

Nation-to-Nation in the Information Age: In Data we Trust

The Future of the Public Service Proposal

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The Problem

As it currently stands Indigenous data is not sovereign. Government data, statistics, analysis, and archival information are currently stored under a myriad of governmental departments and agencies, with data pertaining to Indigenous-specific communities even further dispersed.¹ Canada's colonial legacy has contributed to a history of misuse of Indigenous data. This has reinforced disappointment and distrust in Canadian government departments and agencies within Indigenous communities.² The current push for Open Data has transformed and democratized access to information for outside actors. In a period of renewed nation-to-nation building, there is growing concern as to how the Open Data movement may impact the attainment of Indigenous data sovereignty, as it includes information specific to Indigenous peoples. The intention of this proposal is to mitigate concern over Open Data and its potential infringement on data sovereignty. A recommendation moving forward is piloting a data trust.

Background

Canada's Commitment to a Renewed Nation-to-Nation Relationship

In 2017, the Government of Canada committed to "a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."³ The current state of Indigenous data stewardship by the Canadian federal government contradicts this mandate. Data sovereignty, where information is managed in compliance with the laws, practices and customs of each individual nation-state, would provide agency over personal and sensitive information for Indigenous communities, which is a fundamental step towards developing nation-to-nation relationships.⁴ The Government of Canada currently has ownership and power over data, and therefore, holds responsibility and accountability over the use of and access to information.⁵

The First Nations Information Governance Centre (FNIGC), a First Nations-led organization, conducts First Nations research and information collection has established a framework towards data sovereignty entitled OCAP®. In the 2018 federal budget, the Government of Canada voices support for OCAP®, which stands for four core principles and values pertaining to data governance: ownership, control, access and possession. Progress on the implementation of OCAP® has been slow and inconsistent, as there are currently many barriers to Indigenous data sovereignty. If the Government of Canada were to grant Indigenous communities' sovereignty over their own data, it would require a substantial shift in power. The discussion of capacity, or lack thereof in certain Indigenous communities is used to justify Federal control and ownership

¹ Government of Canada, "Open Data 101," Government of Canada, December 19, 2017, <https://open.canada.ca/en/open-data-principles> (accessed December 4, 2018).

² Open North and British Columbia First Nations Data Governance Initiative, "Decolonizing data: Indigenous data sovereignty primer," Montreal, Open North, 2017.

³ Office of the Prime Minister, "Minister of Indigenous Services Mandate Letter," October 4, 2017, <https://pm.gc.ca/eng/minister-indigenous-services-mandate-letter> (accessed December 4, 2018).

⁴ Snipp, C Matthew, "What does data sovereignty imply: what does it look like?" In *Indigenous data sovereignty: towards an agenda*, by Tahu Kukutai and John Taylor, (Canberra: ANU Press, 2016), 39-56.

⁵ Open North and BCFNDGI, "Decolonizing data," 3.

over Indigenous data. The path towards data sovereignty requires considerations of how data implicates legal and ethical issues for Crown-Indigenous relations.⁶ The decision to release or withhold data is complex, particularly when the Federal government is making this decision on behalf of Indigenous communities.

Open Data and Data Sovereignty

Achieving data sovereignty is further complicated by the Government of Canada's initiative towards Fair and Open Government, which comprises Open Data. As seen in the President of the Treasury Board of Canada (TBS), and the Minister of Innovation, Science and Economic Development mandate letters, Open Data proposes that the public has access to high quality and easily searchable, selective and pertinent data that is collected, produced and utilized by federal government departments and agencies.⁷ Currently, Open Data policies do not account for the interests of Indigenous communities, thus, they are not in alignment with nation-to-nation building. If Indigenous data is made accessible without the appropriate consent it may infringe upon the rights, intellectual property and cultural variances of Indigenous communities. By nature this is problematic, as data sets risk being misused and may deepen the marginalization of Indigenous communities.⁸ However, Open data also has the potential to allow greater collaboration between the Government of Canada and Indigenous communities, and in turn, produce mutually beneficial relationships.⁹ The Canadian Government must circumvent the challenges of open data policies, while simultaneously navigating the complexity of working towards Indigenous Data Sovereignty.¹⁰ This will require an understanding of varying capacities of Indigenous communities, as well as individual histories, so as not to marginalize or reinforce unfavourable power structures.¹¹ Furthermore, setting clear parameters in the decision-making process of what open data is Indigenous-related, requires the collaboration of TBS, Statistics Canada and all other involved departments and agencies.^{12, 13}

Recommendation: Establishing a Data Trust Pilot

Data trusts are one proposed solution towards mitigating the risks of Open Data. A data trust is a legal mechanism for stewarding, holding and managing how data is used and shared.¹⁴ Data trusts are a new approach to data governance and are comprised of varying designs, all defined

⁶ Snipp, "What does data sovereignty imply."

⁷ Government of Canada, "Open Data 101."

⁸ Open North and BCFNDGI, "Decolonizing data," 7.

⁹ Smith, Diane E, "Governing data and data for governance: the everyday practice of Indigenous sovereignty," In *Indigenous data sovereignty: towards an agenda*, by Tahu Kukutai and John Taylor, (Canberra: ANU Press, 2016), 132.

¹⁰ Open North and BCFNDGI, "Decolonizing data."

¹¹ Ibid.

¹² Office of the Prime Minister, "President of the Treasury Board of Canada Mandate Letter," November 12, 2015, <https://pm.gc.ca/eng/president-treasury-board-canada-mandate-letter> (accessed December 4, 2018).

¹³ Office of the Prime Minister, "Minister of Innovation, Science and Economic Development Mandate Letter," June 12, 2015, <https://pm.gc.ca/eng/minister-innovation-science-an> (accessed December 4, 2018).

¹⁴ Wylie, Bianca, and Sean McDonald, "What is a data trust?" Centre for International Governance Innovation, October 9, 2018, <https://www.cigionline.org/articles/what-data-trust> (accessed December 4, 2018).

by a contractual agreement pertaining to whom has authority over data.¹⁵ The core aim of a data trust is to provide a platform where data is of best use, permitting people and organizations to value shared data with a set of pre-determined conditions to abide by.¹⁶ In this case, a data trust would protect both the interests of Indigenous communities and the Government of Canada.¹⁷ The pilot would focus on a specific portfolio of data sets. One potential focus could be the current partnership that FNIGC and Health Canada have on the National Health Survey for Indigenous communities. If the operationalization of information governance were appropriately managed in a way that respected nation-to-nation relationships the policy outcomes could be beneficial for both Indigenous communities and the Government of Canada. The data trust could facilitate the amelioration of health for Indigenous communities and the full potential benefits of the information gathered could be realized.

Design

One proposed data trust structure is the formation of a “mutual organisation,” which constitutes equally shared control over all aspects of data management.¹⁸ This partnership entails a process of defining parameters on how the data trust operates, as well as outlines the objectives and rules of how and when data is used.¹⁹ This is a key aspect of the development of a comprehensive and inclusive data access framework for Indigenous peoples. Data trusts do not ensure good governance; however, they are one component of providing a structure that contributes to appropriate treatment of data.²⁰ They play a necessary role in assuring that data is used in the public service in an ethical and representative manner.²¹

Data trusts require commonality amongst all actors implicated in the data collection, management and distribution.²² Data trusts require the collaboration of multiple interest groups, such as researchers, governments and citizens.²³ The collaborative aspect of data trusts enables the satisfaction of multiple actors’ expectations on how data is handled.²⁴ Furthermore, it balances individual and collective interests in order to obtain and pursue mutually beneficial outcomes.²⁵

The *trust* component of a data trust is what makes this recommendation unique and plausible for addressing the current threat of open data as a barrier to Indigenous data sovereignty. The idea of a data trust is to build trust, while requiring mutual consent, under a mutually governed platform. The mutual organisation structure retains trust, as it sets limitations and regulations amongst

¹⁵ Ibid.

¹⁶ Hardinges, “What is a data trust?”

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Wylie and McDonald, “What is a data trust?”

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Centre for International Governance, “Data trusts- defining what, how and who can use your data,” October 9, 2018, <https://www.youtube.com/watch?v=1txOIEAZb0> (Accessed December 4, 2018).

²⁵ Wylie and McDonald, “Data trusts.”

data-brokers, allowing for more oversight of who owns, controls, accesses and protects specific data sets.²⁶

Implementation

The proposed recommendation of building a data trust would be implemented through a six-month pilot project, led by the Treasury Board Secretariat. It would include Indigenous Services Canada (ISC), Crown-Indigenous Relations and Northern Affairs (CIRNAC), Statistics Canada and FNIGC. Individual Indigenous communities would determine their own level of engagement by directly electing a Trustee, or multiple Trustees. The data trust would assure that all necessary actors have a seat at the table, with no hierarchical structure in order to ensure adequate representation. As a data trust is a shared resource, all decisions require consensus without conflicting goals.²⁷ This pilot project could experiment with both one and multiple data trusts. A single data trust provides a centralized data governance mechanism that allows for improved quality through iteration, yet presents coordination challenges as there are many actors involved.²⁸ Establishing multiple data trusts brings complexities, yet allows for portability from one trust to another.²⁹ Data trusts are a collective tool to engage in Indigenous data governance by redistributing power through shared decision-making. This bottom-up approach requires considerable funding, that could be addressed in the 2020 Budget.³⁰

Challenges & Considerations

- The recommendation of a data trust is set to mitigate issues of control, through a power-sharing partnership. Partnerships and collaboration are difficult, yet essential for progress.³¹
- The sheer number of actors involved presents challenges to reaching consensus. It is of utmost importance that individual Indigenous communities are fairly represented and heard through ongoing efforts of communication and engagement.
- Creating a data trust requires substantial commitments to funding, time and energy in a collaborative development process, requiring contributions across federal departments, such as TBS, StatCan, ISC, and CIRNAC.³²

²⁶ Lawrence, Neil, "Data trusts could allay our privacy fears," *The Guardian*, June 3, 2016, <https://www.theguardian.com/media-network/2016/jun/03/data-trusts-privacy-fears-feudalism-democracy> (accessed December 4, 2018).

²⁷ Wylie and McDonald, "Data trusts."

²⁸ Delacroix, Sylvie, and Neil Lawrence, "Disturbing the 'one size fits all', feudal approach to data governance: bottom up data trusts," *SSRN*, (October 12, 2018), 1-28.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Bruhn, "Identifying useful approaches."

³² Phillips, S, and K Levasseur, "The Snakes and Ladders of Accountability: Contradictions between contracting and collaboration for Canada's voluntary sector," *Canadian Public Administration* 47, no. 4 (2004), 451-474.

- Data trusts are new, highly debated and relatively untested. However, they present an opportunity for experimentation that facilitates agile policymaking through innovatory approaches.³³

Conclusion

Establishing a data trust pilot project is an innovatory shift towards reconciliation.³⁴ Consolidating data is at once advantageous and disadvantageous for nation-to-nation building, as there are both risks and opportunities that come with data stewardship. There is potential for a small-scale experimentation of data trusts to fail, yet it is essential to rebrand this as an opportunity.³⁵ Possible failures may allow alternative solutions to emerge, which ultimately would improve delivery and results.³⁶ The pilot project proposed strives to redefine the relationship between Indigenous communities and the Government of Canada, as it seeks to redistribute power in a collaborative governance mechanism by experimenting with data trusts. The process of evaluation is necessary and would be carried out by both the Government of Canada and relevant Indigenous stakeholders. If the creation of data trusts were to successfully mitigate issues identified in this proposal, perhaps they hold the potential to ameliorate other data governance issues, reaching diverse populations in Canada.

³³Government of Canada, “*Experimentation direction for deputy heads- December 2016*,” June 9, 2016. <https://www.canada.ca/en/innovation-hub/services/reports-resources/experimentation-direction-deputy-heads.html> (accessed December 4, 2018).

³⁴ Wylie and McDonald, “Data trusts.”

³⁵ Government of Canada, “*Experimentation direction for deputy heads*.”

³⁶ Ibid.

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