

***Governing First Nations in Canada: the comparative policy and practical  
community challenges – are there lessons for the Northern Territory?***

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*Greetings to the Mirrar Traditional Owners, Mr. Moderator, Honorable Minister, Ladies and Gentlemen. Also, recognition to Gilbert Corbett, Patrick Ross and John Willis of the Ahherenge Association. Thanks for incredible hospitality shown to us over the last two weeks by many people.*

## **Introduction**

Given our status in the Canadian Constitution, and the legal precedents won in our favor since 1973, Canada's aboriginal peoples might be the envy of indigenous people elsewhere in the world,. We have learned, however, that legal precedent and constitutional recognition don't necessarily result in social change and economic development at the community level. But they do lead to heightened expectations by community members and the general public: expectations that have been met with varying degrees of success from community to community.

As an aboriginal leader, I was involved with others in many of the major political and legal successes won in Canada since 1973. Those successes have led to a host of federal / provincial policies designed to fulfill government obligations to aboriginal people.

We have 600 First Nations communities in Canada, with 1/3 --- or 197 First Nations --- located in the province of British Columbia where I live. Our largest aboriginal community numbers about 18,000 persons, while our smallest community numbers about fifty persons. The average aboriginal community has about 400 members. Many communities are very remote.

Indian Act legislation sets out the process for choosing leaders (by election or by custom), and to whom they are accountable (the Minister). However, for years, the Indian Agent made administrative and policy decisions for us in council meetings, with the Chief and Council simply signing a resolution to formalize the decision. At one time the Indian Agent held tremendous power over the communities he administered. Few if any communities employed a Band administrator, the function then being filled by the Indian Agent.

Although by law Band Councils are still accountable to the Minister rather than to their members, this aspect of the legislation is generally ignored today. The problem with this history of dependency on the Indian Agent is that aboriginal leaders had virtually no role --- and therefore no experience --- in policy making at the community level. Policy was developed by the Department of Indian Affairs in Ottawa, and it was implemented at the community level by an Indian Agent.

In Canada, Band Councils are our only legislated Indian governments. All other aboriginal organizations --- tribal councils, provincial and national bodies --- are political creations of aboriginal people. Unlike Australia, which appears, to me at least, to have legislation affecting how all its indigenous organizations function (e.g. ATSIC, Land Councils, Land Trusts and community organizations).

Major federal / provincial initiatives affecting aboriginal people since 1973 include land claims, devolution, self-government, treaty making and resource agreements. Each of these policy initiatives has presented both opportunities and challenges for British Columbia's aboriginal leaders. Some leaders have met the challenge while others have failed. Some have learned from their mistakes, while some have not.

Patterns of governance have emerged that could apply to each of the above processes. For example, the governance challenges and opportunities for those in the land claims process are duplicated in devolution, self-government and treaty. For this reason, I would like to give three examples --- Skeetchestn, Gitksan Health Authority, Metlakatla --- that may help reveal how BC's leaders have responded to these policy initiatives.

### **Skeetchestn**

Between 1972 and 1982, a succession of short-term leaders held the position of chief at Skeetchestn, a First Nation community in BC's interior. The band was more than \$1M in deficit, thus requiring the Department of Indian Affairs to appoint a third party manager from a nearby band to manage the community. The community was in chaos, with rampant drinking and family violence.

As a result of neglect and opportunism by the third party manager and former leaders, a tragic house fire death of five children shook the community in 1982. Traditional community elders acted immediately. They met with two young band members, whom they believed had leadership potential. They instructed these two young men to recruit another young band member --- Ron Ignace --- to return home to help address their problems. He refused. Two weeks later, on the elder's specific instructions, Ron was approached again.

In an effort to put off the elders, Ron set strong conditions for his return. To his chagrin, the elders accepted. Ron advised the other two youths, *"I have lived away for some time. You know the band better than I do. I'm a theorist, and you are practitioners. If we work together as a team, we will have something to offer the people."* Their conditions included the following:

- To work as a team
- To be leaders only (i.e. they could not hold management positions)
- To concentrate on community business
- That their priority and availability would be to their band members (i.e. they must restrict their travel outside the community)
- To avoid conflicts of interest (i.e. a leader could not be present while the Council decided for his or her family member)

Ron and his council were elected that fall. This trio held core council positions for the next twenty years. New councilors came and went, but the core team remained the same.

When I recently visited this community, the organizational culture created in 1982 still held true. Ron is no longer chief, but one of the original three leaders is, and when I worked with them, they were orienting two new councilors to their organizational culture. Since 1982, the council has insisted on hiring experienced, qualified band administrators. Some former party goers in the community now hold key positions in finance and administration. The community hopes one day to have one of its own members assume the role of band administrator. There is a clear separation between the roles of the leaders and their staff. All councilors have deep respect for their culture, the elders and community members.

Despite its size (450 members), the community and its leaders had no problem assuming responsibility for the delivery of an array of programs and services devolved by the federal government, not to mention other economic and social programs.

The Skeetchestn organizational culture requires that leaders:

- Consult with members on important matters that affect them
- Establish band regulations and policies
- At operational level, work only with the Band Administrator
- Create economic opportunity and build social health for members
- Deal openly and honestly with conflicts of interest
- Hold administrator accountable for band operations

Skeetchestn leaders recognized that by-laws and policies, as an expression of self-government, contribute to community stability; provide structure to the community, and contribute to leaders and staff accountability. The elders played a key role in salvaging the community from its problems.

### **Gitksan Health Authority (GHA)**

In 1994, six Gitksan bands created a health authority for the purpose of delivering health services to its 5,000 members. A twelve-person board of directors was elected to direct the GHA. The board's annual budget was \$1M. Professional staff (nurses) and clerks were hired, some of whom were aboriginal. All professional staff had formerly belonged to a union, and understood their rights as employees.

The board consisted of hereditary chiefs (land holders), and an administrator was chosen, in part, on the basis of being a hereditary chief. The board held a retreat to decide its strategic plan and priorities. Rather than deal directly with members

health needs, as was its mandate, the board chose to build up the hereditary system as one of its priorities.

The directors agreed to an exorbitant honorarium. They also decided to have alternate directors, which increased the board, improperly, to 24 persons. Most of the board and alternates were unemployed, and unfamiliar with governance matters and their fiduciary obligation to their members. After a short while, the administrator became disgruntled and would not organize or attend board meetings. Rather than deal with the administrator, the board hired an administrative assistant who did that work.

Because staff issues were so pressing, and because this was the only source of income for many of the board members, they often held meetings weekly, and sometimes twice a week. In one year, board honorariums amounted to 25% of the total budget, with increased amounts of energy devoted to resolving staff grievances. This resulted in the professional staff inviting a union to represent them. The board ignored the staff until it was too late to prevent litigation with the union. Health services were delivered haphazardly to band members.

The organizational culture of the GHA involved:

- Self-interest over member's and client's interests
- Micro-managing
- Inability to plan and act strategically
- Failure to hire a qualified administrator
- Failure to supervise and properly evaluate the administrator
- Ignoring staff grievances

In my view, those who look after the property of others are trustees, even in traditional culture. Moreover, some values are universal to all cultures --- honesty, respect and sharing. The GHA board did not understand its fiduciary obligation to its members, and ignored their own traditional values.

The GHA is an exceptional situation. Few organizations go astray so quickly. Clearly, this was a classic case of how not to govern. The organization eventually got turned around, and is doing better today.

### **Metlakatla**

The Metlakatla First Nation is located near the city of Prince Rupert, in Northwestern BC. It has taken advantage of a number of economic opportunities in and around the city. To deal with these opportunities, the band created an Economic Development Corporation which has enjoyed many successes. A recent consultant's assessment of the MEDC is that it has growing pains, and needs to refocus. As part of its effort to refocus, the Band Council and the MEDC board of directors sought governance training.

While the Chief Councilor of the Metlakatla Band is also the Executive Director of the MEDC, no positions overlap. The Band Council has its own administrator. Neither organization has developed the usual policies and procedures one would expect at the band council, board or staff level.

Although lacking written policies and institutional safeguards, the organizational culture of the Band Council and the MEDC involves:

- An important separation of powers between the two organizations
- Honest, ethical leaders and staff
- Efforts to be open and transparent with members and each other
- An ability to capture opportunities, with a need for more strategic thinking given their successes

Generally, the Council and MEDC board were not aware of the process and structure of governance. But they were doing a good job, partly because their traditional culture was strong, and they tried to practice it. They related easily to the workshop delivered to them. They now have a better appreciation of the skills and tools of governance --- the institutions of governance as Manley Begay describes them --- and given the organizational changes they have in mind, have requested similar workshops for band members and staff. They want further training in how to develop policies and procedures for both staff and leaders.

### **Challenges and Opportunities**

In Canada, there is a general perception that all aboriginal communities have dysfunctional governance. That is not my belief. In recent years I have delivered governance workshops to many aboriginal communities and umbrella organizations in British Columbia and the Yukon. My experience is that perhaps ten percent of the First Nations I have worked with exercise good, even exceptional governance. Skeetchestn is an example of exceptional governance.

I also estimate that about ten percent of all aboriginal organizations are struggling with the new demands created by government policies. Some of the leaders in these communities, unfortunately, are acting more in their own self-interest than that of their members. Sometimes there is little that can be done until like Skeetchestn in 1982, and the Gitksan Health Authority in the 1990's, an event or crisis strikes which causes community members to take matters into their own hands.

In my opinion, Skeetchestn and the GHA are, for obviously different reasons, exceptional situations, while Metlakatla is closer to the norm. The majority of aboriginal organizations I have worked with are like Metlakatla, they need some training in governance principles, practices and institutions. Given the right support, they will develop an institutional framework that will serve them and their community well.

Before turning to Australia and the Northern Territory, let me add one further observation from my experience in Canada. A lot more thought must be given to supporting First Nations communities in their efforts to organize properly, especially those in remote communities.

Over the last ten years I have worked with many communities in western Canada. I find that virtually all communities are excited to learn about the principles, practices, skills and tools of governance. However, after working with a community for two or three days, I (or other advisors) leave, and the community is more or less on its own.

Most communities could benefit from having an on-site mentor. The person who can fill this role is the administrator or clerk. But this requires honest, ethical administrators who have no less than a certain level of skills and experience. An administrator with the right qualifications fills a key role. It is his or her responsibility to hire good staff, and to supervise and up grade them. It is his or her responsibility to help Council do the work of governors by assisting them to develop policy and create good governing institutions.

Qualified administrators are in short supply in Canada. Indeed, remote aboriginal communities are often the dumping ground for those who are not qualified to be administrators. For this reason, I am involved with others to create a First Nations public service to meet this crucial need in British Columbia. There is a crucial need for such people everywhere, but all the more so in remote communities.

### **Impressions of the Northern Territory**

Now, let me talk briefly about my experience in Australia. We have had the privilege of visiting several organizations and communities since arriving here. My impression is that some very good things are happening here. I will briefly tell you what we saw.

#### **Ikuntji**

We spent a day in Ikuntji. Here we saw an example of how an institutional framework may be evolving with the involvement and support of the Ikuntji Council and land holders. I got the sense that the Ikuntji clerk had many of the characteristics I would look for in an administrator in Canada. He was playing a key role, not just as an administrator, but as a facilitator and catalyst for ideas, values, community institutions and governance processes.

#### **Kalano**

We spent a morning at Kalano in Katherine. This is a very professional organization. It is a beehive of activity. The organization is structured and forward thinking. Elders are involved and respected, and women have a major role in Kalano's programs. The Kalano administrator has worked his way up to the position he is now holding through education and experience. He strikes me as confident and competent.

### **Thamarrurr**

The Thamarrurr at Wadeye have an equally interesting community. The strategic role land holders and women have played in its rebuilding is exciting. Clearly, the community decided it had to refocus in order to deal with some of its problems. The elders' role was described to us as, 'Retaining authority, while stepping back and putting our younger leaders out in front.'

The leaders described how they felt they had to convince government to take the community perspective into account. This is an important first step to moving forward. It appears, to its credit, government responded favorably. In other words, government became part of a "partnership" in the community's future, rather than a stumbling block.

### **Larrakia**

One couldn't help but be impressed by what the Larrakia are doing. Larrakia and Kalano have issues in common, since they are each located in a major community. Kelvin Costello, as administrator, plays a crucial role here, as do several others whom we met. We met the Council only briefly, but the impression gained is that the Larrakia Nation is business oriented, and focused on its member's needs and aspirations.

## Summary

As I suggested at the beginning of this paper, about ten percent of the organizations in Western Canada have exceptionally good governance; ten percent have very weak governance; and the balance are generally keen to do a good job for their members, and are seeking ways to improve themselves as effective governors.

I do not know whether these percentages apply to the Northern Territory. More work would have to be done to determine that. However, human nature is pretty consistent, and if the governance needs of the Northern Territory are similar to ours, it may help to know that the governance challenge is manageable because the majority of community organizations may only need a nudge in the right direction. Governance training can provide this nudge. Also, greater thought might be given to the special mentoring needs of the smaller, remote communities, where the right clerk plays a critical role.

I'm sure there are organizations in the Northern Territory that have governance dysfunctions similar to those experienced by Gitksan Health. But more importantly, it is obvious from Ikuntji, Kalano, Thamarrurr and Larrakia that the Northern Territory has some exceptional governance in some communities.

In the communities we visited over the last two weeks, indigenous leaders appear to be taking control of their destiny step-by-step. These leaders are supported by capable administrators and staff. If I were to characterize my impressions of those organizations, it might be described as follows:

- They have a sense of purpose about creating economic opportunity and building social health for their members
- They consult with members on important matters that affect them
- Elders (land holders) play an important role
- They appear to have, or be building, governance institutions, regulations and policies
- Experienced clerks play an important role
- The clerk is accountable for council administration

Other Northern Territory organizations could look to Ikuntji, Kalano, Thamarrurr and Larrakia as Australian models of governance.