

NORTHERN DEVELOPMENT INITIATIVE TRUST

Independent Legislative Review of the Northern Development Initiative Trust Act 2004

REPORT OF THE LEGISLATIVE REVIEW COMMITTEE

**Celeste Haldane, Q.C.
Dr. Charles Jago, CM, O.BC
Honourable Senator Richard Neufeld (retired)**

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**Facilitation and report preparation provided by
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EXECUTIVE SUMMARY

Background:

The Northern Development Initiative Trust (NDIT) was established in 2004 pursuant to the Northern Development Initiative Trust Act (the “Act”) with the purpose of using its resources and expertise to support economic development in Northern British Columbia.

Pursuant to Section 23.1 of the Act, on or before every fifth anniversary of the Act coming into force, the directors must appoint a committee of qualified individuals to review the Act and evaluate how it is functioning.

The members of the Legislative Review Committee, Dr. Charles Jago, Celeste Haldane, and Sen. Richard Neufeld (Ret.) have reviewed the Act. This report outlines the process and their conclusions.

Conclusions:

The Legislative Review Committee was impressed with both the organization of NDIT and the Act that governs the work and function of the organization. Much of the Act continues to facilitate and enable the mandate of supporting economic development in Northern British Columbia. The committee identified one area for further consultation and legislative change. As well, the committee was tasked with evaluating a specific clause (13.1) for alignment with current NDIT activities.

Consultation and Legislative Change Recommendation:

The committee recommends that the government engage in consultation with Northern First Nations and NDIT to determine the most effective mechanism for sustainable Indigenous representation in decision-making at NDIT; and that legislative change to this effect be incorporated as the government implements measures to align the laws of British Columbia with the UN Declaration on the Rights of Indigenous Peoples.

Review of Clause 13.1:

The opinion of the committee is that the Act does not preclude NDIT engaging in management of funds for government or other agencies as the contracts are not allocations to the Trust but rather third-party administration of funds. No legislative changes are recommended at this time; however, the committee identified several internal NDIT governance policies to support this function and mitigate the risk of diluting the NDIT mandate.

PROCESS

Members of Legislative Review Committee

- Celeste Haldane, Q.C.
- Dr. Charles Jago, CM, O.BC
- Honourable Senator Richard Neufeld (retired)

(see biographies in Appendix A)

Research

Review of NDIT reports including:

- 2019 Annual Report
- 2020-2022 Strategic Plan
- Regional Advisory Council – Terms of Reference
- Regional Advisory Councils – Membership Lists
- 2011 Legislative Review Report
- 2016 Legislative Review Report

Interviews with key informants:

- Joel McKay (CEO, Northern Development)
- Margo Wagner (Board Chair, Northern Development)
- Doug Foster (Assistant Deputy Minister, Strategic Initiatives, Ministry of Finance)
- Greg Goodwin (Executive Director, Regional Programs and Engagement Branch, Ministry of Jobs, Economic Recovery and Innovation)

There were no indications from the document review or interviews that any further research or consultation with additional groups (e.g. business, labour, education) were necessary.

Scope of the Review

As noted also in the 2016 report: “While it is easy to get drawn into a review of the activities and effectiveness of the NDIT organization, we note that section 23.1 (1) of the *Act* contemplates a review of the *Act* itself, and not of the organization.”

The recommendations included in this report focus on an evaluation of the *Northern Development Initiative Trust Act*.

The review of the *Act* addressed the following matters (see Appendix B for further descriptions of areas):

- *Governance*
- *Core Purposes*
- *Finance and Administration*
- *Public Accountability*
- *General*

Per the Legislative Review Committee Terms of Reference (see Appendix B), “responses obtained in the consultation process that are not pertinent to the legislative review, but which may be useful in the context of the comprehensive review will be provided separately to Northern Development Initiative Trust.”

The Committee recognizes the exemplary execution of the NDIT mandate, the visionary leadership team, and dedication from everyone involved. NDIT has obviously intentionally built trusting relationships in the northern communities and this has resulted in their excellent reputation. This is integral to the continued success of the Trust.

NDIT is intentional about providing support based on bottom-up community development principles with representation and decision-making actually sitting in regions with the Regional Advisory Committees. The arms length relationship from government gives NDIT the ability to be independently strategic about what is best for the regions. However, when it comes to board governance there appears to be significant care and attention paid to their relationships with appointing bodies, ensuring they can attract and recruit the necessary skill sets. It is evident that this working relationship has been deliberately cultivated and works because it is based on trust and mutual respect. This working relationship is essential to the continued success of the trust, the board, and the board recruitment processes.

An additional section of this report (Appendix C) provides governance suggestions where committee research indicated that the board and the corporation may benefit from examining challenges and opportunities; however, these are included as points for further review by the NDIT Board and do not require legislative change at this time.

REVIEW AND RECOMMENDATIONS

Governance

Board Composition and Regional Advisory Committees

Background

- 8 of 13 board members are local government officials appointed by the Regional Advisory Committees. This meets the mandate of decision-making happening in the region and communities. These directors live in the region and are aware of community and regional opportunities and concerns. By virtue of their elected positions, these directors are experienced in FOI, managing public sector money, public sector understanding, and areas to invest for public sector impact.
- 5 of 13 board members are government appointees. This has allowed the board to balance some of the missing representation (e.g. Indigenous), to add some necessary competencies (e.g. financial, legal), and to create board sustainability whenever municipal/local government elections result in a significant amount of new representation. Appointees have also been spread throughout the regions to provide additional geographic diversity.
- The NDIT board currently uses a matrix to review the capacity and sectoral representation present on the board and to identify gaps. This information is communicated to the Crown Agencies and Board Resourcing Office (CABRO). Historically, the appointees from CABRO have reflected the recommendations presented in the board matrix and provided appointees as requested to address gaps.
- The current approach is serving NDIT well with the exception of Indigenous representation noted below. The combination of public sector regional expertise and government appointees to balance necessary competencies, sector representation, and geographic representation results in a diverse board with comprehensive knowledge and skills.
- The United Nations Declaration on the Rights of Indigenous People and associated BC legislation recognize the importance of including First Nations at the decision-making level on matters that impact their citizens. This highlights a gap in the Northern Development Initiative Trust Act. Although there is intentional engagement with First Nations regarding funding opportunities and the government appointee approach is currently used to facilitate Indigenous representation on the NDIT board, there is no legislative requirement for Indigenous representation to be included at the decision-making level of Regional Advisory Committees or Board.
- The current NDIT Act (Section 3 (a)) states that *“the only persons who are eligible to become members of the regional advisory committee are elected officials of municipalities or regional districts that are, in whole or in part, within the region, or Members of the Legislative Assembly who have been elected, in whole or in part, by electors from the region”*. There is also provision for *“an opportunity for municipalities or regional districts within the region that have populations of less than 500 to be represented on the regional advisory*

committee". However, there is no provision for First Nations within the region to be represented on the Regional Advisory Committees. Because 8 board members must be "*appointed by the regional advisory committees...of their number*" this is not a mechanism available for regional First Nations to be included at the decision-making level.

- The appointment by CABRO, while currently functioning to appoint an Indigenous board member is not required by any legislation to continue this function.
- The First Nations in Northern BC are many and diverse. The committee does not have information regarding any previous consultation with the Nations to determine the preferred way for Northern BC First Nations to participate at the decision-making level on matters that impact their citizens.

Recommendation – Indigenous Representation

The Legislative Review Committee recommends that:

1. At the request of the NDIT Board, CABRO continue to identify appointees that facilitate Indigenous representation on the NDIT Board.
2. The government consult with First Nations in Northern BC and with NDIT to determine the preferred way to facilitate long-term inclusion at the decision-making level of NDIT.
3. As the government implements the measures to align laws with the UN Declaration on the Rights of Indigenous Peoples (through Bill 41- 2019), the Northern Development Initiative Trust Act be amended per the information gathered in the consultation with Northern First Nations and NDIT.

Core Purposes

No legislative recommendations

Finance and Administration

NDIT policy and intention has resulted in the value of the originating funds given to the Trust being maintained at their real value to ensure the sustainability of the Trust and its continuing ability to invest in the economic development of Northern British Columbia.

The committee is satisfied that NDIT is distributing annual investment funding in accordance with the requirements of the Act.

Third-Party Administration of Funds

- The Legislative Review Committee was asked to specifically review Clause 13.1 – Limit on the additional one-time allocation.
- NDIT currently contracts with government and other agencies to manage and administer funds. Because NDIT has been recognized for performance and sustainability and therefore become a vehicle of choice for third-party administration, these contracts have been at the initiative of government and other agencies. NDIT is not currently pursuing these contracts; however, it is likely that additional contracts will be offered to NDIT and that the corporation may choose to bid on fund administration that is in alignment with the corporation's strategic priorities.
- The opinion of the committee is that the Act does not preclude NDIT engaging in this kind of activity as the contracts are not allocations to the Trust but rather third-party administration of funds. There is no legislative change recommended; however, the committee has identified recommendations for the NDIT Board regarding these contracts (See Appendix C – NDIT Internal Governance Recommendations)

Public Accountability

No legislative recommendations

General

No legislative recommendations

Appendix A: Biographies of Legislative Review Committee Members

Celeste Haldane, Q.C.

Celeste Haldane was reappointed Chief Commissioner of the BC Treaty Commission in May 2020, she was first appointed in April 2017. Prior to this she served as an elected Commissioner for three two-year terms commencing in 2011.

Celeste is a practising lawyer and was appointed Queen's Counsel in 2019. She holds a Master of Laws (LL.M.) in Constitutional Law from Osgoode Hall Law School (York University), and a Bachelor of Laws (LL.B.) and Bachelor of Arts from UBC. In 2015, she began her doctorate in Anthropology and Law at UBC.

Celeste is a Director of the Brain Canada Foundation and Legal Services Society in BC. She is an active member of both the Canadian Bar Association and the Indigenous Bar Association. She is an alumnus of the Governor General's Canadian Leadership Conference.

Celeste is a member of the Sparrow family from Musqueam and is Tsimshian through Metlakatla. She is the proud mother of three and grandmother of two.

Dr. Charles Jago, CM, O.BC

Dr. Charles Jago was president of the University of Northern BC from 1995 to 2006. During his tenure, he provided leadership in the establishment of the Northern Medical Program, which was expressly designed to address the shortage of doctors in rural British Columbia. Dr. Jago has been actively involved in many northern economic development initiatives and championed the development of educational partnerships and programs for First Nations groups in northern B.C.

Dr. Jago received the Queen's Jubilee Medal in 2003, was named to the Order of Canada in 2004 for his 25 years of outstanding achievement and service to education and received the Order of British Columbia in 2013. He chaired the Board of the Fraser Basin Council from 2006 to 2014 and the Board of the British Columbia Northern Health Authority from 2007 to 2017. His other board appointments include Partnerships B.C., 2010 Legacies Now, Canfor Pulp Products Ltd., and Initiatives Prince George. He is currently Board Chair of Sinclair Forest Products Inc.

Dr. Jago received his BA in Honours English and History from the University of Western Ontario. He graduated as the Honours gold medalist from Huron College with a Commonwealth Scholarship to undertake graduate studies at Cambridge University in Britain. Dr Jago graduated from Cambridge with a PhD in History in 1969.

Honourable Senator Richard Neufeld (retired)

Senator Neufeld spent his early career working in the oil and gas industry in northeastern British Columbia. He worked in the field and later on in upper management. Senator Neufeld also owned and managed his own oil and gas business in Fort Nelson for thirteen years. He served on the Town of Fort Nelson Council from 1978 to 1986, five of those years as Mayor.

A Member of the Legislative Assembly for the constituency of Peace River North beginning in 1991 and three consecutive elections thereafter; he served in opposition as critic for numerous ministries for ten years and as Minister of Energy Mines and Petroleum Resources for eight years in the Gordon Campbell government.

He was appointed to the Senate by Prime Minister Stephen Harper in 2009 and served till mandatory retirement at age 75. While in the Senate he served on the National Finance Committee and Energy the Environment and Natural Resources Committee (five of those years as chair).

Senator Neufeld is now retired and lives in Fort St. John BC.

Appendix B: Legislative Review Committee Terms of Reference

A. Purpose and Role of the Legislative Review Committee (the “committee”)

The Northern Development Initiative Trust was established in 2004 pursuant to the Northern Development Initiative Trust Act (the “Act”) with the purpose of using its resources and expertise to stimulate economic growth through 10 investment areas outlined in the Act.

Pursuant to Section 23.1 of the Act, on or before every fifth anniversary of the Act coming into force, the directors must appoint a committee of qualified individuals to review the Act and evaluate how it is functioning.

The review committee may consult with business, labour, education providers, government and any other person or organization it considers appropriate. If a review committee is appointed, it must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.

B. Scope of Review

Objectives of Review

The primary objective of the review is compliance with Section 23.1 of the Act. The results (including both barriers and assets to effective performance identified by the committee in their evaluation of how the Act is functioning) will also be taken into consideration in the comprehensive review process by the Board.

Consultation

The committee will identify appropriate individuals and organizations to consult on the functioning of the Act. The key criteria for selection of those individuals and organizations will be knowledge and understanding of Northern Development, its work and objectives and/or experience working with the Act and the Trust over the previous five years.

Recommendations

The committee will make recommendations for changes to the Act that appear to the committee to be necessary or desirable to support or improve the effective functioning of the Act and of Northern Development.

Publication of the Review Report

The committee will, in consultation with Northern Development staff and the Executive Committee, determine an appropriate method of publication of its report in a manner that can reasonably be expected to bring the report to the attention of the public.

C. Matters to be Addressed in the Review

Without limiting the scope of its review and the evaluation of the functioning of the Act, the committee will address the following matters:

Governance

1. Board: the composition of the Board of Northern Development Initiative Trust, term of office and proceedings, remuneration (clauses 6-11)
2. Regional Advisory Committees: The composition of Regional Advisory Committees, term of office and proceedings (clauses 2-4), regional divisions and structures (clauses 2,3) and rule (clause 19)

Core Purposes

Scope and validity of strategic areas for investment (clause 18)

Finance and Administration

Limit on total allocation to Northern Development Initiative Trust (clause 13.1); requirement to pay interest and donations into Regional and Cross Regional Accounts (clauses 15, 16, 20); the Operation Endowment Account (clause 17); appointment and authorities of staff (clauses 10.1 and 10.2); winding up provisions (clauses 21.1); review requirements (clause 23.1).

Public Accountability

Strategic planning process (clause 12.1); annual reports (clause 12.2); audit requirements (clause 12.3).

General

Flexibility and transparency of the Act; aspects of the Act that have supported or been barriers to the objectives of the Northern Development Initiative Trust; aspects of the Act that have supported or been barriers to the operational efficiency and capacity of Northern Development Initiative Trust to meet its intended objective.

Responses obtained in the consultation process that are not pertinent to the legislative review, but which may be useful in the context of the comprehensive review will be provided separately to Northern Development Initiative Trust.

D. Procedures

Northern Development Initiative Trust will:

- Provide administrative support for the committee, including preparation and distribution in advance of agendas for meetings, arranging locations for meetings, distribution and maintenance of decision records, publication of the final report and other reasonable administrative support as required
- Ensure the consultant has the necessary materials and documentation to support the committee
- Liaise with the Province of B.C. as required

The consultation engaged to assist the committee with the review process will:

- Record decisions of the committee
- Provide information as required to the committee
- Conduct the consultation process on behalf of the committee
- Present the results of the process to the committee for review
- Prepare a draft report and recommendations for the committee's review

- Prepare the final report for committee approval prior to submission to Northern Development Initiative Trust

The committee will:

- Operate on the basis of consensus. For the purposes of this committee, consensus is defined as no member opposing a final decision of the committee
- Report to and liaise with the Executive Committee of Northern Development Initiative Trust
- Provide strategic direction and guidance for the consultant regarding the consultation process and the reporting content and format
- Review draft reports
- Attend a minimum of three and maximum of four meetings
- Modify these terms of reference, from time to time, as considered necessary or desirable to meet the objectives of the legislative review
- Use reasonable efforts to present a final report to Northern Development Initiative Trust for publication no later than March 31, 2021

Appendix C: NDIT Internal Governance Recommendations

Third-Party Fund Administration:

The opinion of the committee is that Section 13.1 of the Act does not preclude NDIT engaging in this kind of activity as the contracts are not allocations to the Trust but rather third-party administration of funds. There is no legislative change recommended; however, the committee has identified recommendations for the Board regarding these contracts:

1. The Board should develop a clear set of criteria to determine which contracts NDIT accepts. This is to ensure that the organization is not spread too thin and that it continues to fulfill the original mandate of supporting economic development in Northern British Columbia.
2. Currently the management fee for these contracts is calculated on a cost-recovery model. While this allows for governments to disperse these funds inexpensively, it does not provide significant economic benefit to NDIT. If NDIT continues to provide these services for government and other agencies, management fees should be calculated to provide additional funding for NDIT to invest in other NDIT initiatives that support economic development in Northern British Columbia.
3. Many of the current and historical third-party administration contracts have been based in Northern British Columbia; however, some are administered over a larger geographical area. While there is some benefit to ensuring that provincial programs are administered in a way that the North is not overlooked, there is also a risk of losing sight of the specific Northern focus of the NDIT mandate. Criteria for engagement in these types of contracts should include that the primary impact should be in relation to the Northern region to ensure that the NDIT mandate does not become diluted.

Remuneration and the Impact on Attraction and Retention of Directors

Currently recruitment of directors is going well and the combination of RAC appointed elected officials and government appointed citizens is facilitating a sustainable, effective board. However, the committee notes that the lack of ability to pay directors (Section 11 of the Act) may eventually present a hindrance to attract, retain, and recruit a diverse set of directors because of exclusion on the grounds of economic ability to participate. As well, attraction of particular skill sets and willingness of directors to commit the time as volunteers (especially key executive committee roles) may limit the pool of willing and capable candidates.

Currently attraction is based on the role NDIT plays in region and recognition of the reputation of the organization.

The committee recognizes that this is not a barrier to the current attraction and retention of directors and does not warrant a recommendation for legislative change at this time; however, additional consultation with current board members, RACs, and potential board members may provide information for a future Legislative Review Committee to examine the implications and effectiveness of Section 11 of the Act on director attraction and retention to ensure a diverse, sustainable board of directors.