse environmental, economic, social, cultural, or spiritual impacts.

- Article 46. The sub-paragraphs in this Article set out principles of human rights and equality.

- Articles 17, 27, and 40 present a cluster for conflict resolution mechanisms that are embedded in the Declaration.

The Truth and Reconciliation Calls to Action and the United Nations Declaration on the Rights of Indigenous peoples are critical to growing the Canadian Indigenous economy. This requires working with Indigenous owned businesses and ensuring that economic benefits accrue to those businesses and communities where projects are planned, developed, and implemented.

Race-shifting, False Identities, and Indigenous Cladding

False claims of Indigenous identity are increasingly coming to light through mainstream and social media. In a recent article for The Tyee, Ginger Gosnell-Myers the first Indigenous Fellow with the Simon Fraser University Morris J. Wosk Centre for Dialogue writes:

> "…decision-makers love pretendians. Pretendians provide them with all the dreamy Indigi-benefits without the dismal realities of Indigenous lived experience…we clearly have an issue where the wrong people can, without any proof of Indigeneity, occupy space for Indigenous people, win awards for Indigenous leadership, or apply for funding designated for Indigenous people.[27]

Australia's Supply Nation has adopted the term "black cladding" to describe those businesses who purport to be Indigenous:

> "Black cladding can mean different things to different people and can therefore be subjective and nuanced depending on how an individual decides to define an Indigenous business. Supply Nation considers "black cladding" the practice of a non-Indigenous business entity or individual taking unfair advantage of an Indigenous business entity or individual for the purpose of gaining access to otherwise inaccessible Indigenous procurement policies or contracts. Unfair advantage involves practices and arrangements that result in the disadvantage or detriment to an Indigenous business, or that do not represent a genuine demonstrated level of equitable partnership and benefit."[28]

Lawford and Colburn in a paper for the Yellowhead Institute explored the rise of race-shifting and self-indigenizing settlers. They wrote:

> "We are seeing the rise of race-shifting and self-Indigenizing settlers. These are self-identifying 'Indigenous' individuals without connection to our Nations and communities and who continue to silence our voices. They reproduce the settler-centric research without being accountable to our Nations while scoring lucrative research grants. This trend is seen elsewhere, among those self-Indigenizing individuals—with very tenuous and often no discernible Indigenous ancestry—are laying claim to the title of unceded Indigenous territory as well as many other inherent Indigenous rights."[29]

In 2017 the Crown-Indigenous Relations and Indigenous Services Canada hired auditing firm KPMG to investigate the use of fake Indigenous identity cards because of their high degree of resemblance to real status cards in Quebec. The KPMG report noted that all the cards suggested the holder was entitled to rights in S.35 of the Canadian Constitution; and further found that individuals holding these cards paid between $40 and $1,000 for the cards.[30]

Legitimate Métis Nation registries require proof of citizenship which includes: historic proof showing evidence of an ancestor who received a land grant, or a scrip grant under the Manitoba Act or the Dominion Lands Act, or who was recognized as a Métis in other government, church, or community records. The historic Métis Nation Homeland means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-Breeds as they were then known. The Métis Homeland geographically embraces all three prairie provinces and parts of Ontario, the Northwest Territories, British Columbia, and parts of the United States.[31]

Darryl Leroux is an Associate Professor at St. Mary's University. As part of his work on the politics of race, racism, and colonialism in Quebec and French Canada, he studies the social, political, and legal dynamics that have led to increasing claims of Indigenous identities. In particular, he seeks to record and understand the work of so-called Métis organizations in Quebec, which often openly oppose existing Indigenous peoples' rights and/or claims. His peer reviewed book *Distorted Descent: White Claims to Indigenous Identity* was published in September 2019.[32] He has identified ninety-two (92) active, inactive, and national organizations in Quebec, New Brunswick, Nova Scotia, and the Northeastern Unites States that are involved in race shifting.

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