Rethinking Self-government: Developing a More Balanced, Evolutionary Approach

Policy Brief No. 29 – September 2007

by

John Graham
The Institute On Governance (IOG) is a Canadian, non-profit think tank that provides an independent source of knowledge, research and advice on governance issues, both in Canada and internationally.

Governance is concerned with how decisions important to a society or an organization are taken. It helps define who should have power and why, who should have voice in decision-making, and how account should be rendered.

Using core principles of sound governance – legitimacy and voice, direction, performance, accountability, and fairness – the IOG explores what good governance means in different contexts.

We analyze questions of public policy and organizational leadership, and publish articles and papers related to the principles and practices of governance. We form partnerships and knowledge networks to explore high priority issues.

Linking the conceptual and theoretical principles of governance to the world of everyday practice, we provide advice to governments, communities, business and public organizations on how to assess the quality of their governance, and how to develop programs for improvement.

You will find additional information on our activities on the IOG website at www.iog.ca

For further information, contact John Graham at the Institute On Governance.
tel.: (1 613) 562 0092 ext. 231
e-mail: jgraham@iog.ca

Most IOG publications and all our policy briefs are available on our website. Sample titles:


Policy Brief No. 27: Clarifying Roles of Aboriginal Leaders and their Staff: A Model Governance Policy, by John Graham (January 2007)

Managing the Relationship of First Nation Political Leaders and their Staff, by John Graham (March 2006)


Partnerships: Putting Good Governance Principles in Practice, by Laura Edgar, Claire Marshall and Michael Bassett (August 2006)

Introduction

There is mounting evidence that sound governance is a necessary condition for communities and nations to make progress in improving the well-being of their citizens. This evidence comes from a wide variety of sources including the World Bank operating in developing countries\(^1\) and the Harvard Project on American Indian Economic Development.\(^2\) In British Columbia, researchers have identified a strong correlation of First Nations with low suicide rates to those with significant initiatives relating to self-government.\(^3\) Indeed, former UN Secretary-General Kofi Annan has stated, “Good governance is perhaps the single most important factor in eradicating poverty and promoting development.”\(^4\) And First Nations share this view: a 2001 Ekos poll of more than 1400 First Nations people found that 71% agreed that “providing the tools for good governance will improve conditions for economic and social development.”\(^5\)

Since the mid-1980s, many – including a good portion of the Aboriginal leadership, the federal government and all political parties – considered self-government to be the principal solution to achieving sound governance. The Charlottetown Accord would even have constitutionalized an Aboriginal right to self-government. Current government policy holds that the right to self-government is already contained in Section 35 of the Constitution Act of 1982. Beyond this, the concept has gained widespread international support.\(^6\)

Yet the difficulties of reaching self-government agreements over the past two decades have been sobering. For example, a 2006 report by the Auditor General on the British Columbia Treaty Process noted that, after 12 years of negotiations, the federal government had spent $426 million and First Nations had borrowed close to $300 million; but despite this, no treaties – which would have included self-government as well as settling a comprehensive claim – had been signed. Even more troubling was the audit’s observation that the process was “actually straining the relations between the governments and First Nations.”\(^7\)

Similar long and sometimes fruitless negotiations to achieve self-government have occurred in other parts of the country as well.\(^8\) The conclusion seems inescapable: the current approach to self-government, which focuses on lengthy negotiations leading to a significant transfer of jurisdiction to Aboriginal governments, will not be the panacea for achieving sound First Nations governance – at least for the next

---

\(^3\) Michael Chandler and Christopher Lalonde, “Cultural Continuity as a Hedge against Suicide in Canada’s First Nations,” *Transcultural Psychiatry*, 35 (June 1998).
\(^4\) Kofi Annan, www.unu.edu/p&g/wgs/
\(^6\) For Example, the United Nations General Assembly recently adopted the “United Nations Declaration on the Rights of Indigenous Peoples,” Article 4 of which reads as follows: “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” United Nations Sixty-First Session, Agenda item 68, September 12, 2007. Canada was one of four countries voting against this resolution, objecting to, among other things, “self-government without recognition of the importance of negotiations”.
\(^8\) Examples include the United Anishnaabeg Councils in Ontario, the Meadow Lake Tribal Council in Saskatchewan and the Montagnais and Attikamek in Quebec.
several decades. In light of this conclusion, this brief seeks to suggest some alternative approaches to achieving self-government, approaches which are less government-centric and more evolutionary.

The starting point in doing so is to examine some lessons from abroad.

Lessons From Abroad

Every year the World Bank publishes a document entitled Governance Matters. In May 2005, Governance Matters IV looked at governance indicators in 209 countries. The salient conclusions of that paper include the following:

- Wealth is not a precondition of good governance
- The most important causal relationship is good governance leading to good outcomes
- The level of corruption is a critical factor in a society’s investment climate
- Relatively rapid improvement in governance is rare but possible
- The world-wide average for a host of good governance indicators has not improved over the past eight years, despite significant investments from aid agencies; and
- “[T]he importance of political commitment from the top has been underplayed.”

These conclusions contain much that is encouraging, but also much that is worrisome. The conclusion that wealth is not a precondition for good governance is good news – given the need for good governance in countries and communities with poor economic conditions. In fact, the causal relationship moves the other way; that is, good governance leads to improved socio-economic outcomes.

On the other hand, the conclusion that rapid improvement is rare but possible sounds a cautionary note. Further, it is highly discouraging that, despite substantial investments, the worldwide average of good governance indicators has not improved over the past eight years. The final bullet points to one reason for the lack of progress on this front: namely, the need for political commitment from the top as a necessary precondition for progress in improving governance.

For Canada’s First Nations, this international experience points to three broad conclusions. First: there are no magic solutions or universal formulas; there is no ‘royal road’ to good governance, no easy ‘cookbook’ to follow. Communities must shape their own paths. And this will take time – decades in many cases. Thus, we should eschew such nation-wide approaches as sweeping ‘reforms’ to the Indian Act or similar such initiatives. Second: no outside agency can impose good governance. This requires instead strong political commitment from within, along with some ‘doable’ initial priorities, a lot of patience, and some willingness to help on the part of some key actors (in this case, the federal government and the provinces). Third: the road to good governance is most likely an evolutionary one with plenty of tough slogging. ‘Build on what works’ is a useful rule of thumb. In this sense, one principal reason for the lack of progress in attaining self-government through the current approach may be the giant leap into the unknown that communities are asked to make and the seeming finality of their agreements. Yet the


10 The focus in this Policy Brief is on First Nations. That said, a local government regime in Alberta encompasses eight Métis Settlements; the Inuit in Labrador are now implementing a claims and self-government agreement; and of course the Territory of Nunavut, although a public government, serves a citizenry with a large majority of Inuit. Some of the arguments in this brief may well apply to these regimes too.
evidence indicates that good governance is a journey – not a destination.

The remainder of this brief develops some policy approaches within these basic parameters.

**Balanced Systems: A Prerequisite of Good Governance**

International evidence suggests that countries ranking highest on good governance indicators tend to have relatively balanced systems – that is, they have a robust and effective government sector balanced by a strong private sector, an independent media and an active and large set of voluntary organizations (sometimes referred to as civil society). Such organizations cover all aspects of society, from sports clubs to service delivery agencies to church groups to public policy advocacy groups (see Figure 1 below).

First and foremost, such systems provide checks and balances on the exercise of power by all players in the system, thus promoting accountability and legitimacy and voice. Other benefits include encouragement and support of individual entrepreneurship and initiative (performance and direction); of people helping themselves and others (performance and fairness); and of options and choice for citizens in employment (fairness and performance). Moreover, the system is resilient in that all society’s ‘eggs’ are not in one ‘basket’ (performance and direction).

Figure 2 depicts an unbalanced system, with its large and even domineering government, its small private and voluntary sector and its media captured largely in the government.

Unbalanced systems are less accountable and perform worse due to the lack of a media watchdog and other checks and balances such as a vigilant voluntary sector. They are riskier, in that losing a charismatic and resourceful leader could disrupt the entire system (thus negatively affecting performance and direction). They have too many functions for their limited capacities (performance and direction); and they provide an easy target – government – to blame, thereby affecting legitimacy and voice. Finally, such governance systems create ‘in’ and ‘out’ groups (often defined by family or ethnic affiliations) with few

---

11 See, for example, John Graham, Bruce Amos and Tim Plumptre, “Principles for Good Governance in the 21st Century: Policy Brief No. 15,” www.iog.ca/publications.
options for the ‘outs’ other than to blame and complain, thereby undermining legitimacy and fairness. To the extent that government attempts to engage in functions it is not well designed to perform – such as running businesses – it affects such good governance factors as performance, fairness and legitimacy.

This description of a large, unbalanced governance system might look familiar to many Aboriginal peoples, especially those living in First Nation communities. As measured by per capita spending, First Nations communities already have by far the largest local governments in Canada, if not the world. The following chart illustrates this point:

<table>
<thead>
<tr>
<th>Government</th>
<th>Per capita annual spending</th>
</tr>
</thead>
<tbody>
<tr>
<td>All municipalities in Canada (2004)</td>
<td>$1,750</td>
</tr>
<tr>
<td>All municipalities in NWT (2004)</td>
<td>$2,666</td>
</tr>
<tr>
<td>First Nations under the Indian Act (2004–06)</td>
<td>$17,142(^\text{14})</td>
</tr>
</tbody>
</table>

\(^{12}\) For some graphic examples of the “lamentable status of Aboriginal democracy,” see Calvin Helin, *Dances with Dependency: Indigenous Success through Self-reliance* (Vancouver: Orca Spirit Publishing, 2006), especially pp. 141–61.\(^{13}\) Sources for this data include: Federation of Canadian Municipalities, “Building Prosperity From the Ground Up: Restoring Municipal Fiscal Balance,” June 2006; Conference Board of Canada, “Mission Possible, Successful Canadian Cities,” January 2007. The First Nation estimate is derived from a sample of twenty First Nations from across Canada varying in size from 76 to 4698 on-reserve members. The data in this sample derives primarily from the 2004/05 fiscal year; in some cases, from 2005/06.\(^{14}\) Readers should not conclude from this figure that First Nations are ‘over-funded’ for the functions they perform. Any conclusions on the adequacy of funding would require more detailed analysis of each function for which these governments are responsible.

Further, these large First Nation governments do not have the usual array of checks and balances that are found with other governments: not only are the voluntary and private\(^{15}\) sectors underdeveloped, but there are few independent review mechanisms like ombudspersons, First Nation-run courts, auditing agencies, or ethics commissions.

A further problem is the large number of regulatory voids facing First Nation communities. Because provincial law relating to land likely does not apply to First Nation communities and because there is little in the way of federal legislation, First Nation communities do not enjoy the array of legislative protection of neighbouring, non-Aboriginal communities in areas as diverse as potable water, waste water treatment, solid waste management, environmental protection, natural resource management (forests, mines, quarries etc.) and so on. Further, as we have argued elsewhere, some self-government agreements may actually worsen the problem.\(^{16}\)

### The Way Ahead: Policy Implications

The above analysis points to two broad strategies, both of which are evolutionary by design. The first would focus on developing a more diversified First Nation public sector where power is dispersed to a number of bodies. Specific examples include:

- Creating arms-length bodies within the community in order to reduce the

\(^{15}\) One indicator of the underdeveloped private sector is entrepreneurship. According to the 2001 Census, 7.89 % of non-Aboriginal Canadians of working age were self-employed. The corresponding figure for Aboriginal Canadians on reserve was 2.16%, more than a three fold difference.\(^{16}\) See John Graham, “Rethinking Self-Government Agreements: the Case of Potable Water,” Policy Brief No. 12 (November 2001), www.iog.ca, for an elaboration of this argument. The principal issue is a government regulating itself.
concentration of power in Chief and Council (economic development, health and housing are areas where some First Nations have already moved in this direction). The critical consideration here is defining the notion of arms-length. The attached model by-law in the Appendix provides one illustration of how this might be done.

- Creating bodies within the existing provincial government public sector that are governed by First Nation individuals other than members of Council. There are examples of this already in the area of Child and Family Services. Education is another area for further development. The advantages are several: i) creating capacity through economies of scale and by relying on long-standing provincial resources and networks; and ii) giving others in the community a chance to serve in positions of authority. Creation of such bodies could lead in the future to semi-independent boards within a First Nation government system.

A second broad strategy would develop some counter-vailing pressures to the public sector to make the overall governance system more balanced and more accountable. Examples include:

- Encouraging the private and voluntary sectors. This will entail the First Nation Council redefining its role in such diverse areas as housing, economic development, culture and recreation.
- Creating appeal mechanisms at the provincial or regional levels for governance issues relating to elections, membership and leadership conduct. The Metis Settlements of Alberta and the Alberta government, for example, have created the Metis Settlements Appeal Tribunal, an administrative appeals body for land and membership issues that may soon be expanded to deal with electoral as well as questionable conduct matters. This body has been in existence for some seventeen years and now has created a sizeable body of Metis-specific law. The Settlements and the Province have more recently created an ombudsman.
- Developing a voluntary certification system for sound financial management. For example, the certification system created under the First Nation Fiscal and Statistical Management Act could be expanded to all First Nations and other First Nation-run organizations.
- Filling existing regulatory voids by, for example, incorporating provincial laws into a federal statute and creating administrative units in provincial governments staffed principally by First Nation individuals. These units might eventually provide the basis for a regulatory body within a First Nation government system.
- Developing own source revenue through user fees and taxation. Paying taxes stimulates citizens to demand quality services, just as they would demand quality in buying goods in the economic market place. Among other things, taxes act as a brake on government spending in that citizens demanding new services must ask the question “Can we afford to raise taxes to pay for them?” In short, a healthy tension between public services and the means for paying for them prevails in a community.18

17 For a fuller description of these two bodies, see Catherine Bell and Harold Robinson, “Government On The Metis Settlements: Foundations and Future Directions; John Graham, “Advancing Governance of the Metis Settlements of Alberta: Selected Working Papers”.

18 Own source revenue generated from the citizens themselves and good governance appear to be inextricably linked. Mounting international evidence indicates that governments relying on ‘outside’ or ‘unearned’ revenue sources (transfers from other governments or natural resource revenues, for example) do not fare as
The lead for all of these initiatives should rest with First Nation leaders and their communities. That said, many require the participation of the federal and provincial governments. The common objective is either to disperse power and increase choice within the community or to create a better array of checks and balances on the exercise of power. Further elaboration of these two broad strategies will be the focus of future policy briefs.

Conclusions

As both an ennobling aspiration and a public policy goal, Aboriginal self-government has long been accepted as the solution to many of the socio-economic and governance challenges of Canada’s Aboriginal peoples.

The difficulty of reaching self-government agreements indicates the need for more incremental and gradual approaches – ones that distribute power in governance systems that are more balanced and integrated with other levels of government. Indeed, these are likely the only approaches that will allow small communities already burdened with massive public sectors and significant capacity issues to make reasonable progress towards sound and sustainable governance.

well as those that rely on revenue collected from citizens through taxes, user fees and levies. See, for example, Mick Moore, “How Does Taxation Affect the Quality of Governance?” Institute Of Development Studies Working Paper 280, University of Sussex Brighton (April 2007), www.ids.ac.uk/ids/bookstore.
Appendix

Model Governance Policy

RELATIONSHIP OF COUNCIL TO AN ECONOMIC DEVELOPMENT CORPORATION

1. OBJECTIVE

The objective of this policy is to ensure that the relationship of Council to the First Nations Economic Development Corporation is as clear as possible so as to promote good governance in the conduct of the First Nation’s affairs.

2. DEFINITIONS

Council refers to the Chief and Councillors of the First Nation

Staff refers to the staff of the First Nation

Administrator refers to the Band Administrator of the First Nation

Citizens refers to all citizens including Councillors, Board members and staff, who are members of the First Nation

Corporation refers to the Economic Development Corporation

3. POLICY STATEMENT

3.1 The First Nation has established the Corporation as a sustainable, profit-making business in keeping with the overall strategic direction of the First Nation. The Corporation will benefit the citizens of the First Nation by remaining profitable over the long term, thus allowing for the distribution of a portion of these profits to be used by Council for enhancing the well-being of the First Nation.

3.2 For greater clarity, the Corporation will not be able to provide sustainable benefits to the First Nation, should it become primarily an employment vehicle for the First Nation citizens.

3.3 The Corporation operates at arms-length on a day-to-day basis. That said, it must remain accountable to the Council and ultimately to the citizens of the First Nation. Further, it must operate in a manner consistent with the longer term direction established by the First Nation.
3.4 Notwithstanding 3.2, the Board will give preference to hiring First Nation citizens first and other members of First Nations second, so long as these citizens and members meet all the qualifications of the job.

3.5 The Board will include members who are not citizens of the First Nation when it is important to enhance expertise not available in the First Nation.

4. ROLES & RESPONSIBILITIES

4.1 Council’s responsibilities include:

- Advising the Chief as the Corporations share holder in trust for the First Nation on appointments to the Board of the Corporation, based on recommendations from the Board
- Approving changes to the legal structure of the Corporation
- Reviewing the annual and strategic plans of the Corporation and recommending their approval to the members of the Corporation at the Annual General Meeting
- Deciding on any yearly dividend, subject to recommendations of the Board
- Approving any major acquisitions or capital expenditures of the Corporation
- Ensuring that the Corporation remains accountable to the Citizens of the First Nation

4.2 The Board’s responsibilities include:

- Assisting the Council in meeting its responsibilities as laid out in 4.1 above
- Ensuring that the Corporation is managed on a sustainable, profit-making basis
- Appointing and evaluating the Chief Executive Officer (CEO) of the Corporation
- Appointing all other staff of the Corporation (this may be delegated to the CEO)
- Developing a yearly plan and strategic plan for the Corporation
- Developing and approving appropriate policies for managing the Corporation
- Recommending to Council whether it is feasible to issue a dividend, and if so the amount, on a yearly basis

5. PROCESS FOR ADDRESSING COMPLAINTS

5.1 Any citizen who believes that Council or the Corporation are not following this policy can direct his or her concerns to the Administrator in writing or recorded at the Administration office. The Administrator will respond to the complainant within 30 days.

5.2 If the member is still not satisfied following the response of the Administrator, he or she may direct his or her concerns in writing to the Chief and Council, who will respond within 30 days.

6. COMMUNICATING THIS POLICY

6.1 This policy requires no special communication procedures other than what is set out in the First Nations’ policy on communications.
7. **REVIEW & EVALUATION OF THIS POLICY**

7.1 Chief and Council will review this policy within 5 years of its adoption and decide whether further evaluative work is necessary. A record of the review will be recorded in writing and attached to the policy.

8. **DATE OF ENACTMENT AND SIGNATURES**

This policy was adopted by the Council at a duly constituted meeting on this ____ day of ______ 2006

Signed:

Chief and Councillors

Administrator