

Elisabeth Patterson, Dionne Schulze s.e.n.c.

CBA Aboriginal Law Conference Friday, June 2, 2017 Winnipeg, Manitoba

DIONNE **SCHULZE** 1. Introduction Federal OSR Policy Growth of own source revenues in Québec Challenges faced to raise OSR Problems with OSR Policy Recommendations



1. Introduction

RCAP (1996): Having own source revenues for the Aboriginal government is a key element of effective self-government

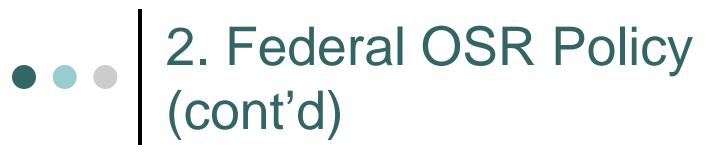
RCAP raised challenges however:

- Low levels of income and economic activity, hence low taxation revenues
- Small land and resource base
- Not necessarily commercial natural resources
- Tax collection is costly



• • 2. Federal OSR Policy

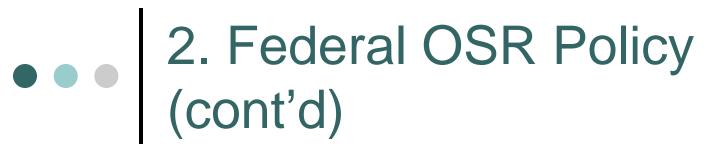
- A portion of revenue generated by Aboriginal government is deducted from federal transfer payments
- Presently, only for First Nations having signed self-government agreements
- However there have been hints that could apply more broadly
- Health, education, social development transfers now protected (2015)





Aboriginal Revenues included:

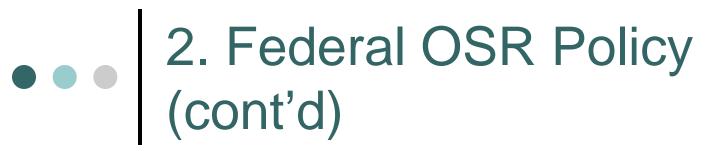
- Tax Revenues
- Resource Revenues (IBA payments for projects on core governance lands)
- Aboriginal governmental business entity profits
- Business and property income of the government
- Fees and charges
- Miscellaneous revenues





Tax Revenues can include:

- First Nation members' income tax (employment, business income, dividends, etc.)
- Real property tax
- Sales tax
- FN corporations' income tax





Revenues that are excluded:

- IBA payments for off-land base projects
- Compensation for s 35 or specific claims
- Program transfers (federal or provincial)
- Provincial transfers (including transfer of taxation capacity)
- Portfolio investment income
- Gifts and donations



• • 3. Growth of OSR in Québec

- Few self-government agreements
- JBNQA (1975) (Cree and Inuit)
- None concluded since
- Innu AIP (2004) & final?
- o Cree Governance Agreement?
- o Atikamekw AIP?





- OSR (taxes, royalties, business income, property income)
- Not much enthusiasm for tax by-laws
- Only one property tax by-law (Uashat mak Maniutenam)
- Not much property income
- OSR is generated more through resource revenues and aboriginal governmental business profits





- Hydro-Québec has signed several agreements recently for Rupert diversion (Cree) and La Romaine dam (Innu)
- Several mining IBAs (Raglan, Eleonore, Lac Bloom)
- Royalties: can be significant but irregular (mineral price)





- IBAs include an Aboriginal preference for contracts
- Development of Aboriginal government and private businesses
- Contracts: Construction, road maintenance, lodging, restaurant business
- Joint ventures, transfer of expertise
- Generates revenue for Aboriginal government and private businesses



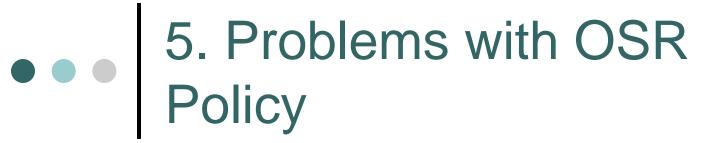


- High expectations
- Lack of expertise
- Training and transfer of knowledge is a slow process
- Difficult access to capital, loans, bonding
- Appropriate permitting
- Language barriers
- Compliance with regulations, taxes
- Isolation: transportation costs, internet



• • 4. Challenges (cont'd)

- Artificial "Aboriginal" companies
- Non-Aboriginal company sub-contracts and reaps profit
- Low / irregular revenue control by nonnative company
- Certification of Aboriginal companies (PSAB, Nunavik, CNG)
- Easier for community-owned companies to meet the test and have access to financing





- Present OSR Policy could have several negative consequences
- OSR Policy is very broad (automatic inclusion of revenues)
- Cap on funding / population growth
- Pressure to generate OSR from resource revenues may erode free prior and informed consent to choose whether to protect or exploit territory
- May erode exercise of traditional way of life



• • 5. Problems (cont'd)

- Governments' reluctance to transfer tax capacity to Aboriginal governments (i.e. exemption is lost, but often not transferred)
- Use of Capacity to raise tax revenues (rather than taxes actually raised)
- Use of *Deemed* Aboriginal governmental business entity profits (whether distributed or not to government)



• • 5. Problems (cont'd)

- Gradual implementation (5 year holiday, then up to 50% after 20 years)
- Inclusion rate (maximum of 50%)
- May not be gradual enough, especially for isolated, more traditional communities
- Could lead to a reduction of economic development, and reduction of OSR



• • 6. Recommendations

- Land base needs to be large enough to generate revenues AND practice traditional way of life
- Government entities should have the choice to reinvest or declare dividends, in order to have capital to reinvest and grow





- If loss of tax exemption is imposed, coming into force should be postponed
- If loss of tax exemption is imposed, all income tax (personal and corporate) should be paid to Aboriginal governments
- Tax revenues included in OSR should be actual not deemed
- Encourage taxation by demonstrating the benefits of taxation before including tax revenues in eligible revenues deducted





- OSR Policy should be adapted to specific Aboriginal government
- Isolated, higher costs
- More traditional, less formal education
- Less opportunities
- Longer and more gradual transition regime to encourage economic development not impede it

• • Questions?

