

# Dysfunctional governance

Eleven barriers to progress among Canada's First Nations

by John Graham

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**T**he blizzard of media stories in late 2011 on the sorry housing conditions in Attawapiskat in northern Ontario, followed by the extensive coverage of the Crown–First Nations Gathering in Ottawa in January 2012, has focused attention on what is surely Canada's most pressing social policy challenge: how to deal with the plight of highly distressed First Nation communities.

Aboriginal and non-Aboriginal commentators alike made reference to Sheila Fraser, the former Auditor General of Canada, who during her ten-year tenure directed some 31 audits on Aboriginal issues. Reflecting on this experience in her final report and subsequent public addresses, she noted that “what’s truly shocking ... is the lack of improvement. Last year, Indian and Northern Affairs Canada reported that between 2001 and 2006 there was little or no progress in the well-being of First Nations communities. In a wealthy country like Canada, this gap is simply unacceptable.”<sup>1</sup>

Fraser was referring to the Community Well-Being (CWB) Index, developed by researchers at Indian and Northern Affairs Canada, which uses census data and is based on four factors: education (high school and university), housing (quantity and quality), labour force (participation and employment) and income (total per capita). Figures 1 and 2 compare the 2006 CWB scores for First Nation communities



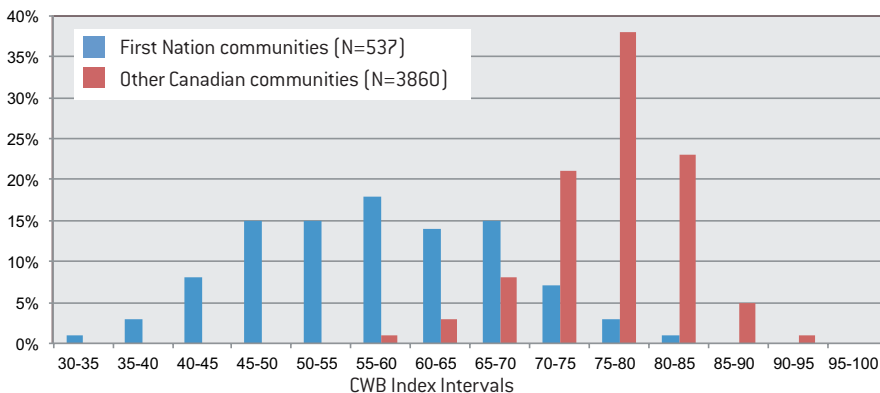
with those in the rest of Canada. The sizable gap in the CWB scores between the two sets of communities – on average about 20 points – is immediately apparent. This gap is particularly pronounced in the prairie provinces: in Saskatchewan, for example, the average gap is 28 points, roughly 40 per cent higher than the national average. In addition, the range and dispersion of well-being scores is much greater among First Nation communities, indicating more inequality among these communities than in the rest of Canada. A large percentage of First Nation communities (close to 40 per cent) have CWB scores lower than the worst-off non-First Nation communities.

The results from the 2006 census were less than encouraging about progress toward closing this well-being gap.<sup>2</sup> The good news is that the CWB scores for a large majority of First Nations (64 per cent) were either stable or improved over the 2001 to 2006 period.

Nonetheless, scores for 36 per cent of First Nations declined, compared to only 10 per cent of other Canadian communities. Perhaps most disheartening is this finding: the gap in community well-being between First Nation communities and those in the rest of Canada has widened, not narrowed, since 1996. In 1996 the average gap was 17 percentage points, in 2001 it was 16 points, and in 2006 it was 20 points.

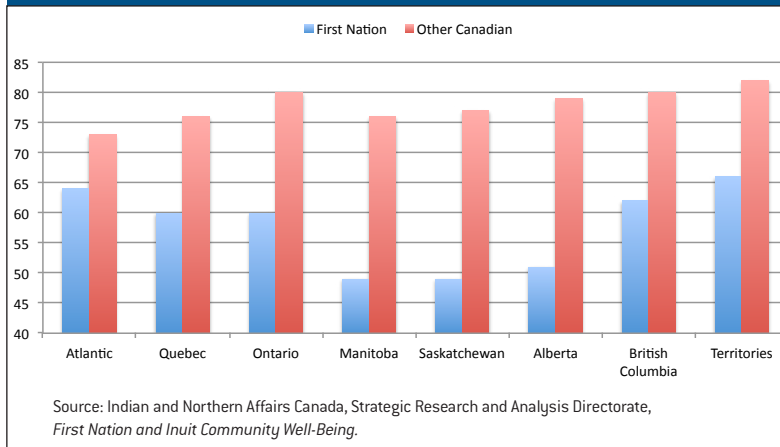
The widening CWB gap is particularly perplexing in light of the number of new initiatives affecting First Nations over the ten-year span. These include significant increases in funding in several program areas (such as water and waste water, housing, education, economic development and residential school healing); the settlement of numerous specific and comprehensive claims; new self-government initiatives (Nisga’a Treaty, First Nations Land Management Act); the development of

**FIGURE 1: DISTRIBUTION OF COMMUNITY WELL-BEING (CWB) INDEX SCORES BY FIRST NATION AND OTHER CANADIAN COMMUNITIES, 2006**



Source: Indian and Northern Affairs Canada, Strategic Research and Analysis Directorate, *First Nation and Inuit Community Well-Being: Describing Historical Trends (1981–2006)* (Ottawa: Indian and Northern Affairs Canada, 2010), retrieved March 7, 2012 from [www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cwbdcck\\_1100100016601\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cwbdcck_1100100016601_eng.pdf)

**FIGURE 2: AVERAGE COMMUNITY WELL-BEING (CWB) INDEX SCORES, BY REGION, 2006**



a multitude of new, First Nation-controlled institutions (such as the National Centre for First Nations Governance); and the adoption of new legislation to remove barriers to economic development and improve financial management (such as the First Nations Fiscal and Financial Management Act). It is also noteworthy that the federal government annually helped roughly 25,000 First Nation individuals and Inuit pursue postsecondary schooling over this time period – surely a significant contribution toward the goal of achieving enhanced community well-being.

Given all of these initiatives, why is the CWB gap widening instead of narrowing? In this essay I make the case that a highly dysfunctional First Nation governance system is a significant brake on

achieving better results for First Nation communities. This dysfunctional system may not be the sole reason for a widening CWB gap: some argue that a 2 per cent cap on annual growth of most federal program expenditures is an important contributor; others point to geographic isolation and the lack of economic opportunities; still others argue that the cumulative and ongoing legacy of colonialism is the key explanatory factor. But poor governance is surely a major culprit. In my judgement there are 11 elements of the

**TABLE 1: PER CAPITA EXPENDITURE COMPARISONS**

First Nation governments	\$17,100
All municipalities in Canada	\$ 1,800
All municipalities in NWT	\$ 2,700
Federal government	\$ 7,000
Provincial governments (BC)	\$ 8,200

Sources 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 20 First Nations from across Canada varying in size from 76 to 4,698 on-reserve members. The data in this sample derive primarily from the 2004–05 fiscal year, and in some cases from 2005–06.

First Nation governance system that, when combined, produce a degree of dysfunction in governance that is unmatched in any other jurisdiction in Canada.

**1. First Nation governments are huge, perhaps the largest local governments in the world**

The governments of these communities are likely the largest local governments in the world as measured by per capita expenditures. Table 1 indicates that per capita expenditures are roughly ten times those of the average Canadian municipality.

Given that First Nation governments have a much greater set of responsibilities (approximating those of a province, a school board, a health board and a municipality combined), these comparisons are hardly surprising. Admittedly, the large size has some advantages. For one thing, First Nation governments are major employers, an especially important factor for those in remote locations.<sup>3</sup> But large size brings political risks, particularly in situations where the government is the “only game in town.”

**2. First Nations governments lack the array of checks and balances that governments in other parts of Canada face**

International evidence suggests that countries ranking high on governance indicators have relatively balanced systems – they have a robust and effective government sector balanced by an independent system of justice, a strong private sector, independent media and an active and large set of voluntary organizations (civil society). Such organizations cover

all aspects of society, from sports clubs to service delivery agencies to church groups to public policy advocacy groups. These latter groups are important in watching governments carefully and raising alarm bells when they appear to stray.

First Nation governance systems lack this balance. The executive and legislative functions are fused in chief and council and there is no official opposition to hold the government to account. And not only are the voluntary and private sectors<sup>4</sup> underdeveloped, but there are few independent review mechanisms like ombudspersons, First Nation–run courts, auditing agencies or ethics commissions. Finally, media in First Nation communities – typically community papers or radio stations – are run by the First Nation itself or some other First Nation regional body and are not independent of First Nation governments.



Given the incentives at play, it is no surprise that elections are hotly contested. Coupled with short election cycles (the Indian Act calls for elections every two years although the custom election option can vary this), the results are often predictable and not conducive to good governance: intense family competition, rapid political churn and politicization of the public service.

This lack of balance threatens accountability, heightens risk should the government not perform, has governments undertaking activities (like running businesses) that traditionally fare poorly, and creates “in” and “out” groups (often defined by family affiliation). The “outs” have few options other than to blame and complain.

### **3. The number of politicians per capita knows no parallel in Canada and many are full-time and salaried**

The Indian Act (section 74.2) states that the council of the First Nation shall consist of one chief, and one councillor for every hundred people, with the number of councillors being no less than two nor more than 12. The Indian Act also allows a First Nation to choose a custom election process where this 1-to-100 ratio can be altered. Whatever the route, because First Nation populations are so small, the number of politicians per capita is always much larger than in any other jurisdiction in Canada. Moreover, it is my experience that the positions of chief and councillor are usually full-time jobs with full-time salaries. A variation with small First Nations, which may

not be able to afford to pay salaries for every councillor, is allowing full-time employees of the First Nation to sit on council. This variation, not permitted in other Canadian jurisdictions, creates its own set of problems.

Given the incentives at play, it is no surprise that elections are hotly contested.<sup>5</sup> Coupled with short election cycles (the Indian Act calls for elections every two years although the custom election option can vary this), the results are often predictable and not conducive to good governance: intense family competition, rapid political churn and politicization of the public service.<sup>6</sup> The impact on social cohesion is troublesome, as a former chief points out:

*It would be fair to state that all First Nation communities have experienced serious forms of divisions amongst themselves as a result of elections. Not only do we have divided loyalties between clans but these election systems have divided families, brother against brother, sister against sister, parents against their own children, and elders against elders. The youth are confused, frustrated and exasperated as they witness these incredible often nasty events in the selection of leaders.<sup>7</sup>*

Taxes are never popular, especially among First Nation people. The Indian tax exemption has become a key symbol of the First Nations' unique relationship with Canada. But what if taxation by First Nations governments would improve governance in First Nation communities?

Exacerbating these problems is the lack, with few exceptions, of any comprehensive orientation program for new councillors. A final complication in some First Nations is the presence of many who question the legitimacy of councils created under the Indian Act.

**4. There are a startling number of regulatory voids relating to land – environmental protection, natural resource management, construction standards and others**

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 lack the 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), building codes and so on.

In addition to increasing risks of jeopardizing the health and safety of community residents and of environmental degradation, these regulatory voids have other negative impacts. Federal government funding agreements with First Nations have become more complex and conditional, as Ottawa attempts to compensate by adding terms to the agreements. Furthermore, First Nation leaders are not constrained by the web of laws facing other Canadian governments. The direction and priorities of a First Nation government can change dramatically with the election of a new group of leaders, to a much greater extent than in other Canadian jurisdictions where existing legal frameworks add a certain stability even with radical changes in the ideologies of political leaders.

**5. First Nations are highly dependent on transfers from federal government departments and with very few exceptions generate no revenue from taxing their citizens or charging user fees**

Taxes are never popular, especially among First Nation people. The Indian tax exemption has become a key symbol of the First Nations' unique relationship with Canada, whether its source is seen as treaties, an inherent Aboriginal right or the relevant section of the Indian Act (section 87).

But what if taxation by First Nations governments would improve governance in First Nation communities?<sup>8</sup> Canadians are broadly familiar with the notion of the “curse of oil,” the thesis that oil wealth impedes democratic governance. Much international literature



The Llewellyn Glacier in the in B.C.'s Atlin Taku region.

PHOTO COURTESY BCGOVPHOTOS VIA FLICKER

suggests that sudden wealth from oil or other natural resources inflicts even greater damage on democratic practices in poor states than it does in rich ones. Other research concludes that the “curse” goes beyond natural resources and can apply to any nontax revenue. For example, there is a growing literature on the “curse of aid.” Further, on the basis of a study of subnational governments receiving large fiscal transfers in Argentina, one scholar observed similar effects to those of the natural resource curse. Among the symptoms were a disproportionately large public sector, a bloated public payroll and widespread patronage politics.<sup>9</sup>

Questions surrounding natural resource revenues and the effects of fiscal transfers have long bedevilled commentators in Canada. Some, for example, question whether heavy fiscal transfers to have-not provinces serve only to depress their economies further and skew accountability relationships. First

Nations in Alberta have experienced the mixed blessings of natural resource wealth firsthand. The patronage and cronyism combined with appalling social conditions that plagued the Stoneys outside Calgary or the Samson Cree Nation in the late 1990s amply attest to the negative effects sudden resource wealth can have on a First Nation community.<sup>10</sup>

Notably, the Royal Commission on Aboriginal Peoples and the Harvard Project on American Indian Economic Development both recommend that First Nations and American Indian tribes rely on an array of revenue sources including taxes levied on their citizens.<sup>11</sup>

#### **6. The collective landholding system as set out in the Indian Act is a major brake on economic development**

That the Indian Act prevents reserve lands from being seized by non-First Nation individuals or organizations has been both a

blessing and a curse – the act has preserved the land base, but it has also seriously constrained economic development in that the major source of small business capital – mortgaging privately owned homes – is not available to First Nation members.

Successive federal governments have introduced a variety of programs to partially fill this void. Indian and Northern Affairs Canada administered its own loan fund, while the former Aboriginal Business Canada established Aboriginal Capital Corporations, small lending institutions, across the country. There have been successive programs to provide equity financing to First Nation businesses; more recently, Ottawa established a loan loss reserve to backstop loans made by major financial institutions to First Nation businesses.

An internationally famous Peruvian economist, Hernando de Soto, has argued that developing countries are far richer than one might think, but the lack of land registry systems – systems we take for granted in Western countries – has prevented the use of housing to finance business ventures. In short, housing in both developing countries and First Nations is “dead capital.” In First Nation country this dead capital amounts to \$7.2 billion. Compare the potential leveraging capacity of this sum to the pitifully small budgets of federal agencies providing equity assistance.

There are modest attempts now underway to deal with this dead capital issue. The Nisga’a under their self-government regime have adopted a law to allow their citizens to hold land in fee simple so that it can be mortgaged for economic development purposes, and some First Nation leaders are working

with Hernando de Soto among others to develop opt-in legislation to allow other First Nations to follow the Nisga’a example.<sup>12</sup>

#### **7. Most First Nation communities are too small for efficient delivery of many of the services for which they have responsibility**

In the rest of Canada and elsewhere in the Western world, local governments serving 600 or so people have responsibilities limited to recreation, sidewalks and streets, and perhaps water and sewers. No countries assign to such small communities responsibilities in the “big three” areas of education, health and social assistance, let alone in other complex areas such as policing, natural resource management, economic development, environmental management and so on.

That said, the empirical evidence suggests that there is no “ideal” size for local government. There is little uniformity in what drives costs across the range of local responsibilities and these cost drivers can change significantly over time. To make an argument based on economies of scale therefore requires a service-by-service analysis.

Take the provision of potable water. According to one expert, Harry Swain, who chaired the Research Advisory Panel of the Walkerton Inquiry, a minimum of about 10,000 households is required to sustain a high-quality provider of drinking water.<sup>13</sup> No reserve in Canada meets this standard. Consequently, the only viable cost-effective options may be contracting out to existing organizations like neighbouring municipalities or the Ontario Clean Water Agency (OCWA),



a crown corporation that contracts with municipalities to operate their water systems, or developing regionally based First Nation–run organizations. A similar argument could be mustered for elementary and secondary education.

In addition to these service-by-service arguments there are broader governance concerns. In the non-Aboriginal world, there are some “good governance” reasons for why provinces carry out some functions and municipalities others. For the provision of potable water and the collection and treatment of sewage, provinces are the regulators and municipalities are the operators. If standards are not being met, provinces have the power to order municipalities to take corrective action, including shutting down a facility. Thus it is not clear how the combining of these regulatory and operating responsibilities in a single-tier Aboriginal government would work. How can a government, especially a small one, regulate itself? And public works is not the only jurisdictional area where this problem might arise – other examples are child and family services, the management of natural resources, environmental protection and policing.

There are other good governance rationales for aggregation in a First Nation context. As the Royal Commission on Aboriginal Peoples (RCAP) and numerous others have pointed out, one major reason concerns the provision of certain services by governments in small communities where family connections are a major fact of life and where discretionary powers of officials and political leaders can exacerbate tensions within the community based on family lines.

There is a potential for significant cleavages in First Nation communities because of different categories of residents. Indeed, with three categories relating to status and two relating to membership, there are six possible categories of residents in communities averaging fewer than 600 people.

A final good governance rationale has to do with core capabilities of a government, such as political leadership and senior administrative competence – capabilities that cannot be obtained by contracting out or making servicing arrangements with other levels of government. RCAP used this rationale, among others, for proposing aggregated First Nation governments.

#### **8. Within First Nations, individuals have varying rights, a situation that promotes disunity and frustration**

In 1985, Bill C-31 modernized the Indian Act through three main provisions: it reinstated Indian status to well over 100,000 individuals who (or whose parents) had lost status under prior versions of the act, standardized rules defining Indian status, and gave First Nations the option of developing their own band citizenship or membership rules.

However, the long-term implications of Bill C-31 are nothing short of devastating. Given current trends in rates of fertility, mortality and most importantly out-marriage, there will be “reserves without Indians” within the next hundred years – that is, for many First Nations there will be no status Indians as defined by the

Promotional shot from the 2005 documentary *Mohawk Girls* by Tracey Deer. The film reveals the exclusionary attitudes that divide communities and the pain and frustration of those struggling with the most basic right of defining who they are.

PHOTO SOURCE WWW.ONF-NFB.GC.CA



Indian Act. For some First Nations, especially those in the southern part of Canada, this impact will occur much sooner.

In the near term, there is a potential for significant cleavages in First Nation communities because of different categories of residents. Indeed, with three categories relating to status (6[1], 6[2] and nonstatus) and two relating to membership (member and nonmember), there are six possible categories of residents in communities averaging fewer than 600 people. Adding to the mix is the Corbière decision, which creates different political rights for members on- and off-reserve.

Confusion and cleavages are quickly emerging. A recent film by Tracey Deer follows the stories of four women on the Kahnawake reserve, caught in various ways by this tangle of categories.<sup>14</sup> One is a status Indian but not a member and wonders about her future in the community. Another has been accepted as a member but only on condition of “good” behaviour for a six-year period. The remaining two have status and are members but are married to or are cohabiting with nonmembers.

Both of these couples feel a sense of alienation from the community as the women had broken unspoken rules: do not marry a white person and do not have a child with a white person. The consequences for these two women are painful: potential loss of their membership and that of their children as well as the perception by some in the community that they have betrayed the First Nation by “diluting the purity of the bloodline.” In sum, the film reveals the exclusionary attitudes that divide communities and the pain and frustration of those struggling with the most basic right of defining who they are.

In addition to the implications for the political and social stability of First Nation communities, the problems emanating from Bill C-31 will very likely spill over to funding issues between federal and provincial governments over the provision of services to the various categories of people in First Nation communities. Ongoing litigation on this and related Bill C-31 issues appears inevitable, sadly thrusting the courts into the role of creating social policy.<sup>15</sup>

9. The history of colonization has led to dependence and a strong sense of victimization for many First Nations

The historical record is unequivocal: Aboriginal peoples in Canada were the victims of an oppressive and devastating colonial regime imposed unilaterally by European settlers. And the effects of this colonial period still linger. An African American writer, Shelby Steele, makes the point about the burden of historical oppression as follows:

*I believe that one of the greatest problems black Americans currently face – one of the greatest barriers to our development in society – is that our memory of oppression has such power, magnitude, depth, and nuance that it constantly drains our best resources into more defense than is strictly necessary ... the irresistible pull into the past can render opportunities in the present all but invisible ... Worse, by focusing so exclusively on white racism and black victimization, it implied that our fate was in society's control rather than our own, and that opportunity itself was something that was given rather than taken. This identity robs us of the very self-determination we have sought for so long and deepens our dependency on the benevolence of others.<sup>16</sup>*

Another writer puts Steele's argument succinctly as follows: "The language of victimhood seduces, then paralyzes."<sup>17</sup>

This theme of taking charge of one's development agenda resonates with the results of the Harvard Project on American Indian Economic Development at the John F. Kennedy

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School of Government.<sup>18</sup> Harvard researchers began with a puzzle. Why do tribes with the most successful economies not always have well-educated citizens, abundant natural resources and access to financial capital? After almost a decade of research involving more than 30 tribes across the United States, the project had an answer: "Economic development on Indian reservations is first and foremost a political problem."

At the heart of the nation-building approach advocated by the Harvard researchers is de facto sovereignty, where sovereignty does not signify a sovereign country in the international sense but rather has a more practical meaning: Who is in charge of realizing economic development for the tribe? Who are the effective decision-makers? As the Harvard researchers note,

*Making the federal government bear responsibility for improving economic conditions on Indian reservations may be good political rhetoric, but it is bad*

A 2006 report by the Auditor General on the British Columbia treaty process noted that the process was “actually straining the relations between the governments and First Nations.” Judging from recent annual reports of the BC Treaty Commission, this observation is still current. PHOTO COURTESY BC GOV PHOTOS



*economic strategy. When tribes take responsibility for what happens on reservations and have the practical power and capacity to act on their own behalf, they start down the road to improving reservation conditions.<sup>19</sup>*

Major accomplishments – political, economic, legal, social, cultural and spiritual – by many Aboriginal people and communities, despite the past and continuing discrimination in the present, are a tribute to their will and fortitude. But such accomplishments and de facto sovereignty, which underlies them, still elude many.

**10. First Nations and the federal and provincial governments have major differences on fundamental matters such as treaty and Aboriginal rights, fiduciary duties and funding obligations**

That differences exist between First Nations and the federal and provincial governments is not in question, and some of the consequences are not difficult to discern. Take self-government as an example. Since the mid-1980s, many – including a good portion of the

Aboriginal leadership, the federal government and all political parties – have considered self-government the key to sound governance and improved well-being. Current Ottawa policy holds that the right to self-government is contained in section 35 of the Constitution Act of 1982. Beyond this, the concept of indigenous self-government has gained widespread international support. Adoption by the United Nations of the Declaration of the Rights of Indigenous Peoples is a recent example.

Yet the difficulties of reaching self-government agreements over the past two decades have been sobering. For example, over a 20-year period the British Columbia treaty process has resulted in only two implemented treaties (three others are awaiting ratification by the parties), despite First Nations spending over \$500 million in negotiation funding of which a staggering \$422 million is in the form of loans. A 2006 report by the Auditor General on the BC treaty process noted that the process was “actually straining the relations between the governments and First Nations.”<sup>20</sup> Judging from recent annual reports of the BC Treaty Commission, this observation is still current.

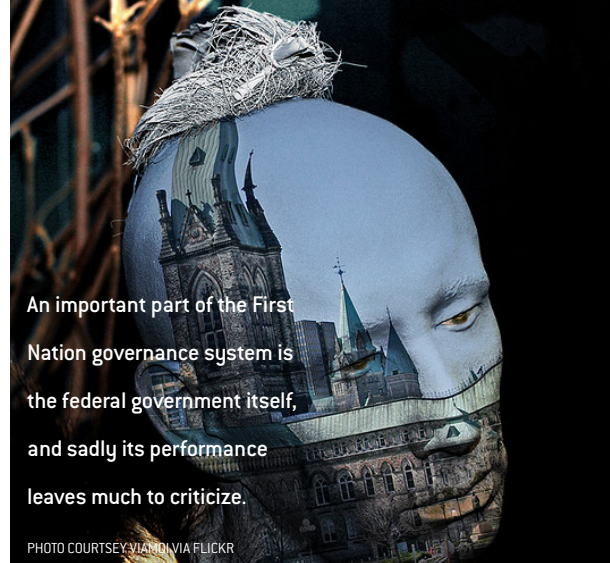
Similarly long and often fruitless negotiations to achieve self-government have occurred elsewhere in the country.<sup>21</sup>

Even when modern treaties including self-government agreements are reached, the results in some cases have been less than stellar. As one study of self-government under the James Bay and Northern Quebec Act (JBNQA) concludes: “The experience of the Crees of Eeyou Istchee and the Inuit of Nunavik under the JBNQA suggests that modern treaties are no panacea for the problems of northern Aboriginal communities.” A study of the Nisga’a experience after ten years of their treaty reached an identical conclusion.<sup>22</sup>

In addition to self-government agreements, major differences in fundamenatals act as roadblocks to moving forward in other areas. Take the Indian Act, for example, widely (and rightly) criticized for its paternalism, among other things. It is difficult to imagine repealing the act, given the lack of consensus on what might replace it. Thus any changes to the act will likely be piecemeal, either court-directed or optional.

**11. The federal government, the First Nations’ most important “partner,” is highly siloed with little capacity for a differentiated, whole-of-community approach to First Nation development**

An important part of the First Nation governance system is the federal government itself, and sadly its performance leaves much to criticize. Part of the problem is that the sheer number of federal departments and agencies dealing with First Nations – more than 30 – creates a difficult coordination challenge under



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PHOTO COURTESY VIAMIN VIA FLICKR

the best of circumstances, especially since the majority have only a peripheral interest in First Nation matters. Even the much smaller number of departments and agencies with major spending programs aimed at them create an enormous reporting burden for First Nations. A 2002 report of the Auditor General of Canada noted that just four federal departments required 168 reports on average from First Nations. Follow-up reports in 2006 and 2011 noted little progress in reducing this burden.<sup>23</sup>

And there is the manner in which First Nations are funded. The Institute on Governance, an Ottawa-based think tank, conducted an evaluation in 2008 of the funding arrangements of Indian and Northern Affairs.<sup>24</sup> The report pointed out the following problems:

- Despite their central importance, there is a lack of clarity about the overall objectives of the funding arrangements and a lack of leadership.
- There has been little or no progression to more flexible arrangements.

- Risk management leaves much to be desired.
- Reporting requirements do not vary much between arrangements.
- For many First Nation recipients, there is a significant reporting burden and there is little understanding of the value of the reports.
- The increased reporting burden associated with new funding programs (housing, education, water) on self-governing First Nations and those with multiyear block funding agreements is reducing the benefits of their funding arrangements with the federal government.
- Very little of the reporting relates to outcomes or program results.
- There is little in the way of coordination of arrangements across the federal government.
- Overall, the accountability relationship is not sound.

Thanks in part to a recently adopted Policy on Transfer Payments, the federal government is making progress in dealing with some of these problems. Nonetheless the development of an effective single-window funding mechanism for federal departments with regard to First Nations remains elusive.

One more federal shortcoming is worthy of mention (this is by no means a complete list):

there is no apparent federal strategy for shaping its relationship with the most distressed First Nations, those with conditions rivalling third world countries and situated at the lower end of the CWB continuum.

### **Leadership, community support and competent managers**

No governance system is perfect. It would take little effort to concoct a long list of Canada's shortcomings as a federation. Still, the shortcomings on such a list would pale in comparison with those described in this essay. In my opinion the collective impact of these 11 elements goes far to explain why improvements in First Nation communities have been so slow.

Outside parties are incapable of "fixing" many if not most of these dysfunctional elements. Three ingredients are necessary for development to occur: inspired and sustained community-level leadership, community support and a competent set of managers. These ingredients will have to be in place for decades if lasting progress is to be made. Only when leadership and community support are present can assistance from outside parties make a critical difference. Even then, progress may be fragile.

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A parallel to the challenges facing First Nation leaders intent on reform exists on a much larger scale among developing countries. Here too, rapid progress on complicated governance issues is possible but rare. Furthermore, sustainability is a real issue – when new political actors take charge, successful programs can grind to a halt. The World Bank tracks six governance indicators across 213 countries and concludes that there is no strong evidence of a significant trend toward improvement in governance worldwide between 1996, the first year these indicators were published, and 2008.<sup>25</sup>

I conclude with a short vignette. When I was in a First Nation community earlier this year, I asked a Nation employee about the poor state of housing. She noted that many solutions had been proposed – including collecting rents and offering a type of home ownership possible under the Indian Act – but these had gone nowhere, thanks largely to the prevailing attitude in the community that residents of a First Nation were entitled to free housing. Faced with this community sentiment, none of the commonly proposed solutions for “fixing” the lamentable state of First Nation communities, from more federal money with fewer conditions to doing away with the Indian Act and the principal department that administers it (Aboriginal Affairs and Northern Development Canada), will be of much help. This sense of entitlement coupled with its corollary that remedying community problems lies in the hands of another party dooms this community to poor housing – and much else.

## Notes

- <sup>1</sup> Sheila Fraser, Address to the Canadian Club of Ottawa, May 25, 2011, retrieved February 9, 2012, from [www.oag-bvg.gc.ca/internet/English/sp\\_20110525\\_e\\_35353.html](http://www.oag-bvg.gc.ca/internet/English/sp_20110525_e_35353.html)
- <sup>2</sup> See Aboriginal Affairs and Northern Development Canada, “Measuring Well-Being: The Community Well-Being (CWB) Index,” retrieved February 9, 2012, from [www.aadnc-aandc.gc.ca/eng/1100100016579](http://www.aadnc-aandc.gc.ca/eng/1100100016579)
- <sup>3</sup> The size of First Nation public service workforces may be surprising to many. I have worked with several First Nations with roughly 700 on-reserve members (near the average size of First Nations) where employees number 100.
- <sup>4</sup> One indicator of the underdeveloped private sector is less entrepreneurship. According to the 2006 census, 10.1 per cent of non-Aboriginal Canadians of working age were self-employed. The corresponding figure for Aboriginal Canadians on reserve was 2.2 per cent, more than a fourfold difference.
- <sup>5</sup> An indicator of hotly contested elections is the number of candidates in First Nation elections. In a sample of 24 First Nation elections over a recent two-year period, there was on average one candidate for every 20 electors. The low end of the sample’s range was four candidates for 266 electors; the high was 46 candidates for 386 electors. One election in the sample featured 78 candidates!
- <sup>6</sup> The influence of family and kin groups on the quality of governance is a universal conundrum of very long standing. For a comprehensive treatment of this topic, see Francis Fukuyama, *The Origins of Political Order* (New York: Farrar, Straus and Giroux, 2011). For an elaboration of the theme of politicizing the public service see John Graham, *Clarifying Roles of Aboriginal Leaders and Their Staff: The Perils of a Portfolio System*, Policy Brief No. 28 (Ottawa: Institute on Governance, 2007), retrieved April 19, 2012, from [pattersoncreek.ca/wp-content/uploads/2011/02/28-Portfolio-System.pdf](http://pattersoncreek.ca/wp-content/uploads/2011/02/28-Portfolio-System.pdf)
- <sup>7</sup> Wally McKay, *Instruments of Governance: Restoring First Nations Governments*, prepared for Canadian Executive Service Organization – Aboriginal Services, June 1999.
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- <sup>9</sup> Carlos Gervasoni, “A Rentier Theory of Subnational Authoritarian Enclaves,” paper delivered at the VIII Congreso Nacional de Ciencia Política de la Sociedad Argentina de Análisis Político, Buenos Aires, November 2007.
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- <sup>11</sup> Royal Commission on Aboriginal Peoples, *Final Report*, Vol. 2, Part 1, pp. 292–93.
- <sup>12</sup> Nisga’a Landholding Transition Act, retrieved February 9, 2012, from [www.nisgaalisims.ca/files/nlg/Nisga'a%20Landholding%20Transition%20Act%20\(October%202009\).pdf](http://www.nisgaalisims.ca/files/nlg/Nisga'a%20Landholding%20Transition%20Act%20(October%202009).pdf); see also Tom Flanagan, Christopher Alcantara and André Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights*, foreword by C.T. (Manny) Jules (Montreal and Kingston: McGill-Queen’s University Press, 2010).
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- <sup>15</sup> One of the most recent cases was the April 2009 decision of the British Columbia Court of Appeal in an action brought by Sharon McIvor.
- <sup>16</sup> Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: St Martin’s Press, 1990) pp. 151–70
- <sup>17</sup> Irshad Manji, *Risking Utopia: On the Edge of a New Democracy* (Vancouver and Toronto: Douglas and McIntyre, 1997).
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- <sup>19</sup> *Ibid*, p. 210.
- <sup>20</sup> British Columbia Treaty Commission, *Annual Report 2011*, retrieved February 9, 2012, from [www.bctreaty.net/files/pdf\\_documents/2011\\_Annual-Report.pdf](http://www.bctreaty.net/files/pdf_documents/2011_Annual-Report.pdf); Office of the Auditor General of Canada, *2006 November Report of the Auditor General of Canada*, Chapter 7, paragraph 7.24, retrieved February 9, 2012, from [www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200611\\_07\\_e\\_14975.html#ch7hd3e](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200611_07_e_14975.html#ch7hd3e)
- <sup>21</sup> Examples include the United Annishnaabeg Councils in Ontario, the Meadow Lake Tribal Council in Saskatchewan and the Montagnais and Attikamek in Quebec.
- <sup>22</sup> Martin Papillon, “Aboriginal Quality of Life Under a Modern Treaty: Lessons from the Experience of the Cree Nation of Eeyou Istchee and the Inuit of Nunavik,” *IRPP Choices*, Vol. 14, No. 9 (August 2008); Joseph Quesnel and Conrad Winn, *The Nisga’a Treaty: Self-Government and Good Governance: The Jury is Still Out*, Policy Series No. 108 (Winnipeg, Regina and Calgary: Frontier Centre for Public Policy, 2011), retrieved February 9, 2012, from [www.fcpp.org/files/1/PS108\\_Nisgaatreaty\\_JN25F2.pdf](http://www.fcpp.org/files/1/PS108_Nisgaatreaty_JN25F2.pdf); Joseph Quesnel, “A Decade of Nisga’a Self-Government: A Positive Impact, but No Silver Bullet,” page 47 in this issue of *Inroads*.
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