

**ASSEMBLY OF FIRST NATIONS
FIRST NATIONS LABOUR MARKET STRATEGY
DRAFT FOR DISCUSSION – NOT FOR DISTRIBUTION
ISSUE PAPER 4 – Policy Instrument, a Statute**

DESCRIPTION: A Statute is seen as the appropriate instrument to reset the relationship and provide an engine and framework for change to autonomous decision-making and government-to-government relations.

Policy instrument choice is a key step in the cabinet process and there must be a clear logic to support a statute versus other choices such as a contribution program, already within the authority of the Minister of ESDC.

Note: A statute is a written law passed by legislation; a statute is a formal written enactment of a legislative authority that governs a state, city or country by way of consent. Statutes are contractual agreements that compel performance from contractees, and/or prohibit something that one would naturally and sovereignly be free to do outside of the contract. Statutes are called laws, and require consent. They are made by legislative bodies, groups of people who are answerable & accountable to common law, which is decided by common law courts; which differ from legislative and statute contract courts. As a source of law for those who consent, statutes are considered primary authority.

OPTIONS:

1. Create a First Nations Labour Market Act which would establish, in turn, a First Nation Labour Market Commission and secretariat as well as enshrining the FNLMS in law providing administrative continuity for the FNLMS.
2. An Act that would set the FNLMS in law setting out the need for agreements with FNs, a Spending Plan and a role and mandate for FNs providing direction to the FNLMS (i.e., no Commission or Secretariat)

RATIONALE:

A Statute is the preferred policy instrument since it will give life to nation-to-nation, government-to-government relations enshrining FN labour market programming and institutions. A statute, considered first for approval by Chiefs in Assembly, will reflect First Nations' constitutional right to govern themselves in an important policy area and will include the governance and fiscal mechanisms to build FN capacity to independently manage labour market issues and to make this policy a reality.

Therefore, a statute is superior to using the “discretionary” and unpredictable spending authority whereby labour market programming is a policy decision of the government of the day.

A **Commission and Secretariat** provide substance for a statute and would be the centre piece in “resetting” the relationship by laying out a governance structure that empowers First Nations while transferring federal funds to FN institutions and providing accountability.

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A **Spending Plan** is a mechanism that can provide stability, predictability and long term funding by embedding the rules and indicators by which to establish the funding envelope.

Agreements with strong First Nations institutions would be an obligation of the Minister under the statute including capacity building as an explicit objective from the outset and at the highest policy level of building First Nation capacity to independently manage labour market issues.

CONSIDERATIONS:

Policy instrument choice is a key step in public policy and is addressed in an MC. A statute would need a clear rationale and would risk being seen as unnecessary if the same end could be achieved through the Spending Power and the Minister's authority to create programs.

Basing a statute on a rights-based approach will be more challenging for the government than arguing for the statute on a policy-based approach since, from the Government point of view, it invokes rights that may not be clearly defined elsewhere, limits future government discretion and may have precedent for other files. A First Nations Labour Market Commission could be a simple but visible mechanism to give substance to the statute and to the relationship between GoC and First Nations.

An Act would define the mandate of a Commission so that it reflects the government-to-government relationship and identifies levels of accountability for the use of public funds appropriate to the relationship.

An effective secretariat would be key to supporting the mandate of a Commission and providing technical support for its objectives.

RECOMMENDED OPTION:

To build the MC around a Ministerial Recommendation that would create a First Nation Labour Market Commission and entrench the FNLMS in a statute.

DECISION:

DATE AND VERSION: Draft 2, November 23, 2016

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Annex: Examples of Policy Instruments

Transfers: grants, contributions, transfers to other levels of government

Government Services delivered by public servants, paid by government operating budgets

Regulation: requiring the private sector or others to operate or provide services to certain standards

Taxation: to create dis-incentives for certain behaviours or to raise funds for public policy goals

Statute: to make a law setting out rules and regulations, creating machinery, creating statutory programs

Information and research: to enable citizens or the private sector to achieve public policy goals

Other: ...