ABORIGINAL PARTICIPATION IN MAJOR RESOURCE DEVELOPMENT

- For Discussion Purposes Only -

Aboriginal Affairs and Northern Development Canada
Affaires autochtones et Développement du Nord Canada

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July 30, 2012

Prepared for the Toronto (August 21, 2012) Roundtable.

Contents

1. INTRODUCTION

The purpose of this paper is to highlight background information on the opportunities and challenges associated with Aboriginal participation in major resource development. The focus is on major resource projects in the energy (oil, gas and hydro) and mining sectors in Canada. Aspects covered include the value of natural resource wealth across the country as well as the importance of mining and energy sectors to the national economy; the importance of resource development to Aboriginal Canadians; the benefits that Aboriginal Canadians can bring to the private sector; and the roles various levels of government play. The intent is not to provide a comprehensive examination of the issue, but rather, a higher level survey of the subject.

> Canada's resource sector is an asset that will increasingly contribute to the prosperity of all Canadians. Some $500B is expected to be invested in over 500 major economic projects across Canada over the next 10 years, driven in part by demand from emerging economies.
>
> **-Budget 2012**

Also, this paper does not strictly limit discussion to "major projects" tracked by Natural Resources Canada (NRCan)'s Major Projects Management Office (MPMO). Rather, it seeks to allow a consideration of wider opportunities in resource development generally for Aboriginal Canadians.

This background information will inform a more detailed discussion of resource development and the potential benefits for Aboriginal communities, businesses and individuals.

2. MAJOR RESOURCE DEVELOPMENT

In 2010, natural resource wealth (including energy resources, mineral resources and timber) in Canada stood at $1.16T or $34,000 per capita, representing 15% of Canada's non-financial wealth[1]. Canadian public and private organizations have reported that they intend to invest $394.1B in construction and machinery and equipment in 2012, up 6.2% from investment in 2011, with 56.6% of the increase coming from higher investment intentions in the mining and oil and gas sectors[2].

> *"Natural resource sectors underpin Canada's economy. Together, energy, mining and mineral processing, and forestry account for close to 10% of Canada's gross domestic product, and growing. In 2010, these sectors directly employed over 760,000 Canadians in communities throughout Canada, including remote and Aboriginal communities.'*
>
> **- The Honourable Joe Oliver, Minister of Natural Resources, Address to the Economic Club of Canada, January 27, 2012**

[1] Enviro Stats, Fall 2011: Statistics Canada, pg. 14
[2] The Daily, Statistics Canada, Wednesday, February 29, 2012. Accessed from http://www.statcan.gc.ca/daily-quotidien/120229/dq120229a-eng.htm

2.1 Energy

Since the rush of government funding for municipal projects during the recession has subsided, more infrastructure investment over the short term will be channeled into the energy sector[3]. The sector already accounts for over 15% of total private business investment and of that flow, 40% goes to the oil sands, which have doubled their share in the past five years [4]. With a large number of upcoming projects in the oil sands, it is expected that cumulative capital expenditures could reach close to $95B by 2015 and $180B by the end of the decade; an investment that could double oil sands production, and generate roughly 300,000 new oil sands and pipelines jobs during that period, as well as an additional 400,000 jobs in the following decade[5].

Canada has abundant resources of both crude oil and natural gas, with an estimated ultimate potential of 343 billion barrels of oil[6] and 424 trillion cubic feet of marketable natural gas[7]. According to National Energy Board (NEB) projections, oil production could double by 2035, and natural gas production may also set record levels during that period[8].

Canadian exports of crude oil totaled 2.130 million barrels per day in 2011, accounting for 15% of Canada's merchandise exports[9]. In terms of natural gas, Canada exports 8.9 billion cubic feet per day[10].

While the oil sands account for the majority of crude oil potential, the frontier regions of Canada make an important contribution. According to estimates from the NEB, approximately 35% of Canada's remaining marketable natural gas and 37% of remaining recoverable light crude oil is in Northern Canada[11].

Electricity generation in Canada amounted to 585 terawatt hours in 2009, and hydroelectricity represented 60.4% of total generation[12]. In 2010, Canada exported 43,763 thousand Megawatt hours (MW.h) of electricity (which is energy enough to power 2.2 million homes)[13]. Canadian gross electricity exports contributed $2.0B in revenue to Canada[14].

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[3] Energizing Infrastructure: Benjamin Tal and Avery Shenfeld; CIBC Economics, September 28, 2011, pg. 3
[4] Ibid, pg. 3.
[5] Ibid.
[6] Canada's Energy Future: Energy Supply and Demand Projections to 2035. National Energy Board, November 2011, pg. 16.
[7] Ibid, pg. 27.
[8] Ibid, pg. 51.
[9] Canadian Association of Petroleum Producers. Accessed May 9, 2012 at http://www.capp.ca/library/statistics/basic/Pages/default.aspx
[10] Ibid.
[11] Northern Oil and Gas Annual Report 2011, Aboriginal Affairs and Northern Development Canada, pg. 10.
[12] http://www.nrcan.gc.ca/statistics-facts/energy/895 Accessed May 9, 2012.
[13] National Energy Board – Energy Facts. Accessed at http://www.neb-one.gc.ca/clf-nsi/rnrgynfmtn/nrgyrprt/nrgdmnd/nrgytrdfct2011/nrgtrdfct-eng.html on May 9, 2012.
[14] Ibid.

2.2 Mining

According to the Mining Association of Canada, Canada's mining industry intends to invest $136B in projects over the next decade, with multiple billions being spent in British Columbia, Alberta, Saskatchewan, Ontario, Newfoundland and Labrador, Nunavut and the NWT[15].

Canada is a leading world producer of minerals and metals, with the mining industry accounting for 21% of the value of Canadian goods exported in 2010 at a total of $84.5B[16]. During that period, exports of aluminum, copper, gold, iron and steel, iron ore, nickel, silver, uranium, zinc, diamonds, potash and coal ranged from $1.7B to $15.1B each[17]. Canada's mining sector contributed approximately $36B to Canada's gross domestic product (GDP) in 2010, including $8B in mineral extraction and $28B in mineral processing and manufacturing[18]. The sector employed 308,000 workers in mineral extraction and in associated smelting, fabrication and manufacturing areas[19].

The top four provinces in terms of production value in 2010 were Ontario, Saskatchewan, BC and Quebec, and they also led in expenditures on mineral resource development[20]. Additionally, of the $8.3B invested in mine complex development in Canada, spending in each of these provinces exceeded $1B; such investments suggest that these provinces will remain vital to Canada's future mineral production[21].

The mining industry has a deep footprint on the Canadian economy. As mining accounts for over half of Canada's rail-freight revenues and port tonnage, organizations such as CN and CP Rail, the Port of Montreal and the Port of Vancouver depend on it[22]. According to the Mining Association of Canada, in 2011, 3,215 Canadian firms provided technical, legal, financial, accounting, environmental and other expertise to the mining industry. Most of these suppliers were located in Ontario (1,286) and BC (945), followed by Alberta (519), Quebec (403), Saskatchewan (90) and Manitoba (65)[23].

3. ABORIGINAL PARTICIPATION: CURRENT CONTEXT

Increasingly, Aboriginal communities have pursued economic opportunities as participants, partners and proponents of often large and complex projects that have the potential to create sustainable business opportunities, a stable source of employment and income for members, and valuable streams of own source revenue. Many Aboriginal communities across the country are located near mining

[15] F&F 2011: Facts and Figures of the Canadian Mining Industry: The Mining Association of Canada, 2011, pg. 4.
[16] Ibid, pg. 81.
[17] Ibid, pg. 4.
[18] Ibid.
[19] Ibid.
[20] Ibid, pg. 12.
[21] Ibid.
[22] Ibid.
[23] Ibid, pgs. 12-13.

operations[24], as well as in the oil sands region[25], and with an estimate of one out of two current mining industry workers needing replacement in the next decade, the opportunities for Aboriginal Canadians to seize labour force opportunities are evident. (See Annex A for a number of maps detailing Aboriginal communities and their population in relation to mining activity across the country.) In addition, recent court decisions regarding the duty to consult have prompted provincial/territorial governments and private sector companies to more fully engage Aboriginal communities in the planning, development and implementation of natural resource projects.

Comprehensive land claims agreements (CLCAs) offer a further consideration as to the means by which Aboriginal communities can participate in resource development. Ownership of non-renewable resources in CLCAs varies by agreement and province. For example, mineral and subsurface rights in the James Bay and Northern Quebec Agreement and the North Eastern Quebec Agreement remain with the province. However, no minerals can be extracted from part of a settlement area without a negotiated compensation, and explorations activities in other settlement areas must be carried out without causing unreasonable conflict with wildlife harvesting activity.

In other CLCAs, the Aboriginal communities have title over the resources. The Nisga'a Final Agreement provides full ownership over mineral resources in Nisga'a lands and exclusive authority over leasing and royalty treatment. In contrast, the Labrador Inuit Agreement states that administration of subsurface resources shall be in accordance with provincial and federal jurisdiction, but there is a provision that entitles the Inuit to 25% ownership of any resources extracted.

3.1 Energy

As of 2009, over 1,600 Aboriginal people were employed in oil sands operations, marking an increase of more than 60% since 1998 (and not including construction-related or long-term contract employment)[26]. Approximately 10% of the oil sands workforce is Aboriginal and from 1998-2009, Aboriginal-owned companies secured $3.7B worth of contracts from oil sands companies in the Wood Buffalo Region of northeastern Alberta (including $810M in 2009 alone)[27]. (See Annex B for a map of oil sands activities and Aboriginal communities.)

In the hydro sector, BC Hydro is pursuing an Aboriginal Employment and Education Strategy and Aboriginal employees currently comprise approximately 2.2% of BC Hydro's total workforce[28]. In 2011, BC Hydro also developed a strategy to promote Aboriginal procurement and business development, which resulted in $19M in contracts awarded to Aboriginal businesses, including $7.2M to an Aboriginal

[24] Ibid, pg. 5.
[25] Oil Sands: A strategic resource for Canada, North America and the global market, Government of Canada, August 2011. Accessed May 24, 2012 at: http://www.nrcan.gc.ca/energy/sites/www.nrcan.gc.ca.energy/files/files/OilSands-AboriginalPeoples_e.pdf
[26] Facts About Aboriginal involvement in the oil sands. Government of Alberta. Accessed from http://www.oilsands.alberta.ca/FactSheets/Aboriginal_involvement_in_the_oil_sands(1).pdf on April 26, 2012.
[27] Ibid.
[28] http://www.bchydro.com/about/accountability_reports/2011_gri/f2011_social_HR9.html Accessed May 9, 2012.

business for site preparation work and a contract for $4.6M for vegetation management services[29].

3.2 Mining

Mining is the largest private sector employer of Aboriginal people in Canada[30], with Aboriginal workers an estimated 7.5% of the mining workforce in 2006, up from 3.6% in 1996[31].

According to NRCan's 2009 study[32] of Aboriginal Participation in Mining, Aboriginal people have continued to be predominantly employed in the trades, transport, and equipment operators sectors of mining, and in occupations unique to the primary industry. According to the study, the proportion of Aboriginal people in management remained relatively unchanged from 2001 to 2006. Still, as of 2006, Aboriginal people working in the sector had an average employment income of more than twice that of the average for total Aboriginal Canadians. However, the gap between the average annual income of Aboriginal people and non-Aboriginal people in mining widened in 2006, as Aboriginal Canadians earned approximately $18,000 less than their non-Aboriginal counterparts, compared with a gap of approximately $12,200 in 2001.

4. INDUSTRY

4.1 Jobs and Growth

4.1.1 Energy

Job requirements in the energy sector are, and are predicted to continue to be, high. For example, according to a recent study on labour challenges in the oil sands by Deloitte, peak demand for labour requirements (especially in construction, operations and engineering) is forecasted for 52,000 workers in 2015[33]. This requirement equals 55% of the total labour supply projected to be available in Alberta for the majority of required "core skills" over the same period – and even before taking into account growing demand that will come from other energy sub-sectors that depend on these same skill sets[34]. Demand will also be high for workers in the oil and gas industry in Saskatchewan, with the Petroleum Human Resources Council of Canada predicting, under a growth scenario, net hiring of over 6,600 positions over the next decade, 62% of which will be due to new jobs as a result of growth in the provincial industry[35].

There are also significant opportunities with natural gas projects in BC, particularly in the Northeastern part of the province. The substantial natural gas reserves in BC

[29] Ibid.
[30] F&F 2011, pg. 71
[31] Ibid, pg. 56.
[32] http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca.minerals-metals/files/pdf/mms-smm/abor-auto/pdf/stats-09-eng.pdf Accessed March 15, 2012.
[33] Balancing the people equation: How enhanced collaboration can help solve labour challenges in the oil sands. Deloitte, 2012, pg. 2.
[34] Ibid.
[35] The Decade Ahead: Labour Market Projections and Analysis for Saskatchewan's Oil and Gas Industry to 2020, Petroleum Human Resources Council, May 2011, pg. 6.

and a growing demand in Asia has led to a new "target market" for Canadian gas producers[36]. Consequently, the Northeastern region is expected to add new jobs at the rate of 1.7% annually between 2010 to 2020, and higher until 2015 (i.e. at 2.5% annually during that period)[37]. Further, the region is expected to be in a situation where demand for workers exceeds supply from 2012 to 2015, and Aboriginal workers represent a potential labour source to meet the requirements[38].

A study commissioned by the Canadian Hydropower Association projects three scenarios for the growth of hydropower in Canada with opportunities for growth ranging from a "business as usual" scenario of 24 hydropower projects over the next 20 years, to a "mid-scenario" of 114 projects, and to an "optimistic" scenario of 158 projects[39]. ("Projects" here refers to new-builds as well as restoration of existing sites, and the variation between the scenarios depends on the extent of government support for the industry coupled with increased environmental regulations on electricity generation).

Job estimates from the Canadian Hydropower Association study project up to 1,754,473 full time equivalent positions (or up to 87,724 full-time jobs that will last for 20 years) related to the construction and operation of hydroelectric plants. Estimates depend on factors such as the level of government support for hydroelectric power and the extent to which the electricity industry becomes regulated to meet carbon emissions targets.

4.1.2 Mining

According to the Mining Industry Human Resources Council (MiHR)'s 2011 Canadian Mining Industry Employment and Hiring

According to the **MiHR**, the top occupations in terms of hiring requirements include:

- Production clerks;
- Heavy-equipment operators;
- Truck drivers;
- Underground production and development miners;
- Construction millwrights and industrial mechanics (except textile);
- Primary production managers;
- Welders and related machine operators;
- Heavy-duty equipment mechanics;
- Machine operators, mineral and metal processing; and
- Labourers in mineral and metal processing.

By 2021, hiring requirements for these positions will be almost 37,000 (just over one-third of total hiring needs).

Source: **Canadian Mining Industry Employment and Hiring Forecasts, 2011, Mining Industry Human Resources Council. Pg. 14**

According to the **Petroleum Human Resources Council of Canada**, the top 10 oil sands occupations (as of 2011) in terms of employment numbers are:

1. Steam-ticketed operators
2. Heavy equipment operators
3. Heavy-duty equipment mechanics
4. Facility operation and maintenance managers
5. Engineering managers
6. Petroleum engineers
7. Mechanical engineers
8. Primary production managers
9. Industrial electricians
10. Millwrights and machinists

Source: **The Decade Ahead: Oil Sands Labour Market Outlook to 2021, Petroleum Human Resources Council of Canada, Petroleum Labour Market Information, Spring 2012.**

[36] The North Eastern British Columbia (NEBC) Energy-Mines Aboriginal Workforce Development Project, by North East Native Advancing Soc... 1, 2012, pg. 6.
[37] Ibid, pg. 9.
[38] Ibid.
[39] Job Creation and Economic Development Opportunities in the Canadian Hydroelectric Market. HEC Montréal (2011) : http://www.canhydropower.org/hydro_e/pdf/HEC_report_for_CHA-DEC2011.pdf Accessed March 15, 2012.

Forecasts, human resources challenges are one of the most significant threats to the future competitiveness of the Canadian mining industry. Specific challenges include: the retirement of baby boomers; the difficulty in attracting and engaging younger workers; and an underrepresentation of diverse groups such as women and immigrants. According to the MiHR baseline scenario, by 2021, cumulative hiring forecasts are to be just over 112,000 mining workers, with needs largest in the prairies, followed by Quebec and Ontario[40].

While there are estimates that about 40% of the workforce in the mining industry will retire by 2014, because of the fact that today's mining industry relies on advanced technologies, much of the demand in this sector is for highly educated workers[41].

> ...mining companies will need to integrate risk-based corporate social responsibility (CSR) strategies and develop and track KPIs [Key Performance Indicators] with the same diligence they use to track production.
> Until CSR registers as a direct business risk, mining companies will struggle to minimize the probability and financial impacts of those risks.
>
> - **Deloitte report:** ***Tracking the trends 2012: The top 10 trends mining companies may face in the coming year***

4.2 Corporate Social Responsibility

Where Aboriginal partnerships with the non-Aboriginal private sector are being developed, there is the potential for large mutual benefits. Aboriginal businesses can benefit from the investment capacity, experience and talent of the broader private sector. Non-Aboriginal companies increasingly see value in strengthening ties with Aboriginal people as partners, potential employees and/or customers across the Canadian economy.

Relations between industry and Aboriginal people and communities have evolved in recent years, with companies that undertake major resource projects recognizing the need to not just consult and engage, but to utilize Aboriginal Canadians as partners and a workforce. Such companies are establishing Aboriginal Relations departments and Aboriginal Affairs policies and a focus on Corporate Social Responsibility (CSR). Suncor, for instance, has an Aboriginal Affairs policy[42] that "acknowledge[s] and respect[s] the legal rights of First Nations under the *Indian Act*, The *Constitution Act*, 1982, and Treaties, where applicable, as well as the legal rights of the Métis people"; respects "the right of Aboriginal/indigenous communities to determine and act upon what is important to their constituents, and to operate according to their own value systems"; and provides "financial, technical and other types of support to promote self reliance in the communities".

Noront Resources has launched initiatives[43] such as a First Nations Advisory Board made up of prominent Aboriginal business leaders (Jerry Asp and Roy Whitney), and has created "Mikawaa", a Project Portal, developed for engagement of First

[40] Canadian Mining Industry Employment and Hiring Forecasts, 2011, Mining Industry Human Resources Council, pg. 10.
[41] F&F 2011, pg. 59.
[42] See http://www.suncor.com/pdf/respdev-AboriginalAffairsPolicy-e.pdf
[43] See http://www.norontresources.com/Corporate_Responsibility/Noront_Bursary/

Nation communities and Noront. The goal of this portal is to open a dialogue with the communities surrounding Noront's projects in Northwestern Ontario's Ring of Fire mineral region as well as the communities' own concerns, issues, and goals.

5. GOVERNMENT INTERESTS

5.1 Provincial/Territorial

When major resource development projects occur on provincial Crown land, the province is generally responsible for licensing and permitting. The management of oil and gas resources North of 60º latitude in the Northwest Territories, Nunavut and northern offshore is a federal responsibility. This responsibility is carried out by the Northern Oil and Gas Branch of Aboriginal Affairs and Northern Development Canada (AANDC). Prior to devolution in 1998, management of Yukon oil and gas was also a federal responsibility.

The Governments of the Northwest Territories and Nunavut co-ordinate territorial energy policy and planning that work to encourage and support the development of energy resources in a manner that will benefit northern residents and governments.

Provincial and territorial governments also have a key role in programming in areas related to Aboriginal economic development, such as education, labour skills development and health for Aboriginal people.

In Alberta, provincial government programming includes an Aboriginal Development Initiative, mandated to increase participation of Aboriginal communities and businesses in Alberta's regional economic development. Saskatchewan has recently announced a Joint Task Force on Aboriginal Education and Employment that will consult throughout the province in an effort to identify practical, grass-roots solutions for eliminating the current gaps in education and employment outcomes for First Nations and Métis people in Saskatchewan.

Resource development also figures centrally in provincial plans, budgets and programs. In Quebec, the Plan Nord, that will be carried out over a period of 25 years, proposes to lead to over $80B in investments during that time and create or consolidate, on average, 20,000 jobs a year, equivalent to 500,000 man-years[44]. The Plan Nord seeks to enhance living conditions in Aboriginal and local communities and measures are planned in the areas of education, manpower, housing, health and culture[45]. In Ontario, the provincial government has prioritized the potential of the Ring of Fire (in terms of chromite, nickel and other minerals) to deliver jobs and growth in the province, through such actions as establishing a dedicated Ring of Fire Secretariat within the Ministry of Northern Development, Mines and Forestry. The provincial government's *Growth Plan for Northern Ontario:*

[44] Plan Nord: Building Northern Québec Together: The Project of a Generation. Government of Québec, 2011, pg. 4.
[45]Ibid, pg. 11.

2011 focuses economic development strategies on, among other priorities, the minerals sector and mining supply and services, and facilitating the entry of new participants and entrepreneurs, including Aboriginal businesses, into this sector and on the need to work with the federal government in these areas.

Responsible Resource Development is the federal government's plan to create jobs, growth and long-term prosperity by streamlining the review process for major projects. The plan includes the introduction of legislation that will advance a system-wide approach for improved federal reviews of major resource projects. It also proposes several program measures to **help build more consistent, accountable, meaningful and timely consultations with Aboriginal groups** in order to help reduce the potential for delays, legal risks and uncertainty.

The Plan will also **reduce the number of federal departments and agencies** responsible for environmental assessments from **40** down to **3** (CEAA, NEB and the Canadian Nuclear Safety Commission).

5.2 Federal

Federal jurisdiction in natural resources applies to the territories "north of 60", Aboriginal lands, and offshore frontier areas. The federal government maintains a strong role in the North, including provision of the majority of the funding of territorial governments. The federal government is also the manager of Crown land and resources in the Northwest Territories and Nunavut. For mineral development, the federal role includes the mineral tenure system that encourages mineral exploration by providing security of title to those who discover new deposits.

Federal powers in natural resources outside of these areas are primarily associated with the interprovincial and international movements of energy and certain natural resources.

Major resource development projects in and of themselves are substantial undertakings which require the participation of a significant number of federal departments and agencies. Consequently, there are many federal interests with which proponents and other stakeholders must deal, and whose mandates could be better aligned. Adding the Aboriginal participation focus naturally implicates many of those already involved, but can potentially draw in additional federal players as well.

Some key federal players include:

Federal Regional Economic Development Agencies (RDAs) that deliver a number of programs and services to promote economic development programs in their respective regions.

Natural Resources Canada (NRCan), the federal government's main source of natural resource-related economic and scientific knowledge and the **Major Projects Management Office** (MPMO) within that supports the regulatory review of major resource projects. (There is also the **Northern Projects Management**

Office (NPMO), under the **Canadian Northern Economic Development Agency** (CanNor) that is responsible for major project management in the North). NRCan is also committed to promoting Aboriginal participation in mining activities throughout Canada. (See Annex C for a map of current MPMO initiatives.)

The **Canadian Environmental Assessment Agency** (CEAA) has the federal lead on the established environmental assessment (EA) processes and the review of proposed projects as required by the *Canadian Environmental Assessment Act*.

Aboriginal Affairs and Northern Development Canada (AANDC) has a substantial role to play in major projects in areas that include; treaty negotiations and land claims agreements; consultation and accommodation issues; the development of new mines and management of existing mines on First Nations reserves through the Indian Mining Regulations under the *Indian Act*; dealing with legislative and regulatory barriers to Aboriginal economic development; and programming that facilitates and enables Aboriginal communities and businesses to obtain the business readiness capacity that is necessary for major resource projects. For the regulation of oil and gas activities in the North, the Minister of Aboriginal Affairs and Northern Development approves a Canada Benefits Plan. A Canada Benefits Plan requires that a company plan for and implement strategies and procedures to promote training, employment and business opportunities for Northern Aboriginal persons and businesses.

Human Resources and Skills Development Canada (HRSDC) takes the lead in skills development programming.

The **National Energy Board** (NEB or Board) is Canada's federal energy regulator. The purpose of the NEB is to regulate pipelines, energy development and trade in the Canadian public interest.

Infrastructure Canada is a key federal funding partner, working with provinces, territories, municipalities, the private sector and non-profit organizations, along with other federal departments and agencies. Its investments address local and regional infrastructure needs, while advancing national priorities.

Transport Canada may also have regulatory and statutory duties in major projects, such as requiring that Navigation Impact Assessments be completed in proposed mining projects as components of an EA.

Health Canada has a role for Aboriginal communities that may not be able to effectively benefit from projects unless longstanding socio-economic and health-related issues are addressed.

5.3 The Crown Duty to Consult

The Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct (e.g. permitting and licensing for resource projects) that might adversely impact potential or established Aboriginal or Treaty rights under Section 35 of the *Constitution Act, 1982*. Existing processes, such as environmental assessments and regulatory approvals, are used to the extent possible to fulfill the Crown duty to consult. A whole-of-government approach is used, where departments work together (and with the Province where appropriate) toward a coordinated approach for Aboriginal consultation that is integrated within the environmental assessment and regulatory approval phases of the review process. The Crown will also take into account the consultation efforts of the Province and the Proponent, to the extent possible, to meet the duty to consult. The courts have indicated that consultation must be meaningful and that the consultation process has to be reasonable.

AANDC supports the whole of government approach through Guiding Principles and Directives, such as the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* that were released March 2011. The principles and directives will guide federal officials in their efforts to address the duty to consult.

AANDC is also negotiating cooperative arrangements with provinces and territories and Aboriginal groups to make consultation processes more efficient and coordinated:

- Mi'kmaq/Nova Scotia/Canada Consultation Terms of Reference, signed August 2010; and
- Finalizing arrangements with New Brunswick, Prince Edward Island and negotiating with Quebec.

The Department is also working with provinces/territories on establishing Memoranda of Understanding (under negotiation with Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia). Such cooperative arrangements provide a clarification of roles and responsibilities for all parties involved. The mandate to lead a whole-of-government approach in the development of consultation protocols involving Canada rests with AANDC.

6. ABORIGINAL ISSUES

While major resource development projects present significant potential for Aboriginal communities, these communities are also often concerned with a number of issues surrounding resource development and their ability to benefit from it.

A key issue for communities, as well as for industry, is the **capacity** of communities to participate in development projects. For instance, despite the demand for workers, there are challenges on the supply side. The education gap

between Aboriginal and non-Aboriginal Canadians remains high and the on-reserve Aboriginal workforce has limited mobility. According to Census 2006, approximately 41% (or 117,740) of the working-age (between 25-64 years of age) First Nation population reported having some form of post-secondary education, while 36% of the working-age Inuit population reported having some form of PSE, compared to 61% of the non-Aboriginal population. Generally speaking, Aboriginal Canadians are worse off than the average Canadian in terms of socio-economic outcomes, including education outcomes. Further, the outcomes are generally weaker on-reserve than in urban areas. According to Census 2006 statistics, the percentage of First Nations people on-reserve with a high school diploma or above was 40.2% while it was 63.7% for urban Aboriginal people, and 78.4% for the urban, non-Aboriginal population. (See Annex D for a map of Well-Being in First Nations Communities across Canada and Annex E for an Overview of Aboriginal Population, Residence and Educational Attainment.)

The mobility rate of First Nations people living on-reserve also suggests limitations on the ability of industry to draw on them to fill labour gaps off-reserve. According to Census 2006 statistics, the mobility rate (percentage who changed location from previous year) for First Nations people living on-reserve was lowest among identity groups at 4.6%, as compared with First Nations living off-reserve in an urban setting at 10.6% and those living off-reserve in a rural setting at 9.6%. In comparison, the mobility rate for the non-Aboriginal population living in an urban setting was 5.8% and 5.7% for those in a rural location. The higher rate for First Nations people suggests an unwillingness or inability to move to jobs.

Some communities may also face deeper socio-economic and other challenges before they can take advantage of supplying the demand for more, and more highly-skilled, workers. For instance, Nishnawbe Aski Nation, which represents 43 First Nations, including the Matawa First Nations in or near the Ring of Fire, has identified high proportions of suicide[46] and prescription drug abuse[47] in its communities. Matawa First Nations have reported that almost 2,000 people in their communities alone have an Opioid addiction[48].

Business Development, including **access to capital** and other **regulatory** and **legislative impediments** due to outdated provisions in the *Indian Act* are also a concern. The *Indian Act* can undermine economic development on-reserve in a number of ways:

- The provisions cumulatively undermine community control over economic affairs, vesting authority with the Minister rather than with First Nations leadership;
- Regulatory and jurisdictional gaps create uncertainty on the part of investors;

[46] http://www.nan.on.ca/upload/documents/com-2010-05-10-nan-to-be-part-of-suicide-prevention-symposium.pdf Accessed May 15, 2012
[47] http://wawataynews.ca/archive/all/2011/9/15/response-prescription-drug-abuse-minimal-nan_21848 Accessed May 15, 2012
[48] "NAN Chiefs Call for Immediate Assistance As Region Braces For Major Health Catastrophe", Nishnawbe Aski Nation News Release, Thursday, February 16, 2012.

- The Crown's role as a fiduciary inhibits the type of risk-taking that may be associated with business and investment decisions; and
- A series of provisions under the Act fundamentally discourage economic development, either as a result of the rules they create or the way they are implemented, and that include but are not limited to:
    - Land registry and land tenure systems – under the *Indian Act*, legal title to reserve lands is vested in either the federal or provincial Crown and, accordingly, neither a band nor an individual member of the band can offer the fee simple title to its reserve lands as collateral for a loan;
    - Lease and designation processes – the *Indian Act* sets out the process by which designations, surrenders and leases can occur on-reserve. The Crown holds a fiduciary duty in managing these process and the associated due diligence required for Ministerial approval can cause significant delays and the loss of potential economic opportunities (e.g., leasing reserve land for commercial development); and
    - Restrictions on the use of land for collateral – the most commonly cited barrier to economic development on-reserve is the restriction on the use of reserve land as a source of collateral for accessing capital.

Impact Benefit Agreements (IBAs)

IBAs are negotiated contracts between First Nations participants and mining companies. Though the terms of these contracts are private, it is understood that IBAs can cover a wide range of issues such as procurement and business development opportunities, employment and training benefits, infrastructure needs, and treatment of resource revenues. IBAs can also serve as a formal means of communication between First Nations communities and the private sector.

IBAs are often linked to environmental impact assessments and environmental management. IBAs do not trigger EAs and cannot replace statutory elements of EAs, but they can be used to augment or modify terms of EAs

Although there are exceptions, federal and provincial governments are rarely a party to IBAs, although in some cases federal departments and agencies (e.g. FedNor) provide funding to communities for IBA negotiation capacity and mining advisory services. Over 85% of the IBAs arranged over the last two decades are between Aboriginal groups and the private sector. The majority of the remaining cases include the Saskatchewan Government, which administers 13 Surface Lease Agreements that include provisions for land management, environmental protection, health and safety, human resource development, and socio-economic benefits on behalf of northern communities, including First Nations.

The ability to leverage resource development for positive impacts on **infrastructure** is also important, particularly for remote communities near which resource development is taking place. Many of these communities are either "off-grid" and rely on diesel generators, or are fly-in only or rely on winter roads. For example, discussions on transportation corridors are ongoing as part of the development of the Ring of Fire region in Northwestern Ontario. A number of mining companies with different claims have put in separate proposals for roads or a combination of all-weather roads and railways to transport the mined material.

These potential corridors would benefit the surrounding First Nations, a number of which are fly-in only.

Other issues with which Aboriginal communities are concerned include:

- Lack of early and meaningful **engagement** with communities on the part of industry.
- Potential **environmental damage** to drinking water and food sources, including impacts on the traditional hunting and trapping practices of Aboriginal communities.
- Establishing meaningful and transparent **partnerships** with industry, including companies undertaking exploration activities, as well as with various levels of government.
- The ability to maximize the potential for benefits from **Impact Benefit Agreements** and to generate wealth from **Resource Revenue Sharing.**
- The **gaps in economic infrastructure** in the **North** (e.g. ports, roads, energy, satellite, search and rescue, etc.).

7. CASE STUDIES AND LESSONS LEARNED

7.1 Victor Diamond Mine

De Beers Canada owns and operates the Victor Diamond Mine, located in the traditional territory of the Mushkegowuk Cree in the James Bay lowlands of Ontario. The Victor mine underwent regulatory review between 2003 and 2005, and opened in 2008. Between 2005 and 2009, Impact Benefit Agreements were signed between De Beers and four of the First Nations of the regional Mushkegowuk Council.

A case study[49] of the Victor Diamond Mine revealed a number of important points. For example, when engagement with First Nations began, De Beers struggled to develop a relationship of trust with communities and to explain the complex and highly technical process of constructing and operating a mine in a remote region. Similarly, First Nations struggled to maintain their traditional ways and social cohesion in the face of decades of industrial and regulatory encroachment, and were not fully prepared to participate in the process.

The example of the Victor Diamond Mine demonstrates a number of lessons learned, such as that First Nations' preparedness to engage proponents and participate in the regulatory process can play a pivotal role in:

- Securing and maintaining community support for a project;
- Ensuring meaningful First Nation participation in the decision-making process; and
- Effectively negotiating benefit agreements.

[49] *Aboriginal Consultation and Regulatory Process Case Study: Victor Diamond Mine – Final Report.* Donna Cona for Natural Resources Canada, March 31, 2011.

7.2 Diavik Diamond Mine

The Diavik Diamond Mine in the Northwest Territories was built on a solid foundation of local and Aboriginal consultation that involved the use of innovative ways to contribute to local community capacity and enhanced transparency. Diavik committed to providing training, employment and business opportunities to residents of Northwest Territories and in 1999, formalized these commitments with local Aboriginal groups and the NWT under the Diavik Socio-Economic Monitoring Agreement (SEMA)[50]. The Agreement committed to 66% northern employment and 40% Aboriginal employment for operations and, by the time the mine had been in operation for just under two years, Diavik and its major contractors had employed over 700 people with 70% northerners and nearly 40% Aboriginal, including a number of labourers, plant and heavy equipment operators, skilled tradespersons, technicians, engineers and administrative and managerial staff[51]. The company implemented skills development programs, including a Workplace Learning Centre that supplied employees and contract staff (many of the workers came to Diavik with minimal literary and numeracy skills) with literacy, numeracy, academic and computer programs[52].

The objectives of the Learning Centre included enhancing and improving the literacy, numeracy and academic skills of employees; providing them with the tools and competencies necessary to improve their performance; academic assistance to apprentices and others involved in training and educational opportunities; training in computers and computer programs and access to computer-based training programs; and the encouragement to workers to become lifelong learners[53]. The programs were tailored to meet the specific needs of individual learners while keeping in mind the company's objectives of acquiring essential job skills and achieving workplace safety and productivity goals[54]. The model has been called an effective one with particular relevance and value for remote sites where the education levels and literacy rates of the local population may be below Canadian averages[55].

The Diavik approach underscores the benefits involved for both a company and Aboriginal communities when the company provides not only an enhancement to basic literacy skills but also additional training for higher-level development.

7.3 Pic River First Nation

The Pic River First Nation in Northwestern Ontario is the owner of a number of hydroelectric plants, including the Twin Falls hydro-electric plant, Umbata, on the White River system, and Wawatay, on the Black River[56]. The First Nation has also

[50] Diavik's Workplace Learning Centre: A Literacy Gem That is Creating Opportunities and Enhancing Workers' Lives. The Conference Board of Canada, December 2005, pg. 2.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid, pg. 4.
[56] Information taken from "Pic River First Nation adds power to their energy mix" by Ian Ross, Northern Ontario Business, June 8, 2009.

been awarded the development rights on two sites on the Kagiano River, a tributary of the Pic River system, approximately 50 kilometres west of Manitouwadge – the proposed High Falls and Manitou Falls are expected to be built and in operation within five years. Importantly, these stations are off-reserve but within the traditional territory of Pic River First Nation. The First Nation has noted that it would have been a more complicated process to finance these projects (the Twin Falls acquisition was made with the assistance of the Royal Bank, after the First Nation had started as a small minority partner in Wawatay) had they been on their 800-acre reserve. That is, it would have been problematic due to the unique federal land tenure system having a negative impact upon the ability for First Nations businesses to provide security for loans to finance such projects and investments.

Pic River First Nation's success in hydro demonstrates that it is possible for Aboriginal communities to finance complex projects; however, it also underscores the continued difficulty in doing so on-reserve due to the antiquated provisions of the *Indian Act*.

8. NEXT STEPS

To further advance this work, AANDC has partnered with the Public Policy Forum, in collaboration with HRSDC and NRCan, to hold a series of regional roundtables with a number of stakeholders in major resource development, including representatives of various provincial and federal departments, the non-Aboriginal private sector, and Aboriginal organizations.

The **first roundtable** was held May 22, 2012 in Ottawa. A number of key themes were reflected in the dialogue, including:

- Labour Market Development;
- Community Readiness;
- Financing and Financial Literacy;
- Partnerships and Collaboration;
- Measurements of Success; and
- Best Practices and Case Studies.

The **second roundtable** was held June 8, 2012 in Calgary and looked at uncovering best practices and promising approaches in the area of labour market development among Aboriginal communities to enhance their ability to participate in and contribute to major resource development projects. Findings were based around the themes of:

- Community Engagement (efforts to improve labour market opportunities and readiness among Aboriginal, Inuit, and Métis peoples must begin by developing partnerships at the community level);
- Capacity (to deliver social support and services, in both the Aboriginal and non-Aboriginal context);

- Corporate Strategy (for approaching communities); and
- Collaboration (enhancing capacity for working collaboratively by building on the number of unique relationships amongst government, industry, educational institutions and Aboriginal communities that already exist).

The **third roundtable** was held June 27, 2012 in Prince George, BC, on community readiness. Discussion centred around the themes of:

- Engagement (more support needed for genuine, collaborative engagement and consultation including development of protocols);
- Co-ordination and collaboration (more alignment and transparency of objectives and government mandates needed instead of simply managing risks);
- Capacity (need to build business and negotiation acumen of communities; private sector and government need to improve relationship-building capacity);
- Access to Capital (use of social financing tools should be explored as alternate financing options); and
- Legislative Barriers (*Indian Act* is an ongoing impediment to business development).

The **fourth roundtable** will be held August 21, 2012 in Toronto, on Financing, and will consider:

- What resources, financial and otherwise, need to be made available for Aboriginal communities looking to play a leadership role in major resource development opportunities in Canada?
- What tools do Aboriginal communities need to manage wealth flowing from resource sector development opportunities? How can this wealth be translated into benefits for these communities?

The **fifth roundtable** will be held August 31, 2012 in Yellowknife and will consider lessons learned from the North. This roundtable will explore differences in approach between North and South in terms of governance, regulatory regimes, land claims, business development and procurement opportunities. Specifically:

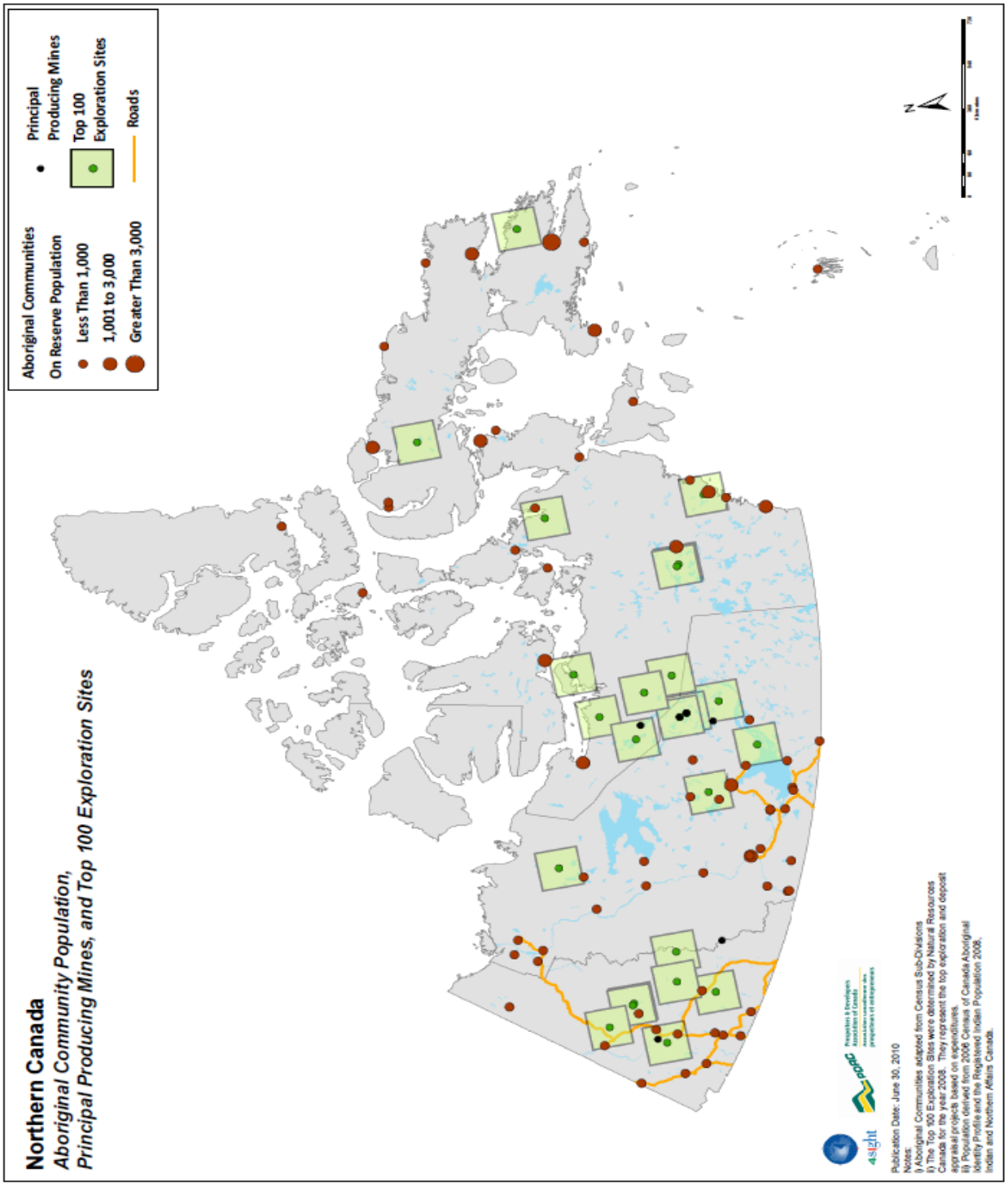
- What factors contribute to and impact Aboriginal participation in major resource development opportunities in the North, and are they unique to the North? How do governance, land claims and regulatory regimes advance Aboriginal participation?
- In addition to Impact Benefit Agreements and Socio-economic Partnership Agreements, what mechanisms are used in the North to advance Aboriginal participation in major projects? Do settled and

unsettled land claims affect the approach when negotiating such agreements?

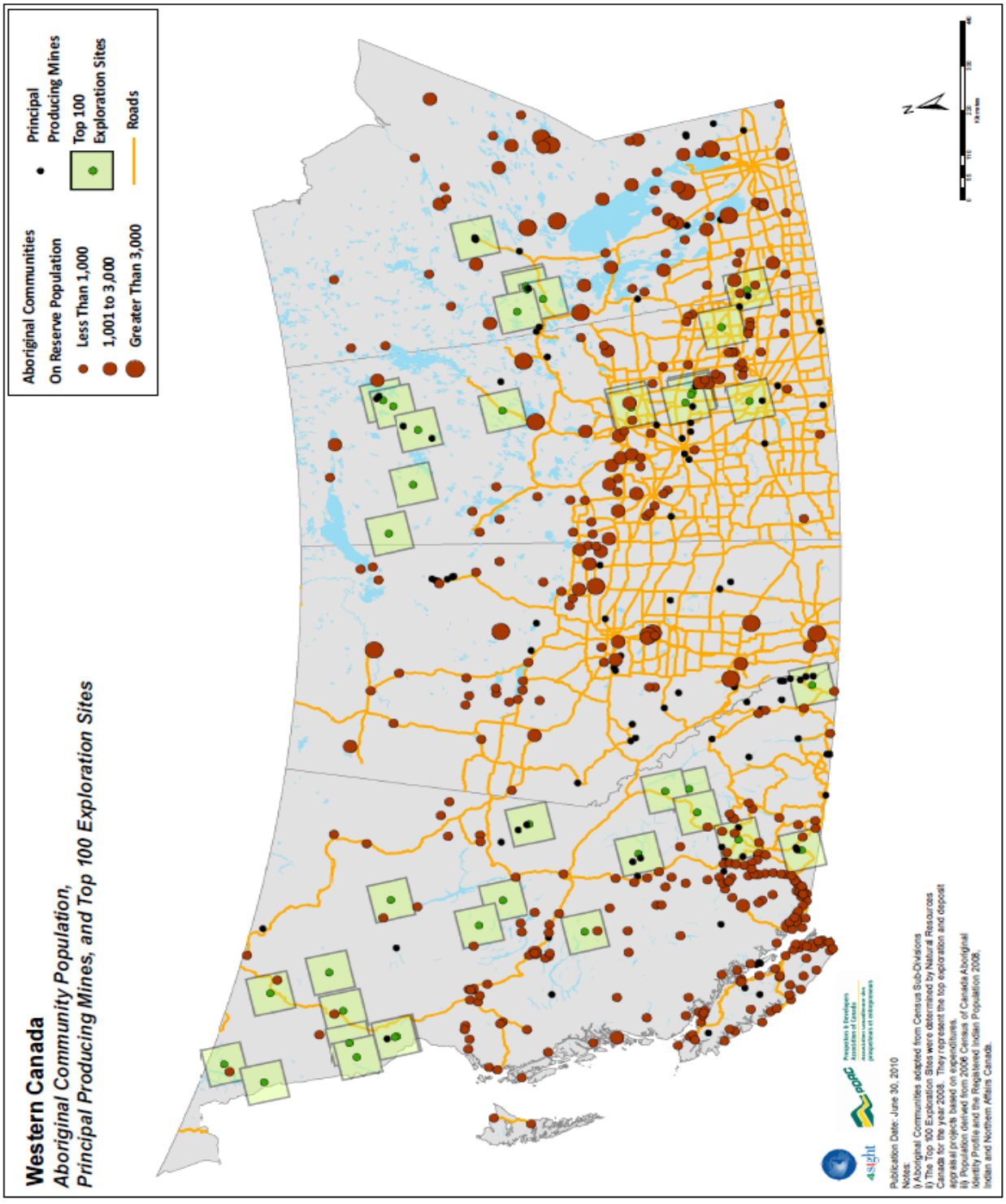
- How do negotiations of such agreements contribute to Aboriginal community readiness, capacity building, labour market and business development, and procurement opportunities?
- What best practices and lessons learned are maximizing Aboriginal participation and relationship-building in the North? Are there other players (e.g. territorial governments, colleges) that contribute to these successful partnerships?

ANNEX A

Aboriginal Community Population, Principal Producing Mines and Top Exploration Sites



Accessed from http://www.pdac.ca/aboriginal/information/map-project.aspx March 15, 2012



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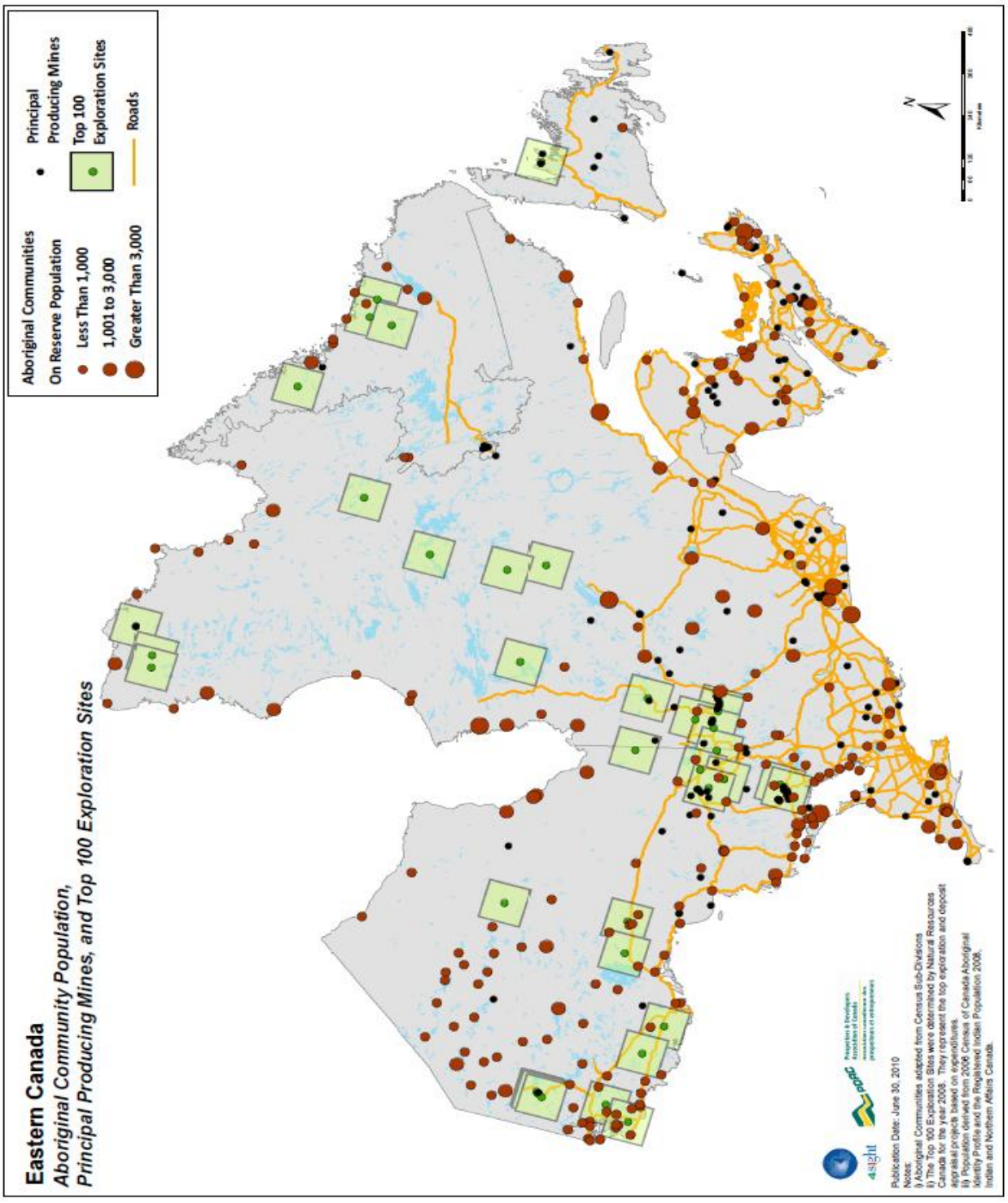
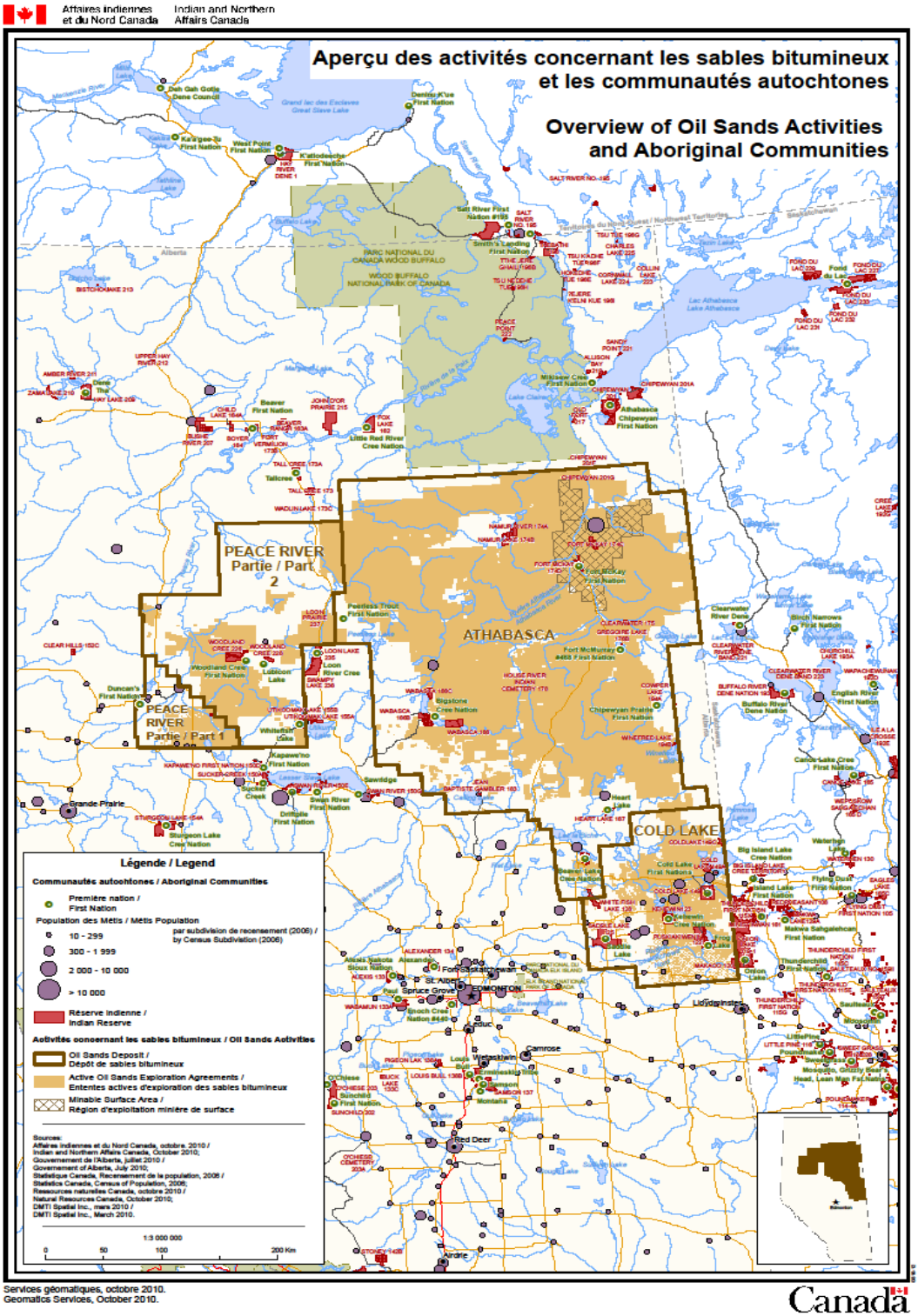


Accessed from http://www.pdac.ca/aboriginal/information/map-project.aspx March 15, 2012

ANNEX B
Oil Sands Activities and Aboriginal Communities


Affaires indiennes et du Nord Canada
Indian and Northern Affairs Canada
Aperçu des activités concernant les sables bitumineux et les communautés autochtones
Overview of Oil Sands Activities and Aboriginal Communities
PEACE RIVER Partie / Part 2
PEACE RIVER Partie / Part 1
ATHABASCA
COLD LAKE
Légende / Legend
Communautés autochtones / Aboriginal Communities
Première nation / First Nation
Population des Métis / Métis Population
par subdivision de recensement (2006) / by Census Subdivision (2006)
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300 - 1 999
2 000 - 10 000
> 10 000
Réserve indienne / Indian Reserve
Activités concernant les sables bitumineux / Oil Sands Activities
Oil Sands Deposit / Dépôt de sables bitumineux
Active Oil Sands Exploration Agreements / Ententes actives d'exploration des sables bitumineux
Minable Surface Area / Région d'exploitation minière de surface
Sources:
Affaires indiennes et du Nord Canada, octobre 2010 / Indian and Northern Affairs Canada, October 2010;
Gouvernement de l'Alberta, juillet 2010 / Government of Alberta, July 2010;
Statistique Canada, Recensement de la population, 2006 / Statistics Canada, Census of Population, 2006;
Ressources naturelles Canada, octobre 2010 / Natural Resources Canada, October 2010;
DMTI Spatial Inc., mars 2010 / DMTI Spatial Inc., March 2010.
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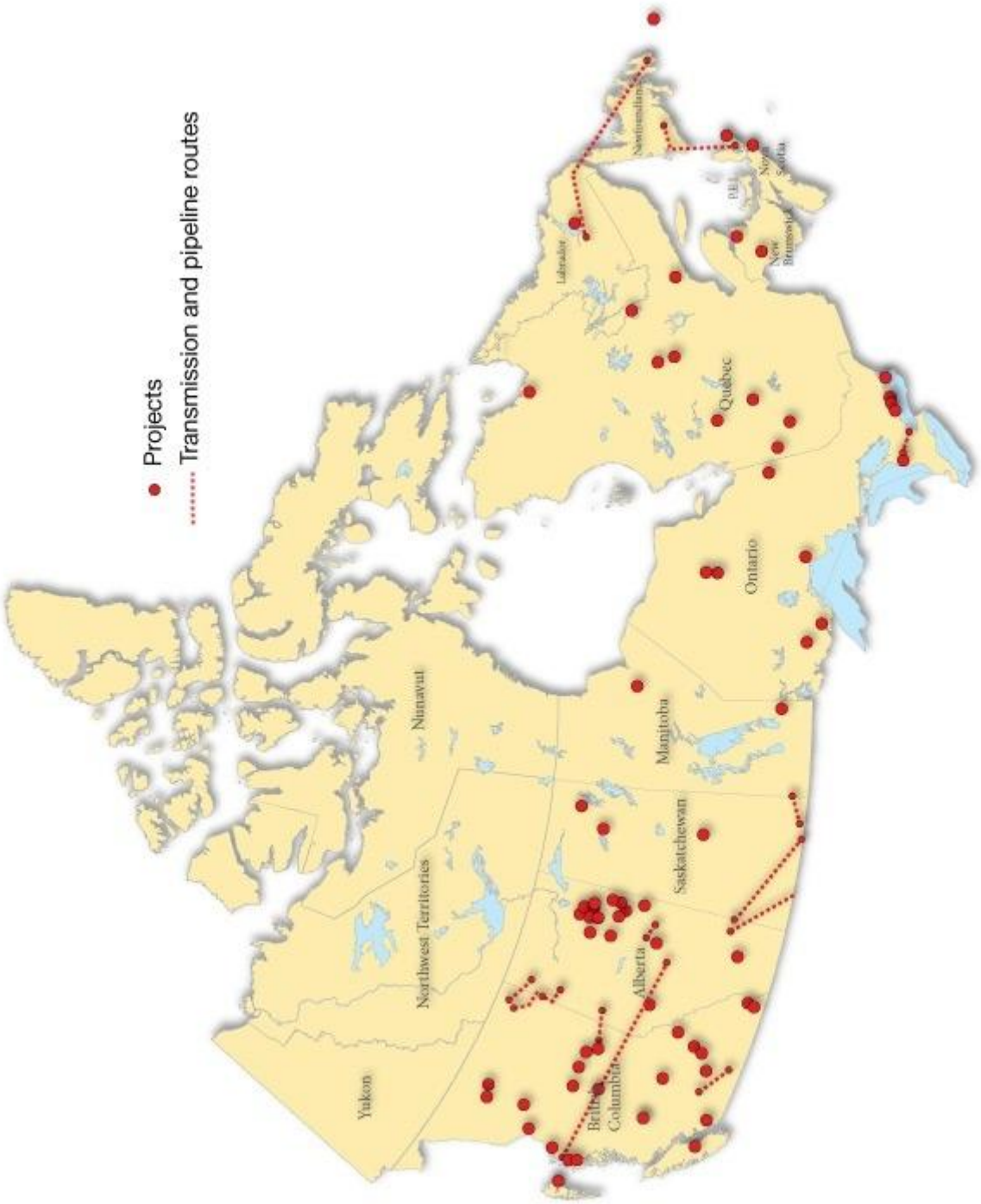
Services géomatiques, octobre 2010.
Geomatics Services, October 2010.
Canada

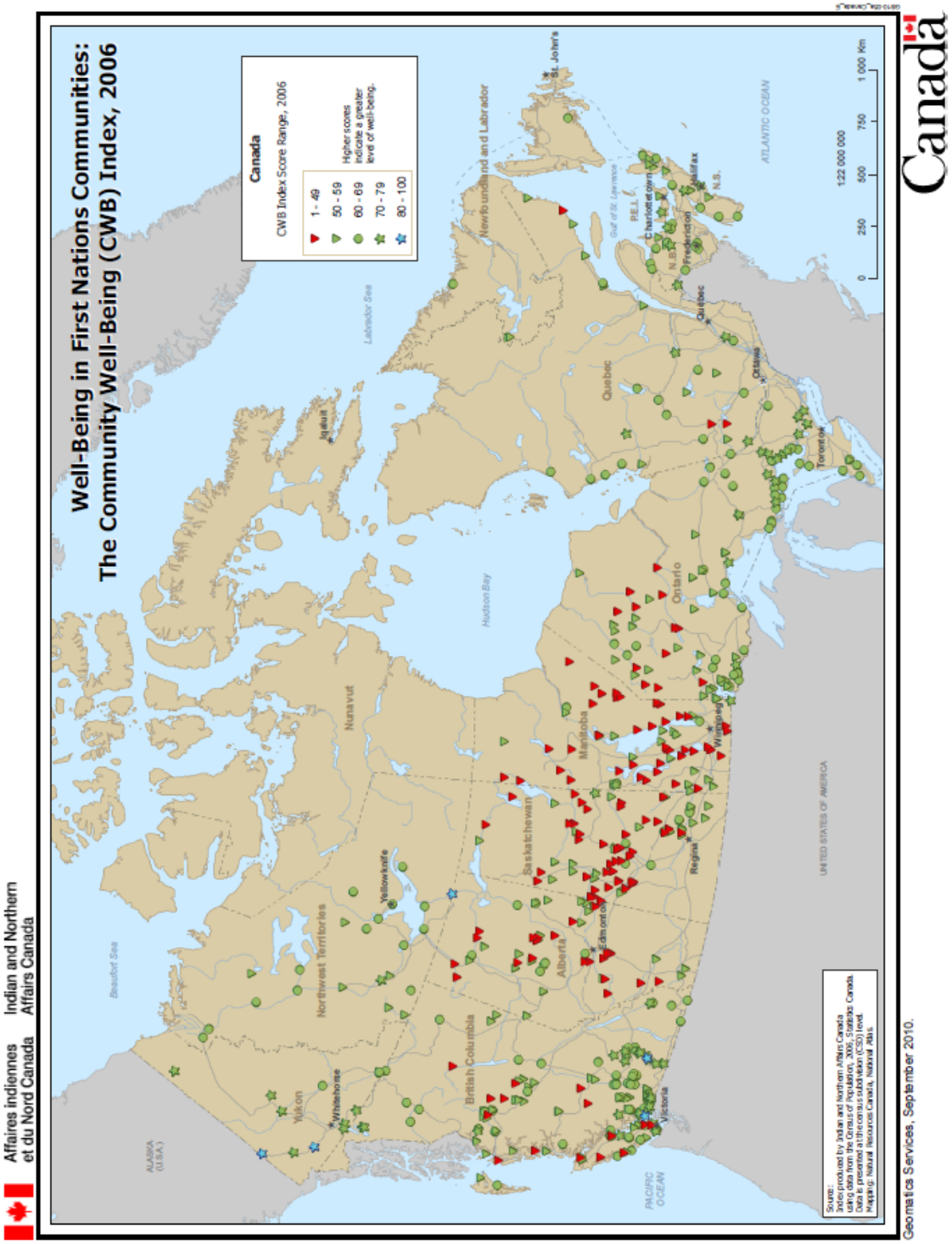
ANNEX C

Major Projects Management Office: Current Initiatives



ANNEX D

Well-Being in First Nations Communities



ANNEX E

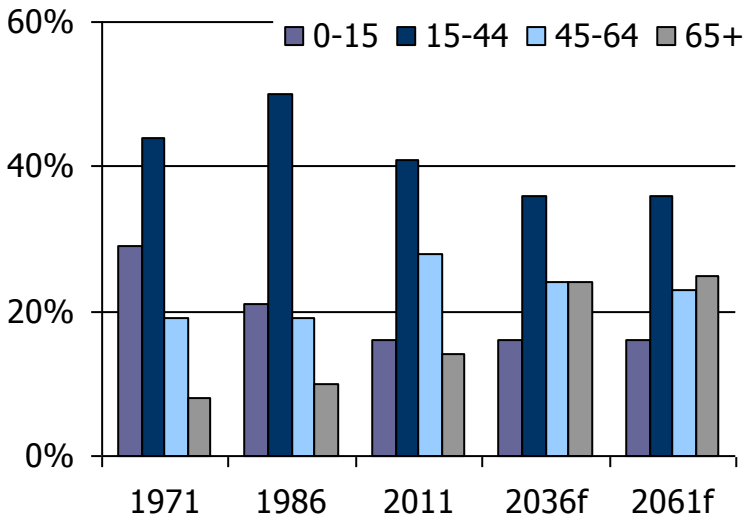
An Overview of Aboriginal Population, Residence and Educational Attainment

Introduction

Canada has abundant energy resources of all kinds. Canada is the second-largest producer of uranium, the third-largest producer of natural gas and hydroelectric power and the world's sixth largest producer of oil. The country is the largest supplier of energy resources to one of the world's largest markets, the United States.

However, much like other advanced economies, Canada is facing a major demographic challenge. Between 2011 and 2036, the senior population (65+) in Canada is projected to grow from roughly 15% to almost 25% of the Canadian population, with a corresponding drop in the working age population (15-64). Correspondingly, annual retirements will increase by about 38% between 2010 and 2020. Over the next decade, this demographic shift along with continuing economic growth is expected to result in approximately 6.5 million jobs. In fact, replacement demand, mostly due to retirement, will account for about two-thirds of these job openings. The primary source (75%) of new workers will be youth transitioning from school to the labour force, while immigration will account for 17%.

Canada's Population by Age Group, 1971-2061



f = forecast – Scenario: Medium-growth, historical trends (1981-2008).

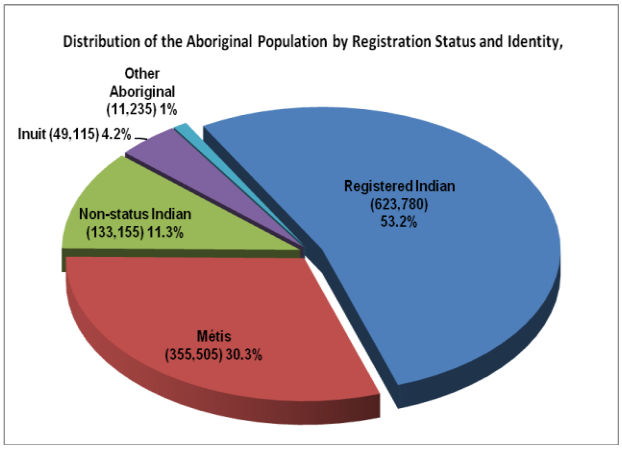
Source: Statistics Canada, CANSIM Tables 051-0001 & 052-0005.

It is clear that Canada needs to increase the size and skill-level of its labour market to be able to fulfill global demand for its natural resources. It is estimated that Aboriginal Canadians will make up an increasing share of the working age population, from 2.95% in 2001 to 3.37% in 2017. This means that assuming no

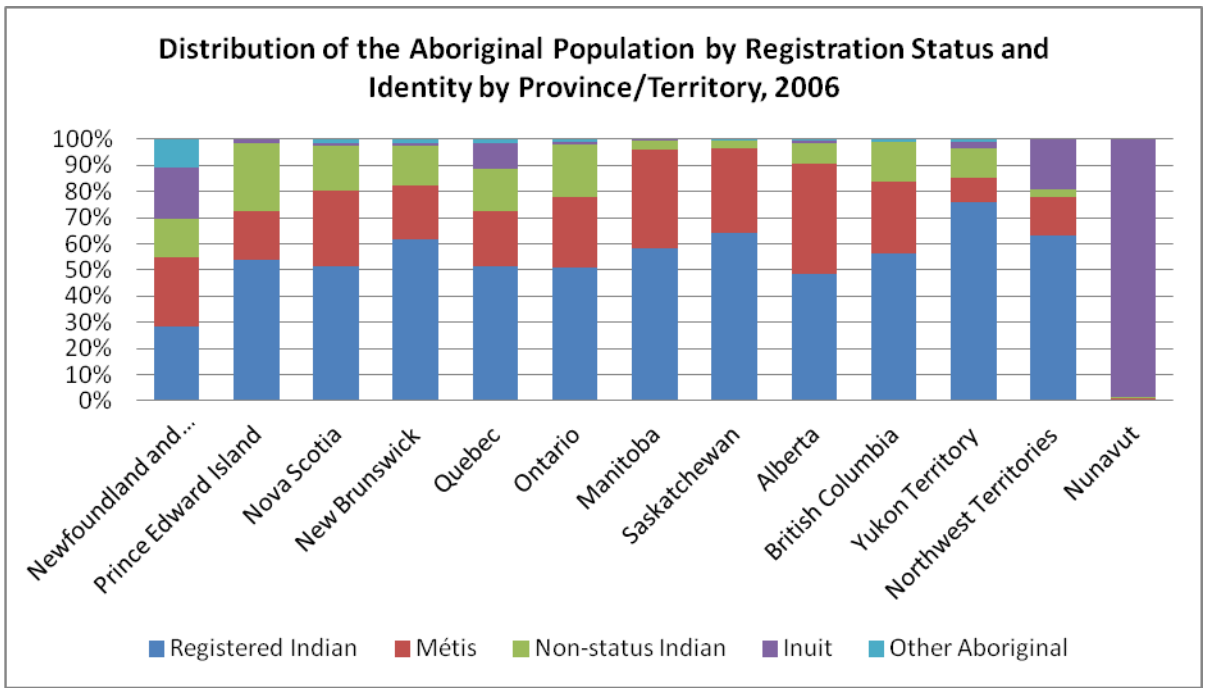
change in their labour market participation, Aboriginal Canadians would be responsible for 7.18% of the total increase in the size of the Canadian labour force.

Aboriginal Population

When the Census was taken in 2006, 1,172,785 people in Canada — representing about 4% of the Canadian population — identified themselves as Aboriginal. The chart to the right presents the breakdown by identity of the total Aboriginal population in Canada, and the graph below shows the distribution by Aboriginal identity across the provinces and territories.



Source: Statistics Canada, 2006 Census of Population, AANDC tabulations



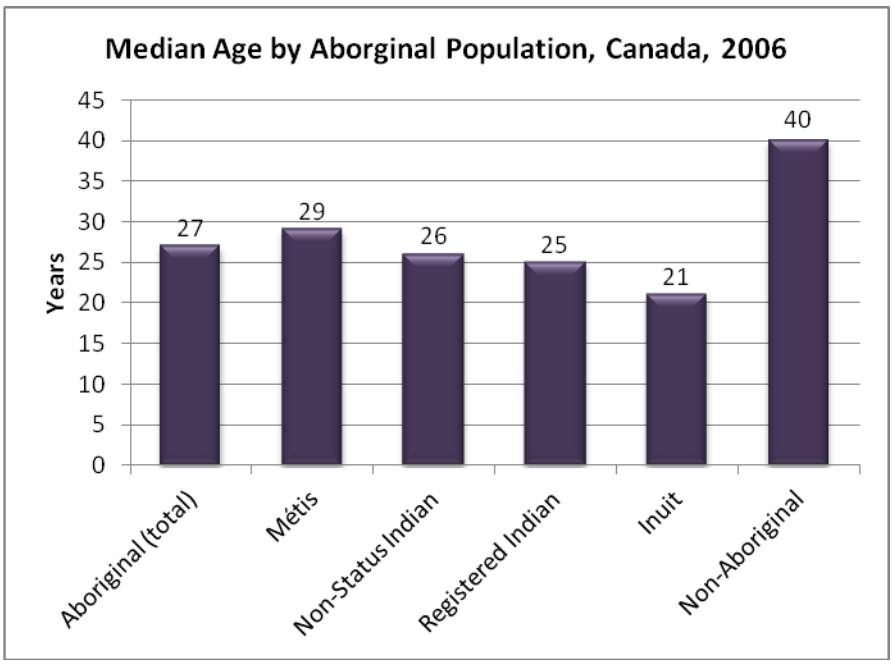
Note: **Other Aboriginal** refers to respondents who reported more than one identity group, and those who reported being a band member with no Aboriginal identity and no registered Indian status

Source: Statistics Canada, 2006 Census of Population, AANDC tabulations

The Aboriginal population is growing rapidly. Between 1996 and 2006, the Aboriginal population increased six times more than the non-Aboriginal population

(47% compared with 8%). Population projections suggest this trend is expected to continue well into the future[57].

In 2006, the Aboriginal population was also much younger than the non-Aboriginal population. In the Aboriginal population, 48% of individuals were the under the age of 25, compared with 31% for non-Aboriginal people. The Inuit population was the youngest of all Aboriginal populations — almost 20 years younger on average than the non-Aboriginal population.



Source: Statistics Canada, 2006 Census Population, AANDC tabulations

There is great variation in growth rates among Aboriginal groups. Fertility, migration and changes to the *Indian Act* in 1985 (Bill C-31) can explain some of the growth in the Aboriginal population. However, a significant portion of the population growth (especially for the Métis and non-Status Indian populations) is attributable to "ethnic mobility," a term used to define changes in self-reporting of cultural affiliation over time and across generations[58].

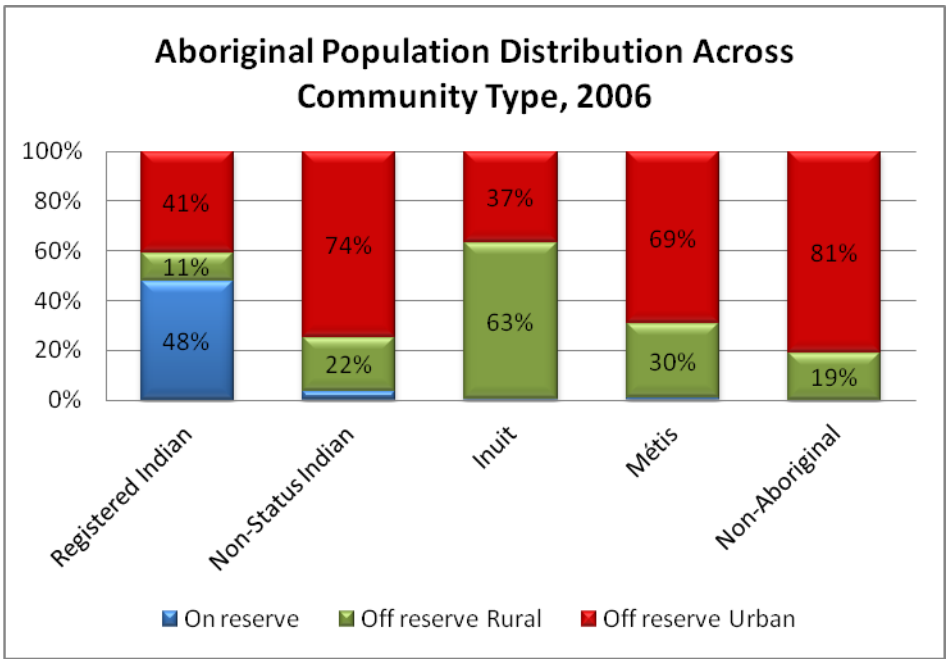
Aboriginal Residence

The majority of Canada's Aboriginal population resides in the western provinces. According to the 2006 Census, 60% of the total Aboriginal population in Canada resided in Manitoba, Saskatchewan, Alberta and British Columbia. Nunavut had the highest concentration of Aboriginal people among all provinces and territories, with

[57] Aboriginal Population, Household and Family Projections, AANDC, 2007
[58] Guimond, E. 2009. L'explosion démographique des populations autochtones du Canada de 1986 à 2001, University of Montreal, Department of demography, doctoral thesis, 209 pages.

85% identifying themselves as Aboriginal. Among the provinces, Manitoba had the highest concentration at 16% followed by Saskatchewan (15%) and Alberta (6%).

In 2006, more than 53% of Aboriginal people resided in urban areas compared with 81% for non-Aboriginals. According to the 2006 Census, about half (48%) of registered Indians resided on reserves[59]. The majority of non-Status Indians (74%) and Métis (69%) resided in urban areas. Inuit live predominantly in rural areas (63%), particularly in the North. Contrary to popular belief, there is no mass exodus from reserves to cities: both the on-reserve and the urban population are growing. While Aboriginal populations are highly mobile and move back and forth from and to cities and within cities, the recent Aboriginal population explosion in cities is in large part attributable to changes in self-reporting of affiliation over time.



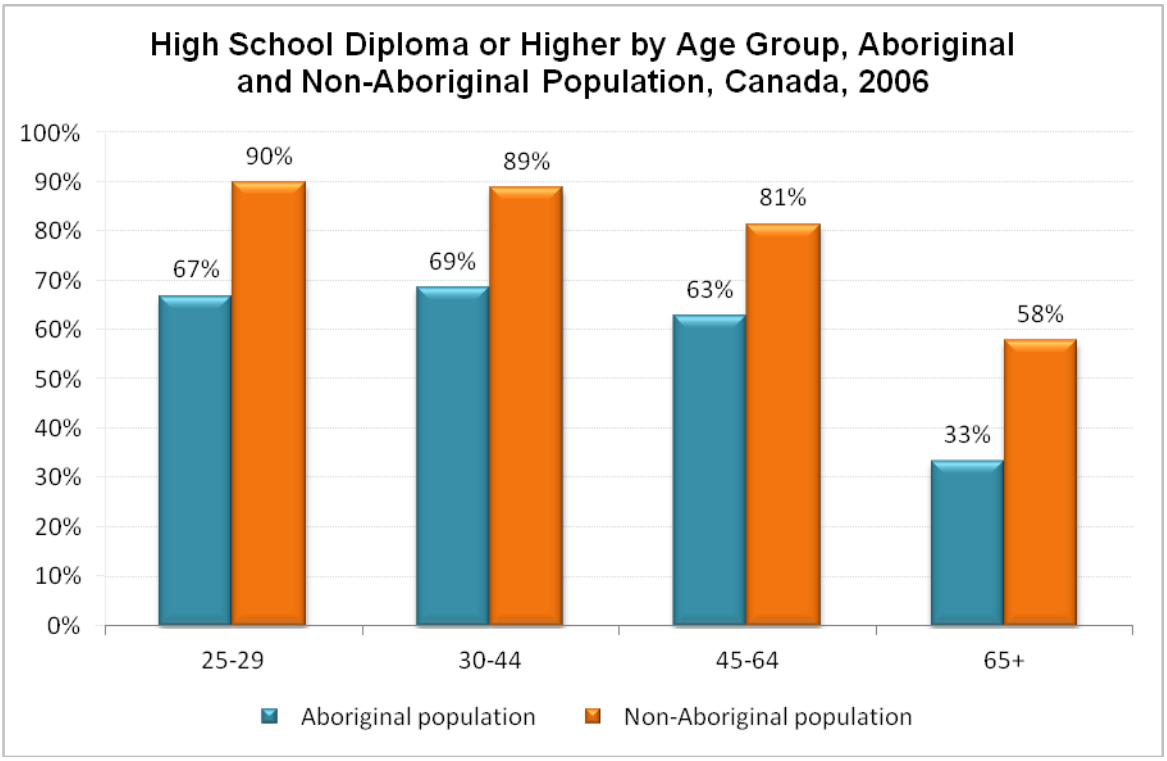
Note: Urban areas have population of at least 1,000 and no fewer than 400 persons per square km

Source: Statistics Canada, 2006 Census of Population, AANDC tabulations.

[59] Every five years, a number of reserves and settlements do not participate in the census because enumeration is not permitted or is interrupted before completion. In 2006, 22 reserves were incompletely enumerated, down from 30 in 2001 and 77 in 1996. Population counts for these reserves are not included in census statistics thereby resulting in an underestimation of the on-reserve population. While the impact of incomplete enumeration is currently unknown, AANDC's Indian Register, an administrative database that offers an alternative source for registered Indian population counts, estimates that 56% of registered Indians were living on reserves in 2006. However, it is important to note that the Census of Population and the Indian Register are two very different sources of data and are not comparable.

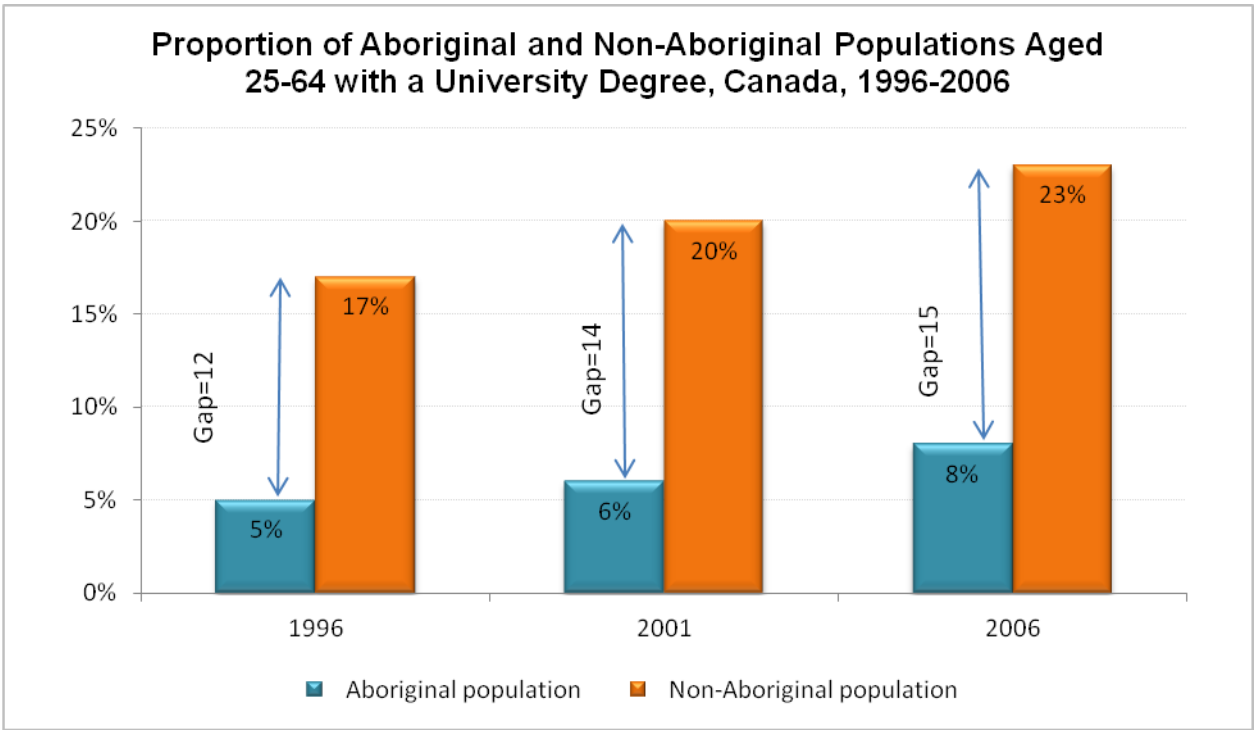
Aboriginal Educational Attainment

Educational attainment is improving among younger generations of Aboriginal people. The proportion of the Aboriginal population aged 25–44 with at least a high school diploma is about 68%, about two times higher than for those aged 65 years and over (33%).



Source: Statistics Canada, 2006 Census Population, AANDC tabulations

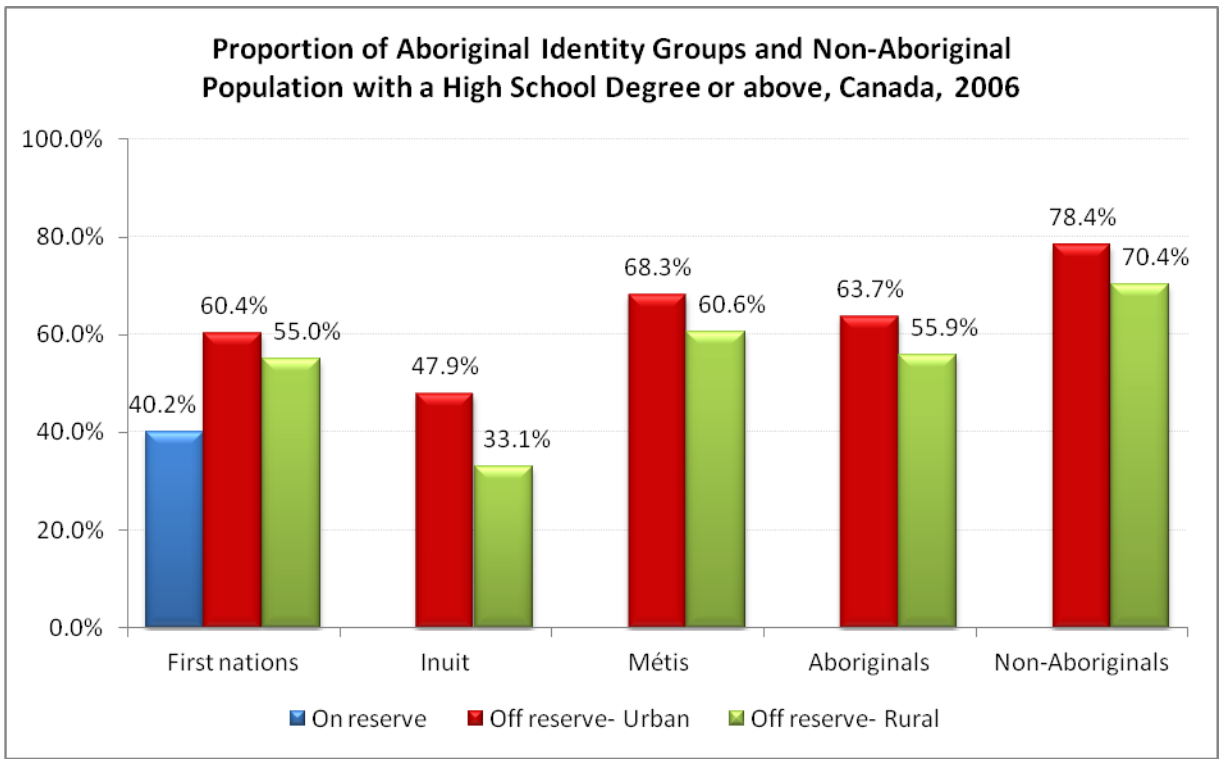
However, there is a significant gap in educational attainment between Aboriginal and non-Aboriginal populations. This gap ranges from 18 to 25 percentage points depending on the age group. The Aboriginal population aged 25–64 with a university degree has increased since 1996 (from 5% to 8%). However, the Aboriginal population still lags far behind the non-Aboriginal population (23%) and the gap between the two populations continued to widen between 1996 and 2006.



Note: **University Degree** includes bachelor, masters and doctorate degrees as well as first professional degrees in medicine, dentistry, veterinary medicine or optometry.

Source: Statistics Canada, 1996, 2001 and 2006 Census of Population, AANDC tabulations.

Educational outcomes vary significantly by residence and Aboriginal identity group. About 68% of Métis individuals residing in urban areas have a high school diploma or better, compared with 60% of First Nation individuals and 48% of Inuit individuals. Rural and on-reserve educational attainment is significantly lower than that for urban Aboriginal people across all identity groups, with about 61% of rural Métis individuals, 40% of on-reserve First Nations, and 33% of rural Inuit having a high school diploma or better. The overall gap in high school attainment or better between Aboriginal and non-Aboriginal individuals is the same – about 15% – for individuals residing in rural or urban areas.



Source: Statistics Canada, 2006 Census of Population, AANDC Tabulations