

CLOSING THE WELL-BEING GAP THROUGH IMPROVED FIRST NATION GOVERNANCE

BY JOHN GRAHAM



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EXECUTIVE SUMMARY

Cogent evidence from both Canada and abroad suggests that poor governance is a principal cause of the sorry conditions in many First Nation communities. While the importance of governance is well established, how to improve governance remains a perplexing question. National and international experience shows that sustained governance improvements depend on three factors: political leadership, managerial and technical capacity and broad citizen support. Outside parties can assist with advice, funding and technical expertise but cannot lead efforts to improve governance. It also follows that governance improvements usually take considerable time; rapid governance improvements are possible but rare.

In sharp contrast with the overall dismal record of effecting important governance change is the entry into the European Union (EU) of former Soviet Bloc satellites – Slovenia, Estonia, Czech Republic, Romania, Slovakia, Poland, Lithuania, Latvia, Bulgaria and Hungary – after they had met stringent political, economic and membership criteria. Thus entering the EU to enjoy its many benefits provided the incentive for “a transformation of unprecedented scope and speed,” the kind of change that, according to the World Bank, is a rarity.

An accreditation system for First Nations, if well designed, could have an impact similar to the EU enlargement strategy in encouraging significant and sustainable governance changes. In Canada, accreditation (sometimes called certification) is becoming an increasingly common instrument in many fields of public administration. The idea of applying third-party certification or accreditation in an Aboriginal context has also gathered increased currency in such diverse areas as health, financial management and housing. For an accreditation system to be a positive influence in promoting sound governance among First Nation communities, it would need to be designed by

First Nation communities in collaboration with the federal government and be sensitive to large variations in First Nation communities, e.g., size and location; be managed by an independent First Nation organization (there are several organizations with accreditation experience that could assume this role); have a dedicated funding source and other capacity-building supports for First Nation communities to access in order to achieve accreditation; have tangible and immediate benefits including access to new funding arrangements with the federal government, programs and financial benefits; build on existing systems and standards; have a regular reaccreditation process to ensure ongoing compliance with the standards, and be voluntary.

A governance accreditation system would likely have standards that encompass at least the following: membership; leadership selection and appeals; the relationship of council to members, including the handling of complaints and accountability provisions; strategic planning; the roles of council, council members and senior staff; the functioning of council, including conflict of interest; financial management; human resource management; management of real property and other assets; protection of privacy; code of conduct; the relationship of council to other community bodies such as an economic development corporation; and the monitoring of program performance.

Developing such an accreditation system would be challenging. Nonetheless, this initiative could have a profound effect in altering the strained relationship between the federal government and First Nation communities. Funding is very much an important part of this relationship, and an accreditation system holds the promise of eliminating many of the irritants that plague it. Even more importantly, sound governance in First Nation communities could be a major factor in positioning them to benefit from Canada’s resource economy.

INTRODUCTION: GOVERNANCE MATTERS

Over the past few decades, commentators on First Nation issues have offered a variety of reasons to explain the sorry conditions in many First Nation communities. One of the most common is geography. Isolated reserves, they argue, are too far removed from job opportunities and have no natural resource base on which to build a sustainable economy.

Still others argue that lack of education is the chief culprit and that the focus should be on obtaining better educational outcomes in First Nation communities.¹ A related thesis is that the cumulative and ongoing legacy of colonialism is the key explanatory factor.

The problem with these and other explanations is that there are too many counter examples. Some First Nations with “poor” geography appear to have above average outcomes while other First Nations with “good” geography seem to do poorly (a number of First Nations in Alberta fall into this category). A recent quantitative study² found that remoteness explained only a small part of the differences in community well-being. Furthermore, explanations relating to geography and colonialism do not appear to lead to practical solutions.

Another cogent explanation for the wide differences in socio-economic outcomes among First Nations in Canada, and one closely related to the call for better education outcomes, is governance. There should be no doubt about the importance of governance to development. One of the early organizations to make this link was the Royal Commission on Aboriginal Peoples, which had this to say in its 1996 report:

Three problems need to be resolved to create a safe environment for development. First, a way needs to be found to separate and limit powers. If power

is concentrated in a few hands, and if there are few constraints on its exercise, there is a strong risk that those with power will use it in their own interests possibly at the expense of others in the community. Second, there must be a means to settle disputes that is open and impartial and provides assurance of a fair hearing, with judgment rendered by a body not controlled by government or any community faction. Third, a way needs to be found to guard against inappropriate political involvement in the day-to-day decisions of business ventures or economic development institutions.³

Some years later, the Harvard Project on American Indian Economic Development at the John F. Kennedy School of Government issued a report that began with a puzzle. Why do American 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.”⁴

Closer to home, based on interviews of the leaders of 25 of some of Canada’s most economically successful First Nation communities, a study under the auspices of Aboriginal Affairs and Northern Development Canada identified four principal success factors: rules and systems that work, local decision-making, community capacity and useable land. The first three of these speak directly to governance while the fourth is only a factor if good governance is present. As one respondent in the study noted, “Without good governance, you’re going nowhere.”⁵

In another Canadian study,⁶ Tom Flanagan and Katrine Beauregard of the University of Calgary tested four

governance-related indicators as possible factors to explain differences in First Nation community well-being – use of Certificates of Possession, adoption of property tax, entry into the *First Nations Land Management Act* and avoidance of third-party management of finances. They concluded that “... all four variables are positively correlated with higher [community well-being] scores, even after controlling for cultural background and remoteness of location.”

These findings on the importance of governance in explaining socio-economic outcomes among indigenous peoples in North America mirror similar conclusions in international settings. For example, a recent study for the World Bank that encompassed empirical evidence from 130 countries over a 10-year period concluded that governance matters: there is a strong causal relationship from good governance to better development outcomes such as higher per capita incomes, lower infant mortality and higher literacy.⁷ Kofi Annan, the former Secretary-General of the United Nations, offered a similar judgment: “Good governance is perhaps the single most important factor in eradicating poverty and promoting development.”⁸

Good governance is particularly important in Canada’s First Nation communities because their governments are so large in relative terms – their responsibilities include not only those of municipalities, but also important elements of provincial and federal governments. It is no exaggeration to state that measured by per capita expenditures, First Nation governments are the largest local governments in the world.⁹ Furthermore, with virtually no private sector and little in the way of not-for-profit organizations, these governments tend to be the only game in town. In short, the quality of governance in these communities really matters.

GOOD GOVERNANCE AND ITS RELATIONSHIP TO DEVELOPMENT

That governance matters still leaves open for debate a number of critical questions: What is good governance? How does good governance result in positive developmental outcomes? Is good governance merely a Western concept or does it have universal appeal and relevance? Each question in itself merits an essay, but here is an overview of some of the pertinent research and analysis that has a bearing upon these questions.

In two recently published books, American scholar Francis Fukuyama has done a comprehensive analysis of what constitutes good governance.¹⁰ They provide an overview of political development in all parts of the world dating back to hunting and gathering societies. According to Fukuyama's exhaustive study, the following institutional framework is a necessary condition for good governance:

- The state has a monopoly on violence and is built on a highly effective, merit-based bureaucracy – something difficult to achieve with human nature gravitating to family and kin relationships.
- Rule of Law denotes equality before the law, the law constraining the state, the protection of property rights, and citizen security.
- Democracy means accountability through elections (universal suffrage) and other means.

A central conclusion of Fukuyama's analysis is that while there is a common institutional framework to good governance, the paths that various political entities have used to get there vary enormously.

There have been many other attempts to define good governance. Researchers, including the author of this essay, at the Institute on Governance (IOG), an independent think-

tank, postulated that good governance is characterized by five principles: legitimacy and voice, fairness, performance, accountability and a shared strategic vision.¹¹ The World Bank has developed six principles of good governance,¹² many of which overlap those of the IOG, while the Harvard study of American Indian Economic Development cited above has developed a similar set of principles or elements. The table below illustrates a reasonable convergence of what constitutes good governance amongst these disparate sources.

Fukuyama	Institute On Governance	World Bank	Harvard
Effective, merit-based state	Performance Strategic vision	Government effectiveness Regulatory quality Control of corruption	Stable institutions & policies Competent bureaucracy Strategic direction
Rule of law	Fairness	Rule of law	Fair & effective dispute resolution
Democracy	Accountability Legitimacy and voice	Political stability and absence of violence Voice and accountability	Cultural match Separation of politics from business

Despite the seeming convergence in this table, there is still much to debate regarding what constitutes good governance and how to realize it. One important issue is the question of voting. Paul Collier, the noted British expert on international development, has provided evidence that in poor, multi-ethnic states with little or no economic growth combined with significant resource revenue, there is a marked tendency for elections to have a pernicious effect, especially on their tendencies toward violence.¹³

Similar arguments have been mounted with regard to highly distressed First Nation communities dominated by several

competing families. A former First Nation leader from Northern Ontario, Wally McKay, sums up his experience as follows:¹⁴

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 also 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.

Another contentious question is whether good governance is simply a Western concept that is not relevant to much of the world. Fukuyama is squarely on the side of universal application of the concept:

I believe that development of these three sets of institutions [encompassing democracy, rule of law, and the state] becomes a universal requirement for all human societies over time. They do not simply represent the cultural preferences of Western societies or any particular cultural group. For better or worse, there is no alternative to a modern, impersonal state as guarantor of order and security, and as a source of necessary public goods. The rule of law is critical for economic development; without clear property rights and contract enforcement, it is difficult for businesses to break out of small circles of trust. Moreover, to the extent that the law enshrines the unalienable rights of individuals, it recognizes their dignity as human agents and thus has an intrinsic value. And finally, democratic participation is more than just a useful check on abusive, corrupt, or tyrannical government. Political agency is an end in itself, one of the basic dimensions of freedom that complete and enrich the life of an individual.¹⁵

Researchers at the IOG take a somewhat more-nuanced approach. They argue that their good governance principles

link directly to the Universal Declaration of Human Rights and thus have worldwide application. That said, history and culture are strong determinants in how these principles are applied in practice. Buttressing the Institute's case vis-à-vis indigenous peoples is Article 1 of the Declaration on the Rights of Indigenous Peoples, which explicitly endorses the Universal Declaration of Human Rights and human rights law.

Finally, how does good governance lead to well-being? There appear to be at least three answers around which there is a fair degree of consensus. First, good governance leads to economic growth and a reduction in poverty by enforcing property rights, creating a level playing field and encouraging investment in technologies and skills. Second, good governance promotes political stability through governments that are legitimate and responsive and through the dispersion of political and economic power. Third, good governance results in the promotion and enforcement of human rights, which is a strong determinant of human well-being, as many, including Fukuyama, argue.

BUILDING GOVERNANCE CAPACITY

While the importance of governance is well established, how to improve governance remains a perplexing question. Evidence from abroad is not encouraging. The World Bank tracks governance indicators across 213 countries and reported that there was no strong evidence of a significant trend in improvement in governance worldwide from 1996 to 2009, despite substantial investments amounting to billions of dollars over that period.

National and international experience shows that sustained governance improvements depend on three factors: political leadership, managerial and technical capacity and broad citizen support. Outside parties can assist with advice, funding and technical expertise but cannot lead efforts to improve governance. As the Harvard researchers noted:

Making the federal government bear responsibility for improving economic conditions on Indian reservations may be good political rhetoric, but it is bad economic strategy. When tribes take responsibility for what happens economically on reservations and have the practical power and capacity to act on their own behalf, they start down the road to improving reservation conditions.¹⁶

It also follows that governance improvements usually take considerable time; rapid governance improvements are possible but rare. Finally, capacity-building efforts to improve staff and leadership skills and competencies in First Nation communities – the most common approach to creating sound governance – may bring short-term improvements, but these may not be sustainable without community support. When new political actors take charge, successful programs can sometimes grind to a halt.

THE EUROPEAN UNION'S ENLARGEMENT STRATEGY

So where can we find successful models of rapid governance improvements that might be relevant to First Nations? Oddly, the recent experience of the European Union (EU) may provide answers.

In sharp contrast with the overall dismal record of effecting important governance change is the entry into the EU of former Soviet Bloc satellites – Slovenia, Estonia, Czech Republic, Romania, Slovakia, Poland, Lithuania, Latvia, Bulgaria and Hungary. Their admission into the EU was premised on profound economic and governance changes in a relatively short period. Here is *The Economist's* assessment, one based on considerable academic research:

*It is, quite simply, the European Union's greatest achievement. The offer of EU membership to its neighbours in the east and south has proved a masterly way of stabilizing troubled countries and inducing them to make democratic and liberal reforms. The contrast with the United States, which despite spending billions has failed to find an equivalent policy for the countries of the Caribbean rim, is striking.*¹⁷

To join the European Union, a state had to meet three criteria known as the Copenhagen criteria:

POLITICAL: stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;

ECONOMIC: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and

ACCEPTANCE OF THE COMMUNITY ACQUIS: ability to take on all the obligations of membership including adherence to the aims of political, economic and monetary union. The acquis is essential to ensuring legal uniformity in the whole union.

Underlying these criteria is a rigorous accession and monitoring process in which the prospective members receive financial support from the EU to help effect the necessary reforms.¹⁸ Poland, Romania and Bulgaria, for example, received €470-million, €306-million and €161-million respectively over an 11-year period.

In sum, the benefits of entering the EU have provided the incentive for "a transformation of unprecedented scope and speed,"¹⁹ the kind of change that, according to the World Bank, is a rarity. Poland is the poster child for this transformation. Since joining the European Union in 2005, it has enjoyed an economic renaissance,²⁰ substantially lowering unemployment and poverty, increasing exports threefold, upgrading its credit rating and achieving remarkable economic growth. Indeed, in 2003, Poland's GDP amounted to 48.8 per cent of the EU average. By 2012, it had risen to 66.9 per cent, an increase of more than 18 points in less than a decade. Further, Poland was the only EU country not to slide into recession following the 2008 worldwide financial crisis. And the principal cause of this success? Here is *The Economist's* answer:²¹

The biggest single contribution to Poland's success ...was its effective use of EU membership. The Poles were quick to see the opportunities in the EU's structural and cohesion funds as well as the benefits of improving their own governance and transparency. Poland fought harder than Romania, Bulgaria and its Visegrad peers against corruption, especially in public procurement, and has a decent record of using structural funds as a result. The EU has rewarded Poland's probity by making it the biggest recipient of its funds (a whopping €102 billion, or \$139 billion [US]) between 2007 and 2013.

The EU enlargement strategy is not without critics.²² Some contend that countries such as Romania and Bulgaria

entered the EU before they were ready. Compounding the error is the lack of any effective mechanism for dealing with member countries that disregard the rule of law and other admission criteria, a lesson that should not be forgotten in building on the EU enlargement experience.

The next question to address is could something akin to the EU experience be developed with a set of incentives so alluring that First Nation leaders and their staff, urged on by their communities, would make the necessary transformative changes to dramatically improve their governance?

TOWARD A FIRST NATION ACCREDITATION SYSTEM

An accreditation system for First Nations, if well designed, could have an impact similar to the EU enlargement strategy in encouraging significant and sustainable governance changes. In Canada, accreditation (sometimes called certification) is becoming an increasingly common instrument in many fields of public administration, including health. For example, many hospitals and other health care providers go through an accreditation process under the auspices of Accreditation Canada (formerly the Canadian Council on Health Services Accreditation). In the private sector, the Canadian Chemical Producers Association introduced the Responsible Care Program in the mid-1980s, an accreditation program for its members. More recently, Imagine Canada developed an accreditation system for charities and not-for-profit organizations.

Not surprisingly, the idea of applying third-party certification or accreditation in an Aboriginal context has also gathered increased currency. Accreditation Canada has established a program for some First Nations' health organizations. At least two First Nations – Membertou in Nova Scotia and Sagamok in Ontario – have succeeded in obtaining ISO 9001:2000 accreditation. And the First Nations Financial Management Board (FNFMB) developed a system for First Nations that wish to borrow money for financing much-needed infrastructure in their communities and want to use property tax revenue as collateral. In a similar vein, the First Nations Market Housing Fund (FNMHF) has a set of standards that communities must meet, including several related to governance, to be eligible for program benefits including partial guarantees for loans from commercial banking organizations.

Why this interest in accreditation? These are some of the purported benefits: such systems promote improved services for citizens; enhance accountability and transparency for funders and citizens; engender

greater confidence of potential partners such as financial institutions and other businesses because of reduced risk; focus capacity-building efforts to attain accreditation; provide an incentive for sustainability of reforms because of the need to be continuously reaccredited; and promote a commitment to continuous improvement, as the accreditation standards undergo ongoing review and enhancement.

In a First Nation context, while these benefits would be important, there need to be more-tangible and immediate reasons to justify the cost and time that achieving accreditation would demand from already overstretched communities. Such benefits might come in three forms.

The first would centre on federal government transfer payments to First Nation communities, a longstanding concern of First Nations and many First Nation organizations. In its April 2013 report titled "Addressing Barriers to Economic Development on Reserve," the National Aboriginal Economic Development Board had this to say:

The Board believes that to resolve the many conflicts inherent in the Crown-First Nation relationship ... the federal government needs to enter into mature and modern arrangements with First Nations governments. These relationships should be characterized by stable and long-term funding arrangements, with decision-making and control exercised at the community level.²³

Former Auditor-General of Canada Sheila Fraser came to a similar conclusion:

"... Our audits have shown that there are a number of issues affecting programs and services that hamper

progress, and negate the efforts of many dedicated public servants ... Funding is insecure and often not timely because it is provided through short-term contribution agreements which are subject to the availability of funding – there are no statutory funding requirements or service standards.”²⁴

An accreditation system administered by an independent body would provide all levels of government with a valid risk assessment on which to base long-term funding arrangements with much-reduced conditionality and reporting burdens and would be in line with existing federal policy on risk-based fiscal transfers. Importantly, the assessment of risk would be taken out of the hands of the federal government, as would ongoing monitoring responsibilities. Periodic reaccreditation would provide assurances of continuing sound governance. Without reaccreditation, benefits, including access to more-flexible funding arrangements, would cease.

Another set of tangible benefits for accredited Aboriginal communities might be access to a set of programs. There are already precedents for this, as the previous section noted, with regard to the FNFMB and the FNMHF. A third set of tangible benefits might come from the private sector through, for example, easier access to credit at lower interest rates from private sector financial institutions.

In summary, for an accreditation system to be a positive influence in promoting sound governance among First Nation communities, it would need to

- have a dedicated funding source and other capacity-building supports for First Nation communities to access in order to achieve accreditation (following the examples of the FNFMB and the FNMHF);
 - have tangible and immediate benefits including access to new funding arrangements, programs and financial benefits;
 - build on existing systems and standards (e.g., those of the FNFMB and FNMHF);
 - have a regular reaccreditation process to ensure ongoing compliance with the standards, and
 - be voluntary.
- be designed by First Nation communities in collaboration with the federal government and be sensitive to large variations in First Nation communities, e.g., size²⁵ and location;
 - be managed by an independent First Nation organization (there are several organizations with accreditation experience that could assume this role);

GOVERNANCE STANDARDS

What elements of community governance would such a system address? A governance accreditation system would likely have standards that encompass at least the following: membership; leadership selection and appeals; the relationship of council to members, including the handling of complaints and accountability provisions; strategic planning; the roles of council, council members and senior staff; the functioning of council, including conflict of interest; financial management; human resource management; management of real property and other

assets; protection of privacy; code of conduct; the relationship of council to other community bodies such as an economic development corporation; and the monitoring of program performance.

The FNFMB certification requirements provide an illustration of what the financial management elements of a First Nation-designed accreditation system might look like.

First Nations Financial Management Board's Certification Process

1. *Compliance approval of a fully implemented Financial Administration Law that meets the Board's standards relating to such matters as the role of Finance and Audit Committees, Code of Conduct, the management of tangible capital assets, annual planning and budgeting, financial and operational reporting, etc.*
2. *Certification that a First Nation's financial management system (policies, procedures, practices, etc.) are fully implemented and meet the Board standards relating to such matters as risk management, insurance, cash management, investment policy, privacy protections, etc.*
3. *Certification that a First Nations financial performance (assessment of seven core financial ratios) meets Board standards.*

CONCLUSION

Developing such an accreditation system would be challenging. Nonetheless, this initiative could have a profound effect in altering the strained relationship between the federal government and First Nation communities. Funding is very much an important part of this relationship, and an accreditation system holds the promise of eliminating many of the irritants that plague it.

Even more importantly, sound governance in First Nation communities could be a major factor in positioning them to benefit from Canada's resource economy. The importance of enhancing First Nation participation in major resource projects cannot be overstated either for First Nation communities or for Canada as a whole. The potential opportunities are staggering. More than 600 major projects representing \$650-billion in new investments are planned over the next 10 years, and approximately half of these projects are scheduled to take place in or near First Nation communities (ironically, "bad" geography has suddenly turned into "good" geography). One-quarter of Canada's discovered and undeveloped resources of conventional petroleum are in Canada's North, where Aboriginal people make up nearly 53 per cent of the population. Some 300,000 workers are needed for these projects, and there are 400,000 Aboriginal youth entering the labour force in the next decade.

The potential to help close the well-being gap between First Nation and non-Aboriginal communities through these projects must not be squandered. Building sound governance through a well-defined First Nation accreditation system could be an important element in realizing this goal.

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