

# REDUCING TRANSACTION COSTS ON INFRASTRUCTURE CORRIDOR PROJECTS IN CANADA

André LeDressay

Jason Calla

Jason Reeves

## EXECUTIVE SUMMARY

High transaction costs often arise because a lack of procedural and system standards creates inefficiencies and uncertainty for securing property rights. In the absence of land, jurisdictional or property rights clarity, ad hoc attempted solutions dominate these systems. In the absence of a process certainty, ad hoc attempted solutions are perpetuated and high transaction costs linger.<sup>1</sup>

Infrastructure corridor projects in Canada face high transaction costs because of little clarity between Indigenous rights and jurisdictions and those of other governments. These costs are higher in part because of a lack of efficiencies throughout the infrastructure lifecycle (planning, design, procurement, construction, financing, operation, maintenance and replacement or decommissioning) and because the legal, economic and fiscal requirements to include Indigenous people and governments in these projects almost always leads to ad hoc solutions. In the absence of a process to address the systemic causes of these high transaction costs, they will linger and infrastructure corridor projects will be more difficult to complete.

We focus on the transaction costs associated with recognizing Indigenous rights and title and securing Indigenous support through greater fiscal and economic participation in infrastructure corridor projects. We use a comparative systems approach and focus on four broad sources of transaction costs to secure Indigenous support – historic, infrastructure lifecycle requirements, inadequate Indigenous fiscal and environmental jurisdiction implementation and inadequate economic participation.

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This story of high infrastructure corridor transaction costs is not unique and is also prevalent for investment facilitation in general on First Nations lands (Richard et al. 2009).

Our findings are not surprising. The colonial legacy of legislating Indigenous people out of the economy and Indigenous governments and their jurisdictions from the federation has created numerous transaction costs related to at least mistrust of centralized governments; differing capacities to support projects and negotiations; unstandardized agreements with unstandardized fiscal, environmental and economic elements; and confusion about governance and representation.

We identify two broad strategies to reduce these transaction costs: targeted federal and provincial programs and decentralized Indigenous jurisdictions supported by Indigenous-led institutions. We find that the program approach fails because of mistrust and that programs are almost always designed to address the symptoms of high transaction costs and not the systemic causes. Moreover, they also can support bureaucratic bloat, which can increase, instead of decrease, transaction costs.

We suggest that a better approach is to support the implementation of Indigenous fiscal, financial, lands, infrastructure, economic and environmental jurisdictions supported by Indigenous-led institutions. We assert that transaction costs caused by systemic issues cannot be effectively reduced by programs, but instead require institutional approaches that support jurisdictional implementation and innovation. We identify many Indigenous-led institutions that could support the systematic reduction of the transaction costs for greater Indigenous fiscal and economic participation in infrastructure corridor projects.

For fiscal, financial, economic and infrastructure jurisdictions this includes the First Nations Tax Commission, the First Nations Financial Management Board, the First Nations Finance Authority, the Tulo Centre of Indigenous Economics and the proposed First Nations Infrastructure Institute. For lands, environmental and economic jurisdictions, this includes the First Nations Land Resource Centre and the First Nations Major Projects Coalition. Many of these institutions operate under legislative frameworks, such as the *First Nations Fiscal Management Act* and the *First Nations Land Management Act*, that provide an effective process to implement these jurisdictions in the federation. More than half of First Nations in Canada participate in either the *First Nations Fiscal Management Act*, the *First Nations Land Management Act*, or both.

We observe that these institutions have begun to work together to co-ordinate their services and advance jurisdictional and institutional innovations to further reduce transaction costs for infrastructure corridor and other Indigenous economic initiatives. We recommend that expanding the support of these institutions, encouraging greater co-ordination among them and implementing more Indigenous jurisdictions along infrastructure corridors is the most effective way to reduce transaction costs and secure more economic and fiscal benefits for Indigenous people and governments, and all Canadians.

The table below summarizes the infrastructure corridor transaction costs identified in this paper, the source of those costs and a proposed Indigenous institutional/ jurisdictional strategy to reduce costs.

Transaction Cost	Source	Proposal
<b>Historical Context</b>		
Mistrust of federal and provincial governments impeding changes necessary for comprehensive participation	Ongoing colonial legacy of denying Indigenous rights, title and jurisdiction	Indigenous-led strategy to build First Nations institutions and assert jurisdictions
Infrastructure Development Systems		
No mechanism to translate fiscal and economic benefits of corridor projects into community infrastructure projects	External control of community infrastructure development process	Proposed First Nations Infrastructure Institute
Lack of land management jurisdiction and inefficient land registry framework within ancestral lands	Land management and land title restrictions imposed by <i>Indian Act</i>	<i>First Nations Land Management Act</i> and proposed national land registry system
Limited administrative capacities, access to technical expertise and support networks	Limited assertion of jurisdiction over infrastructure development	Proposed First Nations Infrastructure Institute and Tulo Centre of Indigenous Economics
Poorly specified Indigenous fiscal relationship with inadequate fiscal powers	Limited taxation options contribute to dependency	Proposed First Nations resource charge
<b>Fiscal Relations</b>		
Negotiation of preliminary consultation agreements	Indigenous jurisdictions inadequately recognized or implemented	Proposed First Nations resource charge and Indigenous environmental jurisdiction
Negotiated payments from proponents (pseudo-taxation) or revenue sharing with provinces (second-hand taxes)	Limited Indigenous taxation jurisdiction	Proposed First Nations resource charge
Non-standardized agreements and non-standardized payments	Lack of institutional support and transparency	First Nations Major Projects Coalition and First Nations Financial Management Board
Transfer-oriented fiscal relationship adds an additional fiscal co-ordination transaction cost	Too little fiscal and regulatory jurisdiction for Indigenous governments	<i>First Nations Fiscal Management Act</i> , fiscal powers and institutional supports
<b>Economic Participation</b>		
Provincial and Indigenous governments share concurrent environmental jurisdiction	Few Indigenous environmental assessment jurisdictions implemented and lack of institutional support	<i>First Nations Land Management Act</i> and First Nations Major Projects Coalition
Costs of capacity development and training to ensure employment quotas often underestimated	Nature of private sector's relationship with Indigenous governments	Tulo Centre of Indigenous Economics and First Nations Major Projects Coalition
Lack of home equity hampers business start-ups and makes it difficult to achieve business opportunity quotas	Land tenure restrictions imposed by the <i>Indian Act</i>	Lands Advisory Board's proposed national land registry system
Equity stake agreements require collective governance and access to credit and/or secure public revenue streams	Lack of framework for collective governance and limited secure revenue stream options	Major Projects Coalition, First Nations Tax Commission and First Nations Finance Authority