



Institute On  
Governance    Institut sur  
la gouvernance

# Policy Brief

## ***The First Nation Governance System: A Brake on Closing the Community Well-being Gap***

*Policy Brief No. 36  
-April 2010*

*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](http://www.iog.ca)

*For further information, contact John Graham at the Institute On Governance.  
tel.: (1 613) 695-1675  
e-mail: [jgraham@iog.ca](mailto:jgraham@iog.ca)*

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

**Policy Brief No. 28: Clarifying Roles of Aboriginal Leaders and Their Staff: The Perils of a Portfolio System** by John Graham (may 2007)

**Policy Brief No. 31: How to Improve First Nation Housing** by John Graham and Gail Motsi (October 2008)

**Friendship Centre Movement: Best Practices in Governance and Management** by John Graham and Mackenzie Kinmond (August 2008)

**In Praise of Taxes: the Relationship of Taxation to Good Governance in A First Nations Context**, by John Graham and Jodi Bruhn (March 2008)

**Policy Brief No. 29: Rethinking Self-Government: Developing A More Balanced, Evolutionary Approach**, by John Graham (September 2007)

*The contents of this paper are the responsibility of the author  
and do not necessarily reflect a position of the IOG or its Board of Directors*

## Introduction

Relying on census data, researchers at Indian and Northern Affairs Canada have developed the Community Well-being Index (CWB), which is based on four factors: education (high school and university), housing (quantity and quality); labour force (participation and employment); and income (total per capita). The results from the 2006 census are now available<sup>1</sup> and they are less than encouraging. The good news is that the CWB scores for a large majority (64%) of First Nations were either stable or improved over the 2001 to 2006 period. Nonetheless, scores for 36% of First Nations declined (compared to only 10% of other Canadian communities). Further, and 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 since 1996, not narrowed, as the table below illustrates:

Year	Average Gap between Communities (100 point scale)
1996	17
2001	16
2006	20

The situation in the three Prairie Provinces is especially disturbing. In Saskatchewan, for example, the gap in the CWB for 2006 is 28 points, roughly 40% larger than the national average.

The widening CWB gap is particularly perplexing, given the number of new initiatives over the 10 year span affecting First Nations. These include

- significant increases in funding in several program areas (e.g. water and waste water, housing, education, economic development, residential school healing);
- the settlement of numerous specific and comprehensive claims (e.g. since 1973, 322 specific claims have been settled with an average settlement value of \$6.6 M);
- new self-government initiatives (e.g. Nisga'a, First Nations Land Management Act);

- the development of a multitude of new, First Nation controlled institutions (e.g. National Centre for First Nations Governance); and
- the adoption of new legislation to remove barriers to economic development and improve financial management (e.g. First Nations Fiscal and Financial Management Act).

It is also noteworthy that the federal government assisted roughly 25,000 First Nation individuals and Inuit a year over this time period to pursue post-secondary schooling – surely a significant contribution towards the goal of achieving enhanced community well-being.

Given all of these initiatives, a critical question of concern to all Canadians is why the CWB gap is widening instead of narrowing? The purpose of this policy brief is to 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, for example, that a 2% funding cap on 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, as I will contend, poor governance is surely one of the principal culprits.

## Key Elements of the First Nation Governance System

In my judgement there are 11 elements of the 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.

Given the small size of First Nation communities, it may come as a surprise to many that the governments of these communities are likely the largest local governments in the world as measured by per capita expenditures. The table below indicates that per capita expenditures are roughly 10x those of the average Canadian municipality.

<sup>1</sup> See <http://bit.ly/CWB-IBC> accessed April 12, 2010

Given that First Nation governments have a much greater set of responsibilities (approximating those of a province, school and health boards and a municipality combined), these comparisons are hardly surprising. And large size alone has some advantages. For one thing, First Nation governments are major employers,<sup>2</sup> an especially important factor for those in remote locations.

### **Per capita expenditure comparisons<sup>3</sup>**

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

But large size brings risks, particularly in situations where the government is the only, or principal, 'game in town'. The following factors magnify these risks enormously.

## **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 highest on good governance indicators tend to have relatively balanced systems – that is, they have a robust and effective government sector balanced by an independent system of justice, 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

<sup>2</sup> The size of First Nation public services as well can be surprising to many. We have worked with several First Nations with roughly 700 on reserve members (near the average size of First Nations) having public services numbering some 100 employees.

<sup>3</sup> 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.

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.

In contrast, First Nation governance systems lack balance. Large First Nation governments do not have the usual array of checks and balances that are found with other governments. 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 (making it difficult, among other things to enforce First Nation laws), 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 therefore are not independent of First Nation governments.

Among other things, this lack of balance threatens accountability, heightens risk should the government not perform, has governments undertaking activities (like running businesses) which traditionally they have done poorly, and creates 'in' and 'out' groups (often defined by family affiliation) with few options for the 'outs' 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 with the number of councillors not to be less than 2 or more than 12. The Indian Act also allows a First Nation to choose a custom election process where this 1/100 ratio can be altered. Whatever the route, because First

<sup>4</sup> One indicator of the underdeveloped private sector is less entrepreneurship. According to the 2006 Census, 10.1% of non-Aboriginal Canadians of working age were self-employed. The corresponding figure for Aboriginal Canadians on reserve was 2.2%, more than a four fold difference.

Nation populations are so small, the number of politicians per capita is always large, larger than any other jurisdiction in Canada. Moreover, it is our experience that the positions of chief and councillor are usually full time jobs with full time salaries. A variation with small First Nations, who may not be able to afford to pay salaries for every councillor, is allowing full time employees of the First Nation to also sit on Council. This variation, one not permitted in other Canadian jurisdictions, creates its own set of problems.

It is no surprise then that elections are hotly contested, given the incentives at play<sup>5</sup>. Coupled with short election cycles (the Indian Act calls for elections every 2 years although the custom election option can vary this), the results are often predictable and not conducive to good governance: intense family competition,<sup>6</sup> rapid political churn, and politicization of the public service.<sup>7</sup> The impact on social cohesion is particularly 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>8</sup>

Exacerbating these problems is the lack of any comprehensive orientation program, with some few exceptions, for new councillors. Another important complication in some First Nations are groups who question the very legitimacy of Councils created under the Indian Act, resulting in more community disharmony.

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

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.), building codes and so on. Further, as I have argued elsewhere, some self-government agreements may actually worsen the problem.<sup>9</sup>

In addition to increased risks to the health and safety of community residents and to environmental degradation, these regulatory voids have other negative impacts. For one thing, federal government funding agreements with First Nations have become more complex and conditional as the government attempts to fill these voids through adding to the terms and conditions of these agreements. For another, First Nation leaders are

---

<sup>5</sup> One indicator of hotly contested elections is the number of candidates in First Nation elections. In a sample of 24 First Nation elections over the past two years, there was on average one candidate for every 20 electors. The low end of the sample's range was 4 candidates for 266 electors; the high, 46 candidates for 386 electors. One election in the sample featured 78 candidates!

<sup>6</sup> For more detail on the impacts of family competition and some interesting international parallels, see John Graham and Jake Wilson, "Aboriginal Governance in the Decade Ahead: Towards a new Agenda for Change", 2004, [www.iog.ca/aboriginalgovernance/publications](http://www.iog.ca/aboriginalgovernance/publications). P. 7-8, accessed March 19, 2010

<sup>7</sup> For an elaboration of this 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, May 2007, [www.iog.ca/publications](http://www.iog.ca/publications), accessed March 19, 2010

---

<sup>8</sup> Wally McKay, *Instruments of Governance: Restoring First Nations Governments*, prepared for CESO Aboriginal Services, June 1999.

<sup>9</sup> See John Graham, "Rethinking Self-Government Agreements: the Case of Potable Water," Policy Brief No. 12 (November 2001), [www.iog.ca](http://www.iog.ca), for an elaboration of this argument. The principal issue is a government regulating itself.

not constrained by the ‘web of rules’ facing other Canadian governments, and this exacerbates the effects of rapid, political churn. The direction and priorities of a First Nation government can change dramatically with the election of a new group of political leaders, much more so than in other Canadian jurisdictions where the ‘web of rules’ adds 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.<sup>10</sup>**

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

But what if taxation by their First Nations governments were to improve governance in their communities? Canadians are broadly familiar with the notion of the ‘curse of oil,’ the thesis that oil wealth impedes democratic governance. Much international literature 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 non-tax revenue. For example, there is a growing literature on the ‘curse of aid’. Further, based on a study of sub-national 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>11</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 to 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>12</sup>

Notably, the Royal Commission on Aboriginal Peoples<sup>13</sup> and 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 from their citizens.

**6. The collective land holding 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 – a blessing in that the Act has preserved the land base but a curse by being a major constraint to 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.

---

<sup>10</sup> For a more comprehensive treatment of this topic, see John Graham and Jodi Bruhn, “In Praise of Taxes: The Link between taxation and Good Governance for First Nation Communities”, Policy Brief No. 32, February 2009, [www.iog.ca/publications](http://www.iog.ca/publications), accessed March 19, 2010

---

<sup>11</sup> Carlos Gervasoni, “A Rentier Theory of Subnational Authoritarian Enclaves,” essay delivered at the VIII Congreso Nacional de Ciencia Política de la Sociedad Argentina de Análisis Político (Buenos Aires: November 2007).

<sup>12</sup> For a description, see Jean Allard, “Big Bear’s Treaty: The Road to Freedom,” *Inroads* 11, 145–49.

<sup>13</sup> Royal Commission on Aboriginal Peoples, “Final Report, Volume 2, Part One”, P. 292-3



Among other things, Indian and Northern Affairs Canada administered its own loan fund; 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; and more recently the government established a loan loss reserve initiative to backstop loans made by major financial institutions to First Nation businesses.

There is an interesting international parallel. A 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 Nation 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 to provide 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<sup>14</sup> and some First Nation leaders are working with Hernando DeSoto among others to develop opt-in legislation to allow other First Nations to follow the Nisga’a example.<sup>15</sup>

**7. The very large majority of First Nation communities are too small for delivering many of the services for which they have responsibility.**

In the rest of Canada and elsewhere in the western world, local governments serving on average 600 or so people have responsibilities limited to recreation, sidewalks and streets, and perhaps water and sewers. No countries assign 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 the ‘economies of scale’ argument therefore requires a service by service analysis.

Take the provision of potable water as a first example. 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>16</sup> No reserve in Canada meets this standard. Consequently, contracting out to existing organizations like neighbouring municipalities or the Ontario Clean Water Agency (OCWA), a Crown Corporation which contracts with municipalities to operate their water systems, or conversely, developing regionally-based, First Nation-run organizations may be the only viable options that are cost-effective.

A similar argument could be mustered for elementary and secondary education. Modern education is not delivered any longer on a single school model, given the complexities of special education, curriculum design, the professional development needs of teachers, extensive policy requirements emanating from potential legal liabilities in dealing with children, testing methodologies and so on<sup>17</sup>.

<sup>14</sup> [www.nisgaalisims.ca/node/99](http://www.nisgaalisims.ca/node/99), accessed March 19, 2010

<sup>15</sup> See also Tom Flanagan, Christopher Alcantara, André LeDressay, “Beyond the Indian Act: Restoring Aboriginal Property Rights”, McGill-Queen’s University Press, 2010 (forward by C.T. (Manny) Jules)

<sup>16</sup> H. Swain, F. Lazar and J. Pine, *Watertight: The case for change in Ontario’s water and wastewater sector*, “Report of the Water Strategy Expert Panel”, Queen’s Printer for Ontario, 2005, 19-20

<sup>17</sup> See Michael Mendelson, “Improving Primary and Secondary Education on Reserves in Canada”, *caledon commentary*, Caledon Institute of Social Policy, October 2006, [www.caledoninst.org](http://www.caledoninst.org)

In addition to these service by service arguments there are some broader governance concerns.<sup>18</sup> In the non-Aboriginal world, there are some ‘good governance’ reasons for why provinces carry out certain functions and municipalities others. Take regulation, for example. The provision of potable water and the collection and treatment of sewage are done to exacting standards established in a regulatory regime. Provinces are the regulators; municipalities, the operators. If the standards are not being met, provinces have the power to order municipalities to take corrective action, including the shutting down of 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 supporting a case for aggregation in a First Nation context. One major reason, as the Royal Commission and numerous others have pointed out, 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.

A second ‘good governance’ rationale has to do with core capabilities of a government – political leadership, senior administrative competence - capabilities which can not be obtained by contracting out or making servicing arrangements with other levels of government. Once again the RCAP used this rationale for arguing for large, Nation-level governments.

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

---

<sup>18</sup> For an elaboration of these arguments, see John Graham, “IOG Policy Brief No. 18, Aggregation and First Nation Governance”, Dec. 2003, [www.iog.ca](http://www.iog.ca)

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

The long-term implications of Bill C-31 are nonetheless nothing short of devastating. Given current trends with regards to rates of fertility, mortality and most importantly out-marriage, there will be ‘reserves without Indians’ within the next 100 years – that is, for many First Nations there will be no status Indians as defined by the *Indian Act*. For some First Nations, this impact will occur very soon as early as 2012.<sup>19</sup>

But perhaps as important in the shorter term is the potential for significant cleavages developing in First Nation communities because of different categories of residents. Indeed, with three categories relating to status (6(1), 6(2) and non-status) and two relating to membership (member or non-member), there are six possible categories of residents for communities averaging less than 600 people. Adding to the mix is the Corbiere decision, which creates different political rights for members on and off reserve.

Little wonder, then, that confusion and cleavages are quickly emerging. A recent film<sup>20</sup> by Tracy Deer follows the stories of four women on the Kahnawake reserve, caught in various ways by this tangle of categories. 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 conditional on ‘good’ behaviour for a six year period. Two others have status and are members but are married to or are co-habiting with non-

---

<sup>19</sup> United Anishnaabeg Councils, “Impacts of the Authority to Determine E-dbendaagzijig”, Research and Analysis Directorate, Indian and Northern Affairs, 1999  
<sup>20</sup> “Club Native: How thick is your blood?”

Written and Directed by Tracy Deer, produced by Rezolution Pictures International Inc. in co-production with the National Film Board, [www.nfb.ca](http://www.nfb.ca), 2008, accessed March 19, 2010



members. Both of these couples feel a sense of alienation from the community as the women had broken firm but 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 to be the inevitable result, sadly thrusting the courts into the role of creating social policy.<sup>21</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 Afro-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>22</sup>

Another writer puts Steele's argument succinctly as follows: “The language of victimhood seduces, then paralyzes.”<sup>23</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 School of Government.<sup>24</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 is used not in the international sense to signify a sovereign country. Rather, the meaning is on a more practical plane: who is in charge of realizing economic development for the Tribe? Who is the effective decision-maker? 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

---

<sup>21</sup> The most recent case was the April 2009 decision of the British Columbia Court of Appeal in an action brought by Sharon McIvor.

---

<sup>22</sup> Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (St Martin's Press: New York, 1990) P. 151-170

<sup>23</sup> Irshad Manji, “Risking Utopia: On the Edge of a New Democracy” (Douglas and McIntyre: Vancouver & Toronto, 1997)

<sup>24</sup> Cornell and Kalt, at [www.ksg.harvard.edu/hpaied/CornellKalt%20Sov-NB.pdf](http://www.ksg.harvard.edu/hpaied/CornellKalt%20Sov-NB.pdf), accessed March 19, 2010

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>25</sup>

It is a tribute to their will and fortitude that many Aboriginal people and communities have achieved major accomplishments – political, economic, legal, social, cultural, and spiritual – despite the past (along with continuing discrimination in the present). 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 these differences exist is not in question. Furthermore, 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 – 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 – the adoption by the United Nations of the Declaration of the Rights of Indigenous Peoples being a recent example.<sup>26</sup> 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.”<sup>27</sup>

Similar long and sometimes fruitless negotiations to achieve self-government have occurred in other parts of the country as well.<sup>28</sup> 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 several decades.

Given the major differences over fundamentals that separate First Nations and other governments in Canada, it is difficult to imagine any national changes of consequence occurring, say to the Indian Act, changes that would be based on a broad consensus among First Nations and the federal government. The best to be hoped for, as Professor Brad Morse noted before Senate Standing Committee on Aboriginal Peoples,<sup>29</sup> is that such changes would be 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 the sheer number of federal departments

---

<sup>25</sup> Ibid, P. 29-30

<sup>26</sup> 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”.

---

<sup>27</sup> Office of the Auditor General of Canada, 2006 Report, Chapter 7, P.7, [www.oag-bvg.gc.ca/domino/reports](http://www.oag-bvg.gc.ca/domino/reports), accessed March 19, 2010

<sup>28</sup> Examples include the United Anishnaabeg Councils in Ontario, the Meadow Lake Tribal Council in Saskatchewan and the Montagnais and Attikamek in Quebec.

<sup>29</sup> Proceeding of the Standing Committee on Aboriginal Peoples, May 6, 2009, [www.parl.gc.ca/40/2/parlbus/commbus/senate/com-e/abor-e](http://www.parl.gc.ca/40/2/parlbus/commbus/senate/com-e/abor-e), accessed March 19, 2010

and agencies dealing with First Nations – over 30 – a difficult co-ordination challenge under the best of circumstances, especially in that the majority have only a peripheral interest in First Nation matters. The reporting burden is enormous even for the much smaller number of departments and agencies with major spending programs aimed at First Nations: one report of the Auditor General of Canada noted that just four federal departments required 168 reports on average from First Nations.<sup>30</sup>

And then there is the manner in which First Nations are funded. In a recent evaluation<sup>31</sup> that the Institute conducted of the funding arrangements of Indian and Northern Affairs, we 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 multi-year 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 co-ordination of arrangements across the federal government
- Overall, the accountability relationship is not sound

This is by no means a complete list of federal shortcomings but one more is worthy of mention: 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 end of the CWB continuum. The development of such a strategy should surely be at the top of this country's social policy agenda.

## Conclusions

It is hardly worth noting that no governance system is perfect. Indeed, it would take little effort to concoct a long list of Canada's shortcomings as a federation. For example, the Institute on Wellbeing, summarizing a recent released report, notes that "Fewer Canadians are voting or volunteering for formal political groups, nearly half say they aren't happy with the way Canada's democracy works, and an overwhelming majority say that federal government policies have not made their lives better".<sup>32</sup> This, despite the fact that international organizations rank Canada very high in terms of governance.

So does this essay overstate the case that the First Nation governance system is highly dysfunctional? Some think so. When I gave a presentation to the Senate's Committee on Aboriginal Peoples,<sup>33</sup> a presentation much along the lines of this policy brief, a Senator asked why I had to be so negative. In the same vein, a co-presenter to the Committee suggested that my take on First Nation governance system could lead to "paralysis".

My response is twofold. First, without a full understanding of the depth and seriousness of the problems plaguing the First Nation governance system, crafting policy responses and initiatives wastes time and funding and may even make matters worse. Unlike the rest of Canada, First Nations have most of their eggs in one governance basket. And when this system performs badly, communities find themselves in deep trouble. But the converse is also true: if, for some reason, a First Nation community can overcome many of the bad governance cards it has been dealt to create a

---

<sup>30</sup> Office of the Auditor General, 2002

<sup>31</sup> "Special Study on INAC's Funding Arrangements", December 2008, [www.iog.ca/aboriginalgovernance/publications](http://www.iog.ca/aboriginalgovernance/publications), accessed March 19, 2010

---

<sup>32</sup> Institute On Wellbeing, "Democratic Engagement Domain Report", January 2010, <http://www.ciw.ca/en/home.aspx>, accessed March 19, 2010

<sup>33</sup> Proceeding of the Standing Committee on Aboriginal Peoples, May 6, 2009, op. cit.

strong, sustainable government, it can achieve much good.

The record of the last decade, particularly the conclusion that the well-being gap appears to be widening, not closing, should be worrisome to everyone concerned about having Aboriginal peoples find a comfortable place in this country.

My second point is that the analysis in this brief does lead to possible new approaches and initiatives, some of which have been canvassed in other IOG papers and policy briefs. Among these are:

- encouraging a greater dispersion of power within communities;
- having certain First Nation programs become better integrated into provincial systems;
- developing more checks and balances through, for example, First Nation controlled dispute resolution systems;
- creating more incentives for better governance through accreditation systems;
- providing First Nations with a voluntary power to tax residents in their communities; and
- having the federal government develop a more differentiated approach to its programs and funding mechanisms so as to take into account the vast differences in governance capacity among First Nations.

But none of us should be under any illusions that progress will be rapid. The problems are deep seated and, sadly, there are no easy answers or ‘silver bullets’. Outside entities can be helpful in certain circumstances but ultimately the solutions and the will to implement them must come from the communities themselves.

In a forthcoming publication,<sup>34</sup> the IOG will attempt to enlarge on the possibilities and limitations of assistance by outside entities, especially in the most dire cases.

---

<sup>34</sup> John Graham & François Levesque, “First Nation Communities in Distress: Dealing with Causes, Not Symptoms” to be published on the IOG website.