

Joint Committee on Climate Action:
Best Practices for Federal Departments
Working with First Nations on Climate Change



Canada 
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Introduction

First Nations – Canada Joint Committee on Climate Action History

In December 2016, the Prime Minister and the National Chief of the Assembly of First Nations (AFN) jointly recommended that Canada and the AFN establish the JCCA as a unique, senior-level table where federal officials and First Nations representatives convene as equals to discuss the implementation of the Pan-Canadian Framework and broader First Nations-led climate priorities. The JCCA has also worked to position First Nations as active drivers and agents of change, contributing knowledge, experience, and leadership vital to understanding and building climate resilience in Canada.

The JCCA is comprised of national and regional First Nations representatives and Government of Canada senior officials (Director to ADM level) across multiple departments responsible for implementing clean growth and climate changes programs and policies. Collectively, the JCCA brings considerable experience and diverse expertise related to the development and implementation of federal climate-related programs and policies; First Nations climate action and priorities; and building partnerships between First Nations and the Government of Canada, which serve as the basis for the recommendations in this document.

Challenges to First Nations' participation in federal climate actions

The Pan-Canadian Framework on Clean Growth and Climate Change (PCF) is consistent with, and builds on, Canada's commitment in the Paris Agreement that it would recognize and respect the rights of First Nations in taking action to address climate change. The best practices and approaches outlined in this document reflect the need for federal policies, programs, and practices to evolve alongside the co-development of a new fiscal relationship between the Government of Canada and First Nations as well as reflect the Government's focus on re-building a nation-to-nation relationship.

Over the last 2 years of collaboration, First Nation representatives and federal officials have identified challenges and barriers that limit the advancement of First Nations' climate leadership and make it difficult for First Nations to participate in Canada's transition to a low carbon economy, including the transition to net-zero emissions, and address the compounding impacts of climate change on their Nations.

The main barriers limiting immediate access to, and participation in, climate change and clean growth federal programs include:

- limited opportunities for First Nations to participate throughout various stages of policy development and implementation (e.g. via engagement or other collaborative arrangements);
- limited opportunities for First Nations to contribute to decision-making;
- underfunding of current programs targeting First Nations;
- inflexible (niche) program mandates and narrow eligible investment categories that do not necessarily reflect First Nations climate priorities;

- rigid funding arrangements, including significant allocations through provinces and territories;
- short application deadlines and unrealistic application requirements;
- unmalleable program parameters, requirements and timelines;
- administrative and reporting burdens, with excessive focus on compliance rather than results;
- limited engagement with First Nation proponents and/or recipients; and
- lack of capacity or resources to support proponents and/or recipients.

Limited opportunities for First Nations to participate in policy and program development, decision-making, and program implementation also present challenges to First Nations' effective and meaningful involvement in the implementation of the PCF.

First Nations' Climate Leadership – A vision of self-determined climate action

First Nations have been leaders on adaptation, mitigation, and living reciprocally with Mother Earth for thousands of years. The climate crisis requires immediate, transformative action build on meaningful partnerships and the safeguarding and recognition of First Nations governance, rights, and leadership. The climate crisis impacts First Nations in a multi-faceted manner, requiring a holistic, multi-dimensional, and interconnected response. Actively building and supporting First Nations' leadership and agency on climate change supports their goals of self-determination, including in the areas of funding, action, and other co-benefits.

An important component of this approach is to move away from framing First Nations through a lens of vulnerability, which has marginalized First Nations leadership and self-determination in the

past. The JCCA has positioned First Nations as active drivers and agents of change, contributing knowledge, experience, and leadership vital to understanding and building climate resilience in Canada. This framing is integral to ensuring equitable participation and reciprocal dialogue between Federal and First Nation representatives on the JCCA.

In practice, this means exploring in partnership with First Nations whether and how climate initiatives could contribute to transitioning towards greater First Nations self-determination and climate leadership, including through alternative funding models and devolution of decision-making where appropriate. Such an approach recognizes that First Nations climate leadership requires a new paradigm in how climate action is funded and managed, and involves a shift towards flexible, nations-based funding arrangements that directly transfers resources, capacity, and authority to First Nations.

Best Practices for Meaningful Engagement with First Nations

1. Establish longer-term, more human relationships with First Nations

Conventional mechanisms relied upon by government officials to engage with external partners are not always appropriate in a First Nations context. Approaching engagement on an ad hoc, project-specific basis with a closed window for comments is not conducive to the meaningful involvement of First Nations partners, does not reflect the principle of a nation-to-nation relationship, and often results in ineffective engagement as First Nation partners may not have the resources, time or prior contextual knowledge to effectively participate in the engagement process.



Recommended approaches include the following:

- Identify durable, accessible points of contact on substantive matters that can interact with First Nations at their requests and on an informal basis;
- Dedicate meetings with First Nations for meet-and-greets and provide general contextual awareness. As appropriate, this means substantive discussions may need to take place in subsequent meetings;
- Prioritize bilateral, informal conversations over generic calls for proposals and written submissions; and,
- Ensure engagement activities are clearly positioned within the larger Canadian climate landscape, take into account feedback already provided by First Nations on similar initiatives, and build on information that is already available (e.g. published material from First Nations climate organizations and peer-reviewed journals).
- Engage in cultural awareness and safety programs for any federal official working with First Nations.

2. Engage with First Nations as early as possible

A move away from a conventional model of policy-making (i.e. developed within the four walls of a federal department) is essential to cultivate 'nation-to-nation' relationships with First Nations in the development and design of policies and programs. As such, federal departments are encouraged to reach out at the earliest stages of the creation of a policy or program and discuss with First Nation partners their priorities, challenges, and ideas for solutions.

This helps to determine whether the creation of a new program would address existing gaps, provide meaningful outcomes for First Nations, avoid duplicating existing programming, and contribute to reducing the number of funding niches First Nations must navigate to move a project forward.

Recommended approaches include the following:

- Launch engagement with First Nations at the earliest stages of policy-making (e.g. as appropriate, this includes during the foundational research stage, which may inform the development of a Memorandum to Cabinet and the publication of draft regulations and legislations);
- Provide First Nations partners with a clear understanding of the mandate of federal officials and the principles of Cabinet decision-making, solidarity, and confidentiality they uphold, including any limitation these entail for collaborative development processes;
- Provide background information, discussion points and any other relevant documentation to First Nations as early as possible to promote informed conversations. This means ensuring that the information is received in advance, and that it provides a clear understanding of the purpose of the engagement, the direct outcomes and the anticipated long-term goals. Often, information is relayed without sufficient time for review or discussion amongst First Nations; and,
- Leverage and draw linkages with existing relationships between the Government of Canada and First Nations to initiate or support engagement activities, including:
 - o The First Nations – Canada Joint Committee on Climate Action;
 - o The Permanent Bilateral Mechanism;

- o Bilateral relationships with regional First Nations representatives, including Political Treaty Organizations, self-governing First Nations, and other First Nations organizations; and,
 - o Other pre-existing relationships and governance structures, which the JCCA secretariat can help identify
- Ensure that engagement efforts also foster deep relations with First Nations rights-holders

3. Operationalize the concept of Ethical Space in all activities conducted with First Nations

Ethical Space is an approach to weaving Indigenous and Western knowledge and communication systems together. Elder Dr. Reginald Crowshoe described this concept as a space where “traditional oral practices and Western written practices are paralleled, leveraging the strengths of the respective processes to co-create a safe place to design, develop, validate and work together in harmony, bridging the gap between cultures and activating meaningful reconciliation. For the JCCA, this is framed by a joint recognition of First Nations Treaties, agreements and other constructive arrangements; recognizing the application of UNDRIP, and acknowledging the Truth and Reconciliations Commission’s Calls-to-Action, Canada’s Constitution, and Canadian jurisprudence. An Ethical Space also demands that JCCA members are dedicated to strengthening relationships among themselves, and developing a better understanding of the traditions, conventions, and structures that influence the work of the JCCA.

The JCCA is working to operationalize the concept of Ethical Space within all their activities. In doing this, they have developed a list of Guiding Principles to inform how to cultivate good relations between federal and First Nation representatives:

- **Rights-based approach:** Recognizing that all Canadians, including First Nations, have rights related to a healthy environment, and recognizing First Nations have specific rights related to the environment, including lands and waters, as represented through rights under the Canadian Constitution, jurisprudence and Treaties, Agreements and other Constructive Arrangements. Collaborative arrangements, including the JCCA, do not replace or alleviate the Crown of its duty to consult First Nations at a local, regional and national level on issues related to climate change.
- **Trust and kindness:** Relationships should be developed in a dynamic way, through demonstrated implementation of Indigenous knowledge as described in advice, recommendations and Indigenous protocols. Participants should work towards and maintain respectful, positive, transparent, and cooperative relationships to achieve shared goals and collective commitments. Relationships require all parties to be transparent about their objectives and limitations, decide which areas they want to provide advice towards, and identify which issues require cross validation. Best practices and protocols may be developed as the relationships are developed.
- **Mutual respect and fairness:** Indigenous knowledge should be integrated as an equal to written knowledge systems. Ceremony, song and dialogue throughout a shared journey is an effective means of cross-validating respective systems of knowledge. Fairness is essential in ensuring that we achieve equity between knowledge systems and that we are even able to get to sharing in a good and appropriate fashion.

- **Good faith and honesty:** Parties should enter into Ethical Space with an attention to practice honest and clear communication, in order to cultivate a positive relationship. In being honest, it is important to leave roles and responsibilities at the door, and seek to understand the concept of cultural translation and cultural interpretation of things we want to joint-develop. Members commit to sharing documents in a manner that allows adequate preparation and are presented on a without prejudice basis. Government officials should provide First Nations partners with a clear understanding of their roles and responsibilities, including the boundaries of such roles and responsibilities, as well as the larger governmental process in which engagement takes place.
- **Joint-development:** Federal and First Nations members should commit to jointly developing real and meaningful approaches for First Nations that position them as leaders of climate action, with clear timelines, objectives, and reporting in support of the PCF and other climate change activities. Transformative change happens when we come together in the safety of ethical spaces to have discussions and joint-develop solutions.

4. Adopt a distinction-basis throughout engagement activities

Consistent with a renewed Nation-to-Nation relationship, and in recognition of the unique circumstances of First Nations and the disproportionate impacts of climate change that they experience, distinctions-based approaches should be developed and integrated in all engagement activities. This entails a distinct engagement process for First Nations – the outcomes of which are not generalizable to Métis and Inuit.

Distinction-based approaches facilitate the alignment of climate activities with First Nations' priorities, help establish constructive, long-term relationships, and facilitate First Nations' effective participation in federal climate action.

Engagement initiatives supporting program, policy, regulatory or legislative development should adopt a distinctions-based approach to reflect the heterogeneity of contexts in which they operate, including various jurisdictional realities, worldviews and governance structures.

Recommended approaches include the following:

- Ensure teams developing programs and policies receive distinctions-based cultural competency training, including the courses available through the Canada School of Public Service at a minimum;
- Ensure officials involved in the development of programs, policies, regulations, and legislations have regular opportunities to meet, exchange, and learn from First Nations partners;
- Plan for additional resources, time and personnel commitment during the engagement process to enable distinction-based approaches;
- Establish distinct communication channels with First Nations, Inuit and Métis partners; and,
- Reflect the three distinctions in discussion papers, concept notes and other forms of external facing publications, as well as briefings to senior management.



5. Determine the right scope of engagement and ensure modes of collaboration align with the preference of First Nation partners

A starting point for determining the scope of engagement and collaboration with First Nations partners is building an understanding of existing priorities raised by First Nations, potential barriers to meaningful engagement, and alignment with current and past engagements with First Nations partners. The second step is to reach out directly and ask whether an area of work aligns with their self-determination efforts.

Recommended approaches include the following:

- Review local, regional, and national priorities and perspectives on climate change raised through formal First Nations governance structures, including Resolutions of regional and national Chiefs-in-Assembly, and frame engagement within existing First Nations priorities for action;
- Assess existing federal engagement processes with First Nations partners to ensure that new engagement initiatives are not overlapping or duplicative of current or past engagements on climate-related issues;
- Recognize regional gaps in capacity to meaningfully engage and ensure that more time- or resource-intensive engagement with First Nations partners is supplemented with capacity-building initiatives to enable meaningful participation of First Nations;

6. Ensure engagement leads to meaningful outcomes

From the perspectives of both First Nations and government officials, achieving meaningful engagement is a long and resource-intensive process and is not an outcome in itself.

In recognition of the competing priorities First Nations must address on a daily basis with limited resources, any engagement activity should be outcome-oriented and aim at enabling substantive and incremental changes to program, policy, regulation, or legislation.

Engagement should be considered as a means to an end, which in the context of climate change is about rebuilding the Government's nation-to-nation relationship with First Nations, advancing First Nations climate leadership, better integrating the multi-dimensional nature of climate in climate actions, and addressing the climate crisis. All these objectives transcend individual climate initiatives and require the establishment of long-term and outcome-oriented relationships.

Recommended approaches include the following:

- Avoid limiting engagement objectives to information sharing;
- Confirm whether and how engagement can support progress in First Nations' climate-related priorities areas;
- Explore deeper forms of engagement, including joint development of programs, policies, and budget proposals, targeted workshop discussions, First Nations participation to existing governance structures, and creation of new joint governance mechanisms; and,
- Provide financial support to First Nations partners to support their participation in engagement processes and address capacity gaps.
- Ensure adequate resources and staffing for government officials to meaningfully engage with First Nation partners, balanced with the need for equitable, long-term funding to build First Nations capacity.



7. Create decision-making and engagement opportunities throughout the lifespan of the initiative

Many implementation and governance challenges and barriers can be identified and mitigated through ongoing partnership with First Nations partners. Building relationships through early and frequent communication throughout the program and project implementation cycles is essential to avoid, where possible, such barriers.

Recommended approaches include the following:

- Embed funding in policies and programs to support First Nations' capacity to participate in the governance of climate initiatives on an ongoing basis;
- Revisit governance structures to enable ongoing engagement with First Nations, for example by institutionalizing a First Nations Advisory Body. Advisory Bodies have increasingly been used to support the long-term participation and engagement of First Nations, from development to implementation. The terms of reference of these bodies should be jointly designed, provide direct input and decisions into the system, and be connected to other decision-making bodies
- Engagement activities should explicitly identify the linkages with decision points and create spaces for First Nations to be heard directly by the ultimate decision makers, whether through subcommittees or otherwise; and,
- First Nations' participation on multi-stakeholder governance bodies should be supplemented with dedicated, First Nations-specific channels to avoid the risk of tokenization;

8. Make room for First Nations' knowledge systems and legal orders in engagement and governance structures

Partnership should endeavour to create a place for knowledge systems to interact with mutual respect, kindness, generosity and other basic values and principles. All knowledge systems are equal; no single system has more weight or legitimacy than another. In doing this, officials should not seek to integrate First Nations knowledge systems directly into federal climate policy and program development where one system needs to "corroborate" the other to achieve internal validity. Instead, policy and program development should seek to institutionalize opportunities for First Nations governance and federal governance to come together to engage in joint policy development and decision-making.

- Consider the adoption of Ownership, Control, Access and Possession (OCAP®) principles, including in partnership with the First Nations Information Governance Centre.
- Go beyond engagement and foster First Nations-led knowledge production infrastructure to help generate information (e.g. through support for First Nations-led research and advices).
- Enable the expression of First Nations knowledge systems through the active, free, renewed, and equal participation of First Nation representatives in policy and program deliberations. First Nations knowledge systems are inseparable from First Nations individuals.
- Provide First Nations with resources and agency to establish governance structures that reflect their socio-cultural traditions.

Best Practices for Program Design and Implementation

The principles in this Best Practices Guide were developed in partnership between First Nations representatives and federal officials at the JCCA in 2018.

1. Program design and parameters should be flexible and accommodating

Specific and unique needs of First Nations proponents need to be addressed through carefully considered program objectives and design. This includes terms and conditions that provide: flexible, outcomes-based eligible investment criteria; or more accommodating funding arrangements, which provide predictable, longer-term funding and better risk management.

- **Recognize jurisdictional gaps that limit or exclude participation of First Nation proponents.** Federal funding allocated to provincial or territorial governments should include objectives to support projects led by First Nations. Acknowledge expectations for eligibility that accurately reflect how First Nations will access funding (i.e., instructions to the province or territory that an appropriate portion is to be allocated to Indigenous groups within that jurisdiction).
- **Adopt a comprehensive approach that values or prioritizes projects that support multiple outcomes, and/or deliver co-benefits.** Support capacity-building outcomes and investments, such as in training, skills development and knowledge dissemination.
- **Adjust eligibility criteria to identify funding for rural and remote communities** across Canada and avoid North/South of 60 approaches that limit access to funding for northern communities south of 60.
- **Support project bundling** for communities seeking to implement activities regionally.

- **Avoid** community readiness as a precondition for funding.
- **Incorporate guidelines** for long-term, predictable funding. Treasury Board Secretariat's 2008 Directive on Transfer Payments (Appendix H/K) offers directives on how to reallocate funding across cost categories and enables funding flexibility.
- **Consider dedicating** resources to support engagement and capacity building within First Nations.
- **Recognize limited ability of First Nations to secure funding.** Where possible, federal programs should leverage complementary sources of funding and seek co-funding opportunities with other departments.
- **Standardize federal cost-share and stacking provisions for First Nations proponents across programs.** Remove funding floors and stacking limits, where possible.

2. Program application process should enable engagement and include First Nations in decision making

Federal programs should acknowledge the varying capacity of First Nations proponents to submit applications, or to develop robust proposals.

- **Provide early and on-going engagement opportunities.** This includes sharing information about calls for proposals, application timelines and assessment criteria as early as possible.
- **Offer support throughout the application process** and work with potential applicants to increase capacity and develop proposals or build projects, where appropriate or needed.
- **Present opportunities to participate in project selection.** Consider First Nations participation on project selection committees.



3. First Nations should be involved in program implementation

Many implementation challenges and barriers can be identified and mitigated through ongoing engagement with First Nation partners. Building relationships through early and frequent communication throughout the program and project implementation cycles will ensure success.

4. Flexible and accommodating program implementation processes

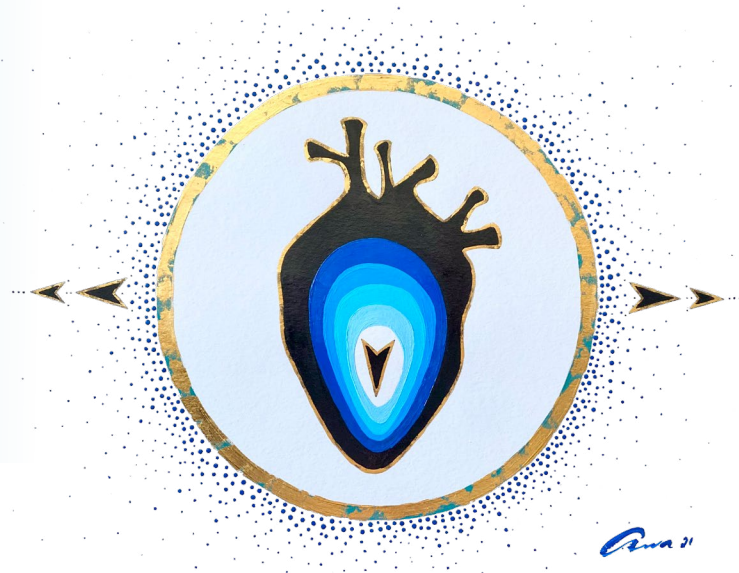
Departmental guidelines and policies often present administrative burdens for First Nation recipients. Risk-based approaches should be adjusted to accommodate and provide more appropriate risk responses.

- Delivering on multiple outcomes, including delivery of co-benefits such as support for capacity-building, training, skills development and knowledge dissemination. Flexibility to adjust the scope of projects will help ensure unforeseen on the ground challenges do not effectively end a project.
- Acknowledge realities of northern, rural or isolated communities, including risks beyond the recipients' control (e.g., weather delays, transportation constraints, etc.). Processes or service standards should align to mitigate burdens or accommodate as appropriate.
- Multi-year funding arrangements should be considered to allow flexibility for re-profiling funding as a risk response.

- Adjust requirements for reporting, audit, and evaluation, to ensure appropriate project oversight focused on outcomes, but without contributing to the administrative burden of Indigenous recipients with limited administrative capacity.

5. Jointly-develop policy and program indicators and evaluation metrics

It is essential to develop First Nations-specific indicators / criteria to report on the implementation of climate-related federal funding programs and outcomes for First Nations. This would support the exploration of alternative funding models and investments in First Nations self-determined climate solutions. This also includes meaningful processes and policies to ensure project data and results are made available to First Nations in an appropriate format and ongoing basis.



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