

# A decade of Nisga'a self-government

A positive impact, but no silver bullet

by Joseph Quesnel

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When Shawn Atleo, National Chief of the Assembly of First Nations (AFN), called for the end of the Indian Act and the dismantling of the Aboriginal Affairs<sup>1</sup> bureaucracy last summer, he was seen as making a bold move. His plan was short on details, but Atleo deserves credit for appealing for radical reform of First Nation governance. Most people who seriously study Aboriginal affairs agree that the paternalism inherent in the Act is both wrong and undesirable. Research from organizations such as the First Nations Tax Commission demonstrates a clear connection between the regulatory hurdles and delays imposed by the Indian Act and the sorry state of many First Nation economies.<sup>2</sup>

The assumption that Aboriginal self-government is both necessary and desirable is widely held in academia and especially in indigenous activist circles. I share the assumption that some form of autonomy for First Nations is desirable. The end goal, however, is not self-government for its own sake, but to advance First Nations both as individuals and as a group in concrete terms.

We know there is some sort of relationship between autonomy and economic improvement. The highly regarded U.S.-based

## The end goal is not self-government for its own sake, but to advance First Nations both as individuals and as a group in concrete terms.

Harvard Project on American Indian Economic Development has shown a positive connection between reservations being in possession of jurisdiction and their successful economic development.<sup>3</sup> In Canada, a study by the independent accounting firm KPMG looked at the economic situation of 17 First Nations that have opted into the First Nation Land Management Act (FNLMA), a legislative scheme that allows bands to opt out of the land use and resource provisions of the Indian Act. The study found that the program has generated \$101 million in investment and 2,000 jobs in those communities.<sup>4</sup> The degree to which there was preexisting wealth in these communities, and the extent to which the FNLMA was part of the success, are matters for debate, but the strong correlation is worthy of notice.

So, is Aboriginal self-government a “silver bullet” in and of itself? Does it lead to general socioeconomic improvement for First Nations, or only selective improvements? Does anything get worse? What are the effects on governance and services? These are not just theoretical issues. The federal government’s comprehensive claims policy allows communities without a historic treaty to negotiate and sign deals involving some degree of freedom from the Indian Act.

One such community is the Nisga’a Nation of northwest British Columbia, whose

comprehensive land claims agreement with Ottawa and British Columbia was signed in 1998 and took legal effect in 2000. When it comes to land ownership and resources, the treaty granted self-government to the Nisga’a. Nisga’a lands are no longer reserve lands, governed by the Indian Act.

Although there are some concurrent powers and the treaty did not grant substantial international powers of sovereign states (such as foreign affairs and defence), it granted the Nisga’a government substantial autonomy in areas integral to the Nisga’a culture (language, citizenship, education, etc.). Inasmuch as the Nisga’a can make their own laws and these laws take precedence over the laws of other levels of government, this is true self-government and not mere self-administration or self-management.<sup>5</sup> In 14 legislative areas, where Nisga’a laws conflict with federal or provincial legislation, Nisga’a law prevails. Although in some areas Nisga’a authorities are obligated to meet or exceed provincial standards, the Nisga’a treaty gives us an indication of the effects of a First Nation obtaining some degree of self-government.

In 2010, the Frontier Centre for Public Policy, an independent think tank based in western Canada, decided to undertake a major study of the Nisga’a treaty experiment. I was lead researcher on the project. I

was accompanied by Barb McLeod, a Cree researcher from La Ronge Indian Band in Saskatchewan.

In addition, we decided to study a control Native community that was similarly situated to the Nisga’a, but missing the key feature of independence from the Indian Act. We chose the Tsimshian Nation of northwest B.C. A culturally and linguistically similar community, it was also chosen because of its geographic closeness and similar economic situation. COMPAS, a polling firm based in Toronto, was commissioned to conduct professional telephone surveys of Nisga’a members, as well as members of the control Tsimshian population.

COMPAS purposely oversampled the Nisga’a in this project, achieving a total of 121 completions (see table 1).<sup>6</sup> COMPAS also elected to interview Nisga’a from four different villages – New Aiyansh, Laxgalts’ap, Gingolx, and Gitwinksihlkw – to gain multiple perspectives and reduce the potential for bias. The Tsimshian sample was much smaller, with 26 respondents. The Tsimshian data can be interpreted as qualitative and suggestive, while

the Nisga’a data can be treated with statistical confidence.

While Nisga’a and Tsimshian respondents were asked questions related to the quality of governance and services, we also conducted 15 “key informant” interviews among the Nisga’a. These were anonymous and confidential in-person interviews with influential members of the Nisga’a community from all four Nisga’a villages. Frontier staff conducted the key informant interviews on a face-to-face basis with sampling carried out by snowball or referral methods.

We approached the research with two hypotheses to explain why self-government may have a positive effect on the well-being of Nisga’a citizens.

On the one hand, the degree of self-determination provided by the Treaty opened up new possibilities for self-reliance, accountability and excellent governance. Devolution of authority to local Nisga’a Lisims may have enabled Nisga’a citizens to readily identify, hold accountable and reward local officials on the basis of the quality of their performance. Effective control over land and resources may also have reduced transaction costs associated

TABLE 1: REGIONAL DISTRIBUTION OF SAMPLES	
NISGA'A (121 RESPONDENTS)	
Nisga'a Village of New Aiyansh	57%
Nisga'a Village of Laxgalts'ap	23%
Nisga'a Village of Gingolx	10%
Nisga'a Village of Gitwinksihlkw	10%
TSMISHIAN (26 RESPONDENTS)	
Kitsumkaylum	73%
Kulspai	27%

with generating economic wealth and yielded better results over the long run.

On the other hand, among the Nisga'a, clan, kinship and hereditary chiefs have been central features of life. Historians have long concluded that individualism and the decline of clan and extended family have been key

to accountability and the other essential ingredients of good government. Maybe self-government enabled Nisga'a to transform devolution into good governance by weakening these traditional ties. If so, it would be potent testimony to the benefits provided by the Nisga'a Treaty.

**TABLE 2: TRUST IN GOVERNMENTS TO DO WHAT THEY PROMISE**

		MEAN	7	6	5	4	3	2	1	DON'T KNOW
		(PER CENT)								
Local	Nisga'a	4.3	16	16	13	20	12	7	13	3
	Tsimshian	3.7	8	15	15	8	15	4	23	12
Federal	Nisga'a	3.4	5	3	16	21	20	13	16	7
	Tsimshian	3.3	4	8	12	19	27	0	27	4
Provincial	Nisga'a	3.2	5	6	18	16	13	12	28	3
	Tsimshian	2.5	0	8	8	15	15	0	50	4

Notes:

Respondents were asked: How much do you trust the [local First Nations/federal/B.C. provincial] government to do what it promises? (1 = you don't trust them to do what they promise; 7 = you do trust them to do what they promise)

On the basis of an independent-samples t-test, the difference between the Nisga'a and Tsimshian responses are not statistically significant for local and federal governments (2-tailed significance scores of 0.240 and 0.751 respectively). With respect to the B.C. government, the difference is near conventional significance (0.089).

**TABLE 3: TRUST IN GOVERNMENTS TO BE HONEST**

		MEAN	7	6	5	4	3	2	1	DON'T KNOW
		(PER CENT)								
Local	Nisga'a	3.9	16	16	13	20	12	7	13	3
	Tsimshian	3.2	4	8	12	12	19	0	27	19
Federal	Nisga'a	3.2	5	7	18	8	18	16	24	3
	Tsimshian	2.7	8	0	8	12	19	15	35	4
Provincial	Nisga'a	3.0	4	6	13	19	10	13	34	1
	Tsimshian	2.2	4	4	4	8	12	12	54	4

Notes:

Respondents were asked: How much do you trust the local Nisga'a [Tsimshian] government to be honest and not to favour themselves or their friends in deciding whom they hire or how they spend money? (1 = you don't trust them to be honest; 7 = you do trust them to be honest)

On the basis of an independent-samples t-test, the difference between the Nisga'a and Tsimshian responses are not statistically significant for local and federal governments (2-tailed significance scores of 0.161 and 0.207 respectively). With respect to the B.C. government the difference is on the borderline of conventional significance (0.055).

**TABLE 4: CHANGES IN THE LAST TEN YEARS**

	NISGA'A	TSIMSHIAN
	(PER CENT)	
<b>Compared to 10 years ago, does the local First Nation government consult everyone...<sup>a</sup></b>		
More often	39	42
Less often	51	35
UNPROMPTED No change	3	8
UNPROMPTED It does not consult everyone	2	0
UNPROMPTED It never consulted everyone and it doesn't today	1	4
UNPROMPTED Don't know/refuse	4	12
<b>Compared to 10 years ago, are health services...<sup>b</sup></b>		
Better	46	19
Worse	41	50
UNPROMPTED No change	10	27
UNPROMPTED Don't know/refuse	3	4
<b>Compared to 10 years ago, is schooling...<sup>c</sup></b>		
Better	41	19
Worse	42	61
UNPROMPTED No change	10	4
UNPROMPTED Don't know/refuse	7	15
<b>Compared to 10 years ago, do people have...<sup>d</sup></b>		
More money	19	8
Less money	60	85
UNPROMPTED No change	12	8
UNPROMPTED Don't know/refuse	9	0

**Notes:**

<sup>a</sup> On the basis of a difference of percentages test, the difference between "More often" and "Less often" is statistically significant among the Nisga'a responses at least at the 0.05 level of significance using a one-tailed test. The overall differences in responses between the Nisga'a and Tsimshian are not statistically significant based on a Chi-square Fisher's Exact 2-sided score of 0.341.

<sup>b</sup> On the basis of a difference of percentages test, the difference between "Better" and "Worse" is not statistically significant among the Nisga'a responses at least at the 0.05 level of significance using a one-tailed test. The overall differences in responses between the Nisga'a and Tsimshian are marginally short of conventional significance based on a Chi-square Fisher's Exact 2-sided score of 0.073 (marginal significance being between 0.050 and 0.100).

<sup>c</sup> On the basis of a difference of percentages test, the difference between "Better" and "Worse" is not statistically significant among the Nisga'a responses at least at the 0.05 level of significance using a one-tailed test. The difference in responses between the Nisga'a and Tsimshian is marginally short of statistical significance based on a Chi-square Fisher's Exact 2-sided score of 0.052.

<sup>d</sup> On the basis of a difference of percentages test, the difference between "More money" and "Less money" is statistically significant among the Nisga'a responses at least at the 0.05 level of significance using a one-tailed test. The overall differences in responses between the Nisga'a and Tsimshian are just short of conventional significance based on a Chi-square Fisher's Exact 2-sided score of 0.101.

## Persistent problems, hope for the future

Table 2 demonstrates that the First Nation-led local Nisga'a government enjoys more trust than any other level of government and more trust than the Tsimshian feel for their local government. The 4.3 mean among the Nisga'a respondents is the highest score for any level and for both Native communities. Table 3 shows similar results with respect to honesty in hiring and spending. This is an interesting result given that perceived problems with nepotism and a lack of transparency on financial data are common complaints levelled against Indian Act band governments.

However, according to table 4 the Nisga'a believe that their government consults people less than it did a decade ago. This result flies in the face of conventional thinking that a government closer to the people and more accountable would consult more.

Again according to table 4, a majority among the Nisga'a believe that health services have improved; they are divided equally as to whether schooling has improved or worsened. With respect to both, the Nisga'a are on average more positive than the Tsimshian. Where

things get interesting is with respect to the financial situation. Most of the Nisga'a believe it has worsened since the Nisga'a Treaty came into effect. This needs to be seen in light of the serious economic strain that downturns in the forest industry and commercial fishing have caused not just in the Nass Valley but in the entire region of northwest B.C. The Tsimshian results are even more pessimistic. As with many First Nations, the reality of the Nisga'a situation is an isolated and remote location, separated from mainstream markets.

Our 15 individual interviews revealed more nuanced answers (see table 5). We spoke with influential members of the Nisga'a community across many backgrounds, including both supporters and opponents of the Treaty. When it came to governance, many respondents were still concerned about problems of perceived "politicized voting," nepotism and a lack of separation between politics on the one hand and administration and service delivery on the other. Some felt there were real reprisals for speaking out against "corruption." The interviewees also spoke to a lack of consultation between the Nisga'a government and its citizens. When it came to creating a cohesive identity, some key informants said that the Nisga'a Lisims government was acting in

**TABLE 5: SIMILARITIES AND DIFFERENCES BETWEEN SURVEY RESPONSES AND KEY INFORMANT INTERVIEWS**

AS A RESULT OF THE TREATY....	PUBLIC'S PERCEPTION	KEY INFORMANTS' PERCEPTION
Increased trust in government	Yes	No
Honesty in spending and hiring	Yes	No
Decline in consulting the people	Yes	Yes
Health services improved	Yes	Yes
Education services improved	Yes	Divided
Economic conditions improved	No	No

competition with the four villages instead of working with them, so they felt the old Nisga'a Tribal Council system was still alive.

When it came to economic development, some well-connected key informants identified problems with “politicized economic ventures” and bad investments. They also felt that a business mentality was not being cultivated within the communities. This could potentially explain why economic improvement does not seem to be taking place.

Many key informants were convinced that old Indian Act dependencies on public services remain, and they felt that it would take some time to overcome these old habits.

One thing that was apparent was a sense of hope for the future. Some informants demonstrated a certain “glow” in that the Nisga'a had achieved something dignifying and that the buck now stopped with them. They felt the future was now more fully in their hands, whether for good or ill.

## Nisga'a individual property rights

The Nisga'a Nation made history by passing the Nisga'a Landholding Transition Act in October 2009. The legislation will allow Nisga'a residents to take up small residential lots in complete fee simple, meaning that they can transfer the land to anyone they wish and they can use the land as collateral to access credit. The move is consistent with

the self-governing powers of the treaty, as the land was transferred from the Crown to the Nisga'a government in a form of “collective fee simple.” The Nisga'a government could choose to grant title to members if they wished.

The move came after three years of study and community consultation where it was determined that individual ownership and fee simple rights would be the most effective way to kickstart economic development. The issue of land ownership came up in our survey as



many residents are concerned about the impacts of the change on residents. Some feel that the level of poverty makes property ownership undesirable: they fear some would gamble away their land entitlement for a “quick buck.”

## Necessary or sufficient condition?

In logic, a necessary condition for a particular state of affairs is a condition that must be

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satisfied for that state of affairs to obtain. A sufficient condition is a condition that, if satisfied, guarantees that the state of affairs obtains. So, is self-government a necessary or sufficient condition for overall indigenous success? The results are mixed, but jurisdiction is definitely part of the puzzle.

According to Stephen Cornell of the Harvard Project, jurisdiction or authority is essential for successful Aboriginal economic development. However, self-government is not sufficient. It requires other factors to work successfully: rules and institutions, and efficacy of implementation. In other words, good governance relies on consistent application of fair rules and the ability to carry them out. One consistent conclusion of the Harvard Project studies has been that Native American tribes that possess jurisdiction are more likely to be economically successful than not.<sup>7</sup> Thus, some form of self-government could be seen as a necessary condition for optimal success, but not a sufficient one.

However, there are First Nation bands and Native American tribes doing well without freedom from federal oversight. Some Canadian examples are the Osoyoos Indian Band in British Columbia and the Membertou First Nation in Nova Scotia. Both have carefully cultivated contact with the outside business world and concentrated on job and wealth creation. Their leaders are focused on promoting economic self-sufficiency, and Osoyoos has achieved it.<sup>8</sup> Favourable geographical location plays a role in assuring business opportunities for Osoyoos, but geography cannot explain why the community was nearly bankrupt before, and is now a net employer in the region. Geography and resources alone cannot assure economic success. Institutions and leadership play a role.

The Frontier Centre's Nisga'a study demonstrated that there are governance benefits to inking a self-government deal.<sup>9</sup> There is more confidence in the government and the perception that core public services have improved.

However, economic development is another issue. The free market, and the private sector-led economic growth it generates, are the most essential factors in elevating populations out of poverty. The Economic Freedom of the World Index and the International Property Rights Index (IPRI) show the strong positive correlation between economic freedom and socioeconomic well-being. The IPRI also shows the positive correlation between strong physical and intellectual property rights and higher GDP per capita and foreign direct investment inflows.

Thus, the extent to which a First Nation community promotes private entrepreneurship,



allows private ownership of property and provides for a free market will ultimately play an important role in determining whether the community experiences economic development. Economic consulting firms like Fiscal Realities Economists have repeatedly shown that the market is not permitted to function at its optimum on reserve lands, and their results are echoed by the federal government. Greater wealth could be achieved for First Nations if only a fraction of their reserve lands were converted to fee simple ownership.<sup>10</sup>

Some community development proponents argue that government-led community development is a solution for isolated bands, but there is no evidence yet to show that tribal enterprises and community development corporations are the sole solution. In fact, there is growing evidence that they are problematic. However, recent data confirm that economic development corporations are leading in economic growth on Canadian First Nations. Then again, any type of band economic venture, even if collectively owned, is better than none at all. If band-owned initiatives are effectively managed, separately from elected politicians, they are more likely to be successful.<sup>11</sup>

### **Can you take the Indian Act out of the “Indian”?**

The main implication of these findings for First Nations seeking self-government and for policymakers is that self-government alone is not a panacea. The Nisga’a study provides evidence that governance problems continue to

plague self-governing communities, although it also points to improvements in governance and services.

The study provides some support for both of our initial hypotheses. It is evident that devolution to the Nisga’a Lisims has had a definite impact on the perception of good governance and services. It is also evident that the treaty may have affected the influence of traditional governance and extended families, and created a form of authority more in line with modern governance. However, it is clear that traditions and traditional clan identities and loyalties play a continuing role in Nisga’a society and are encouraged by the Nisga’a Lisim government. So, although the Nisga’a have modern governance, it did not come completely at the expense of cultural ties, which remain strong.

Freedom from the Indian Act does not provide easy freedom from the entrenched behaviour of that regime. To paraphrase an old expression, you can take the “Indian” out of the Indian Act, but you cannot easily take the Indian Act out of the “Indian.” Building good institutions, strong leadership and goal-directed policies must proceed together once a First Nation has jurisdiction or even before a deal is signed.

At this point, we cannot conclude that self-government is either a necessary or a sufficient condition for indigenous success. We do not have enough data over time to properly assess self-governing communities. It is also worth noting that some First Nations do well without self-government. What we can say at this point is there is very compelling evidence for improvements in various areas under

There is very compelling evidence for improvements in various areas under self-government, but these take place when self-government acts in concert with other factors.

self-government, but these take place when self-government acts in concert with other factors. The Nisga'a study revealed this pattern in terms of governance and services.

Economic development will continue to be a significant and contentious issue. Problems of isolation and the difficulty of building a business culture continue to stymie programs intended to end First Nation poverty. This is so even in self-governing communities. The key question is whether bands use their self-government powers to unlock private entrepreneurial talent on First Nations and enable institutions like private property. The Nisga'a Nation experiment in fee simple ownership must be studied over time.

## Notes

- <sup>1</sup> In the summer of 2011 the departmental name was changed from Indian and Northern Affairs to Aboriginal Affairs and Northern Development.
- <sup>2</sup> Tom Flanagan, Christopher Alcantara, and André Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights* (Montreal and Kingston: McGill-Queen's University Press, 2010)
- <sup>3</sup> "There are Compelling Reasons: Self-Government Matters, Harvard Economic Study Finds," retrieved

from British Columbia Treaty Commission website at [www.bctreaty.net/files/gov\\_ed1.php](http://www.bctreaty.net/files/gov_ed1.php)

- <sup>4</sup> Richard Foot, "First Nations Blame Ottawa for Continued Poverty on Reserves," Postmedia News, October 15, 2010, retrieved from Global Saskatoon website at [www.globalsaskatoon.com/First+Nations+blame+Ottawa+continued+poverty+reserves/3678297/story.html](http://www.globalsaskatoon.com/First+Nations+blame+Ottawa+continued+poverty+reserves/3678297/story.html)
- <sup>5</sup> Curtis Cook and Juan David Lindau, *Aboriginal Rights and Self-Government: The Canadian and Mexican Experience* (Montreal and Kingston: McGill-Queen's University Press, 2010)
- <sup>6</sup> By convention, the findings from Nisga'a respondents can be deemed accurate to within approximately 8 percentage points 19 times out of 20.
- <sup>7</sup> Tony Penikett, *Reconciliation: First Nation Treaty Making in British Columbia* (Vancouver: Douglas and McIntyre, 2006), p. 200; see also "There are Compelling Reasons."
- <sup>8</sup> Laura Eggertson, "Transparent, Entrepreneurial First Nations Reap Economic Success from Coast to Coast," Toronto Star, January 14, 2011, retrieved from [www.thestar.com/news/insight/article/922221](http://www.thestar.com/news/insight/article/922221)
- <sup>9</sup> 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 from Frontier Centre website at [www.fcpp.org/files/1/PS108\\_NisgaTreaty\\_JN25F2.pdf](http://www.fcpp.org/files/1/PS108_NisgaTreaty_JN25F2.pdf)
- <sup>10</sup> Fiscal Realities Economists have produced several studies showing how Indian Act restrictions and land ownership issues prevent First Nations from generating optimal wealth from their own lands and resources (see the Fiscal Realities website at [www.fiscalrealities.com](http://www.fiscalrealities.com)). See also Flanagan, Alcantara and Le Dressay, *Beyond the Indian Act*.
- <sup>11</sup> Miriam Jorgensen, *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson: University of Arizona Press, 2007), pp.175–98; TD Economics, *Estimating the Size of the Aboriginal Market in Canada*, Special Report, June 17, 2011, retrieved from [www.td.com/document/PDF/economics/special/sg0611\\_aboriginal.pdf](http://www.td.com/document/PDF/economics/special/sg0611_aboriginal.pdf)