Nation Building and the Anishinabek Nation Fiscal Agreement
1. **Indian Act versus Self Government Recognition**

- **Option A: Do Nothing:** Federal Parliament -> Federal Law -> Whether by Prescription (example: *Indian Act*) or by Devolution (example: *First Nations Oil and Gas and Moneys Management Act*). Meeting of Federal Priorities; amendments or repeal based on those priorities.
  
  ○ **Example of Prescription - Indian Act:** 20 (1) *No Indian is* lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

  ○ **Example of Devolution - FNOGMA:** 34 (3) A first nation *shall send* particulars relating to each contract issued by the first nation to the Minister for registration in the register established by the regulations ...

- **Option B: Sovereign Capacity:** Inherency | Recognition | Exercise
  
  Agreement
  
  Robust Funding
  
  Chi-Naaknigewin and Resulting Law Making

  ○ **Example of Recognition - ANEA:** 3.1 This Education Agreement is based on the *recognition that the inherent right* of self-government is an existing aboriginal right within the meaning of section 35 of the Constitution ...
2. **Brief History of Fiscal Negotiations**

- Canada has long realized decolonization negotiations, or “self-government negotiations” must happen, and must include fiscal supports.

- Historically, Canada’s approach has been to under-fund this process. So, fifteen years ago, the standard fiscal support offer was an 8% increase for governance, compared to Indian Act funding.

- Canada had abandoned the eight percent increase in favour of an interim offer of – roughly – 100% increase for governance.

- What changed? Constant advocacy by First Nations; international attention; desire for seat on UN Security Council; push for reconciliation.

- Negotiators have achieved a 700% increase for governance.
3. Key Benefits - Fiscal Arrangements

- These fiscal arrangements deliver on the promise of a government-based approach to expenditure
  - increased funding
  - flexibility in expense allocation
  - a fiscal relationship beyond the reach of federal “winds of change”
  - greater national profile and reach for the First Nations of the Anishinabek Nation
  - ability to put in place a nation-building strategy and start tackling socio-economic concerns
  - cultural fit in law-making and thus in resulting expenditures
4. The Fiscal Offer

- The fiscal package negotiated with Canada makes a number of positive changes:
  - **Current Funding:** $16M under *Indian Act* for 40 FNs.
  - **Interim Offer:** $32M.
  - **Final Offer:** $96.8M.
  - **For each First Nation:** A new floor of $1.7M will be established for governance funding. *This is ongoing funding.*
  - **For the Anishinabek Nation Government:** Between $3M and $6M, depending on the number of FNs that ratify. *This is ongoing funding.*
  - **Transitional Funding:** One-Time Implementation funding for each First Nation: $548,000.
4. The Fiscal Offer [continued]

- The fiscal package has a number of features:
  
  - premised on a “modular approach” – the more Anishinabek First Nations vote “yes”, the bigger the “pie” gets
  
  - contained within a 5 year, renewable fiscal agreement, but with an ongoing fiscal relationship preserved in the governance agreement itself
  
  - preserves the ability of Anishinabek First Nations to continue to receive Indian Act funding in areas not covered by the agreement ... “Indian Act” funding is funding with the following type of legal authority:
    - Indian Act – example – ss. 74 to 90 on elections and the powers of the Council
    - Department of Indian Affairs and Northern Development Act – s. 4
    - See https://www.aadnc-aandc.gc.ca/eng/1100100013828/1100100013833
  
  - provides for adjustments to keep pace with inflation
  
  - provides for exceptional circumstances, dispute resolution, and the collation of statistics
5. First Nations and the Anishinabek Nation Government

- It is also important to understand the structure of FN-ANG relationships
  - The First Nations have paramountcy. The Anishinabek Nation Government cannot dictate to the First Nations. It is not going to simply replace Canada.
  - The Anishinabek Nation Government is not a separate, foreign entity. Anishinabek Nation citizens and leaders are the citizens and leaders of the First Nations.
  - The Anishinabek Nation Government has no exclusive powers. Only the signatory First Nations can authorize Anishinabek Nation powers.
  - Collective Services are not a carrot or a stick – First Nations can opt out. In nation building, some collective services are needed. For example, how do you know in which direction high school graduation or diabetes rates are trending. These are necessary services, but they can’t be used to direct First Nation action. First Nations can opt out.
5. First Nations and the Anishinabek Nation Government [continued]

- The fiscal agreement will enable a number of collective services:
  - **Elections**: An elections agency could coordinate common elections across the nation.
  - **Statistics and Strategic Planning**: A Anishinabek Statistical Agency could be created, aimed at measuring program impacts and closing socio-economic gaps.
  - **Dispute Resolution**: A Anishinabek Nation Tribunal could serve as a good first step towards a full-fledged court system.
  - **Procurement**: A Anishinabek Procurement Agency could use group buying to bring down prices offered for various goods and services.
  - **Economic and Workforce Development**: Such an agency could focus on workforce training and prioritize job positions for Anishinabek citizens.
  - **Language and Culture**: Such an agency could help bring back and sustain the language as well as cultural practices.
6. The Possible Future of Governance ...

Chippewas of the Thames FN, with increased governance funding:

Current: $423,000
Offer: $2,508,000

Citizens:

- enhanced ability to close socio-economic gaps,
- enhanced ability to increase workforce participation,
- enhanced exercise of inherent rights,
- any deficit funding for governance ends and amounts redirected,
- what does governance mean to you?