First Nations Governance Pilot Projects: Challenge and Innovation

FINAL REPORT

Volume 1

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Prepared for the First Nations Governance Centre
By
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Volume 1

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Introduction

Between November 2003 and March 2004, First Nation governments and organizations across Canada were invited to make proposals for pilot projects on matters related to First Nation governance. One hundred and twenty-nine projects received funding. Of this group, 115 submitted reports to the Department of Indian Affairs and Northern Development in time to be considered in this study. The reports were submitted on the understanding that they might be shared with other First Nations. Project reports available for review as part of this research project are listed in Appendix A of Volume 2.

The First Nations Governance Centre, an independent research and education organization, recognized the value of these reports in providing information about First Nations' governance activities and priorities, and for informing the Centre of issues of importance and related areas of research.

In the spring of 2004, the First Nations Governance Centre asked the Carleton University Centre for Community Innovation (3ci) to prepare an analytical review of completed pilot project reports. The goals of this research were to:

> - identify general *trends and patterns* within the collection of governance pilot projects,

> - assess the pilot projects in terms of *process and products*, with an eye to uncovering and further investigating innovative projects of general interest as case studies, including projects that were indicative of traditional approaches to governance,

> - prepare a comparative and *contextual analysis* of the projects, and

> - recommend *further areas of research and development* on First Nation governance, based on what was learned about priorities and practices from the case studies.

This two volume report is the result of that work. It reveals a remarkably rich range of experience with community-based action to improve specific aspects of First Nations' governance.

The collection of reports as a whole tells much about the priorities and practices of First Nation governments. Many of the projects demonstrate a high level of competence in community-based or participatory research, reflection and analysis. As well, among the various initiatives undertaken by First Nations are found many good examples and well-developed practices that may in themselves be of interest to other First Nation governments and indeed, to other governments of similar size.

In this report we comment both on trends and patterns in First Nations' development of governance tools and institutions, and upon specific initiatives in all parts of Canada that might be of interest to others facing similar challenges.

1. Report Organization and Research Methodology

The report is organized in two volumes. The various components of the research, and how this informs the organization of information in Volumes 1 and 2 of the research report are depicted graphically in the diagram below. The research methodology is described more fully in Appendix B of Volume 2.

At the heart of both volumes are the 115 First Nation governance project reports. These were reviewed both as a collection and in more detail as case studies of First Nation governance development.

Volume I introduces the First Nations Governance Project initiative. It discusses the opportunities and limitations created by DIAND terms of reference and provides an overview of funded projects by reviewing the trends and main findings that emerge from them. These are analysed as aspects of a four track process of broad political change, at the level of treaty or constitutional relationship, First Nation community development and institutional development, and changes to the government-to-government relationship.

Volume II describes the results of 29 projects, selected as case studies for their general interest and transferable experience. The case studies are organized in nine thematic categories corresponding with aspects of First Nations governance. The case studies demonstrate diverse First Nation responses to the challenges and opportunities of governance development and reform.
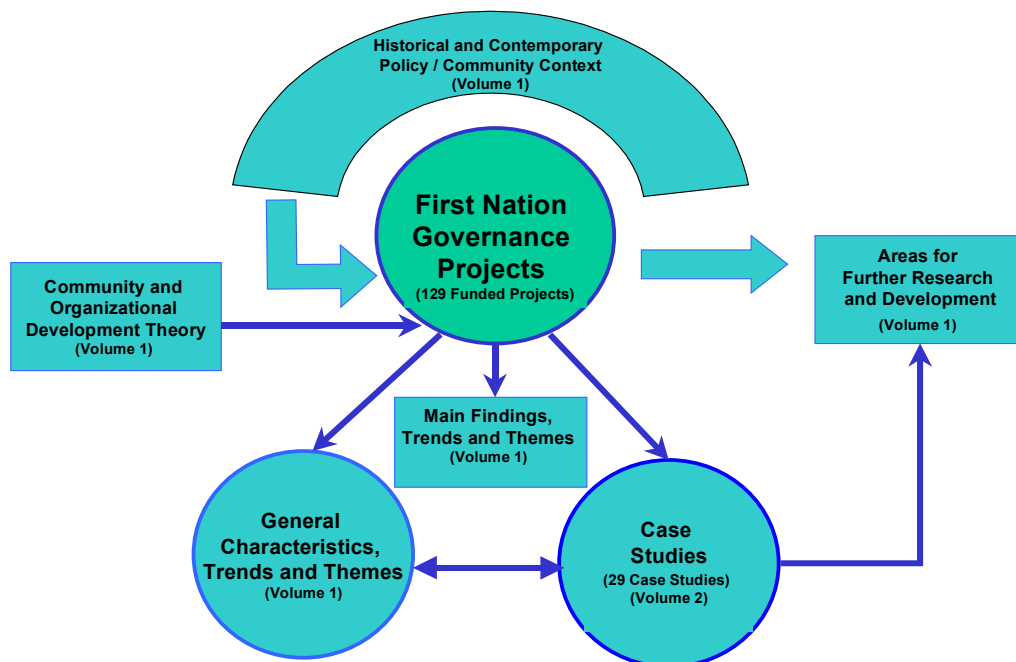
2. Organization of Volume 1

Volume I is organized in five parts.

Part I provides an ***introduction to the First Nations Governance pilot projects initiative.*** It comments on the opportunities and constraints created by terms of reference established by the Department of Indian Affairs and Northern Development.

Part II summarizes major ***trends and themes*** that emerged within the collection of completed projects. It introduces the ***main findings*** of this study.

Part III places the projects in ***the context of historical and contemporary policies*** that have shaped First Nation governance. It identifies important features of good government and identifies some of the key issues confronting First Nation governments today.

In **Part IV,** the analysis is extended by building upon specific experiences documented in the First Nations' pilot project reports. Here the report identifies ***what can be learned from the First Nations' projects about good governance and processes for building it.*** These experiences will be of general interest to other First Nations and Indigenous governments, and also to Canadian citizens generally. This part draws linkages between First Nation projects and research on organizational change and development.

Finally, in **Part V**, general conclusions are drawn, ***and priority areas for further research and development*** in the area of First Nation governance are suggested.

Part I - The First Nations Governance Projects Initiative

1. Origins

The First Nations Governance Projects initiative was one of several governance initiatives sponsored by the Minister of Indian Affairs and Northern Development during the mandate of the previous Liberal government (2000– 2004).

The program began in the winter of 2002-03, when the Saskatchewan Region of the Department of Indian Affairs and Northern Developments (DIAND) funded three projects "to document best practices in governance and the costs of local governance." In August 2003, the governance projects program was offered to First Nations across Canada. Public announcements were made by the Minister in all regions.

DIAND terms of reference and the proposal guide for the projects identify the following objectives:

> ➢ To enable First Nations and First Nation organizations to carry out projects which address implementation issues and the requirements of the proposed *First Nations Governance Act*, Bill C-7, in four priority areas:
>
>> 1) band government support systems,
>> 2) code development,
>> 3) aggregations of functions and authorities,
>> 4) costing of implementation activities related to C-7.
>
>> Under each of these specific areas, the guide provides a detailed list of issues to be addressed.
>
> ➢ To facilitate increased capacity development at individual and/or aggregate community levels in governance functions associated with the implementation of the proposed *First Nations Governance Act*.
>
> ➢ To have First Nations governance projects produce a number of specific governance tools (including tools which can be used in the context of First Nation traditions and customs) in each of the four priority areas listed above.

The full proposal guide, with these details included, appears as Appendix C of Volume 2.

2. Funding Decisions

First Nations, Tribal Councils and First Nation organizations were invited to submit proposals. Departmental officials assessed the proposals for conformity with program objectives. Decision-makers considered the approval of projects on the basis of:

Outputs or products:	Preferred projects were to produce specific governance tools or document models or aspects of governance functions under the proposed *First Nations Governance Act* (FNGA).
Project outcomes :	These had to be clearly explained. Projects were assessed on the degree to which (a) the project would result in practical applications, strengthening First Nations governance and, (b) the project would assist First Nations in the implementation of the *First Nations Governance Act* in the four identified priority areas.
Distribution of topics:	The program guidelines stated "a good mix of projects across the four priority areas" was being sought.
Region:	The documentation received as part of this research project does not mention regional distribution of the projects, but it is clear from the approved projects list that DIAND attempted to support projects in every region.

3. Constraints

The number and variety of projects completed under the Governance Pilot Project program suggests that many First Nations governments and organizations recognized that the program offered opportunities to advance their work. It is clear that the program also introduced significant constraints which likely shaped the nature and scope of the projects that we studied. Following are some observations on the effects of project terms of reference on project selection and the execution of the projects themselves.

1. *First Nations took the opportunity offered by the targeted program to advance their own goals in respect of First Nations governance.*

    DIAND's official purposes and the constraints of the pilot project no doubt affected the number and type of applications. It is not so clear, however, that First Nations felt constrained by frequent references to Bill C-7 in the program materials and obliged to shape their projects in this direction. Instead, it appears that First Nations used the funding opportunity to undertake or advance projects that were important to them, and that could be seen to be eligible under the program guidelines.

2. *Duration of the application period and funding limits probably limited the number and type of proposals from First Nation organizations.*

    The short lead time between announcement of the program and the deadline for applications probably limited the number of First Nations that applied, and tended to favor well-organized and adequately staffed First Nation governments and organizations who were already working on governance. The requirement that the projects be completed within the fiscal year of application likely further limited the number of applications, as it would have shaped what the applicants proposed to do. Projects requiring more than a few months to complete, or projects that could not be conceived of in phases, would not have

been eligible. All of the projects reviewed in this report were developed, written into proposals, assessed, funded and completed in less than one year.

Considering this time frame, the depth and the sophistication of many projects is remarkable. From the project reports, it is clear that many First Nations saw the Governance Pilot Projects as an opportunity to take developmental work that was already underway another step. Others used the pilot project as an opportunity to complete a relatively small and separate piece of work (such as the development of a human resources policy), while a few used the pilot project as an opportunity to launch new initiatives that they expect to continue.

The research team for the Carleton Centre for Community Innovation did not receive a list of rejected projects, or any record of negotiations between regional staff and First Nations. As a result, there is no way to assess the extent to which particular areas of governance may have been excluded.

3. *The total amount of funding allocated for each project was important.*

The original announcements indicated that most approved projects would be funded in the amount of $50,000, though a range of $10,000 to $60,000 was possible. In addition, Tribal Councils and other aggregate groups could apply for larger amounts.

The notional funding cap of $60,000 per project may have limited the scope of work that could be envisioned. In practice, most First Nations did not receive funding at the highest level, but rather in the range of $15,000 - $30,000. For a small organization, this level of funding could certainly be important to creating an opportunity for work on governance, but it would probably rule out certain activities.

4. *The project guidelines probably established at least part of the pattern of applications.*

Although many First Nations and organizations who received funding applied a somewhat broad interpretation to the project guidelines, it is still likely that a somewhat different set of projects would have developed had the guidelines been less prescriptive, or prescriptive in another direction. For example, the guidelines do not specifically mandate work on traditional approaches to governance to contemporary requirements; possibly more of this work would have been undertaken had they done so. The complete DIAND program terms of reference and funding guidelines can be found in Appendix C of Volume 2.

5. *First Nations were unable to develop governance reform and prepare development plans with a reasonable expectation of implementation in the medium to longer term.*

Many First Nations took the opportunity provided by their project to think strategically about the future. Many prepared coherent and staged plans for governance development. However some First Nations were only able to complete a

portion of developmental work, and were unable to advance beyond the planning phase.

These constraints illustrate a common feature of the complex relationship between federal departments and First Nation governments and organizations. A conundrum underlies the changing stance of the federal government, from top-down overseer of First Nation governments to facilitator of grassroots change and political development. Federal purposes shaped the pilot projects, and the federal fiscal year and timelines imposed further limits. Though these features of the program are hardly ideal for building a grassroots process of political change, in fact, the collection of project reports reveals a remarkable range of development processes, indicating that progress in many First Nations towards authentic self-government is both broad and deep.

Part II: Overview of Project Trends, Themes and Findings

1. The First Nations Governance Project Report Collection

The First Nations Governance pilot project collection contains reports prepared by First Nations and First Nation organizations. Out of a total of 129 DIAND approved projects, 115 were available for review and consideration as part of this research project. Available reports are listed in Appendix A of Volume 2.

The research team analysed the collection of available reports to create a working inventory, the final form of which appears in Appendix D of Volume 2. It provides, at a glance, an overview of:

> ➢ project proponent,
> ➢ location,
> ➢ report content, and
> ➢ tangible products.

The project reports were also analysed for trends and patterns. These are described below, in terms of:

> (a) Project Proponents and Geographic Distribution
> (b) Content and Products
> (c) Processes
> (d) Implementation

a) Project Proponents and Geographic Distribution

Project proponents most frequently are individual First Nation communities. Approximately 85% of INAC approved projects were completed by individual First Nations or small groups of First Nations that share strong community or nation ties. Other projects were undertaken by Tribal Councils, treaty or regional organizations, and First Nation institutions specializing in aspects of First Nations governance and administration.

**Distribution of First Nations Governance Pilot Projects,
By Province, Territory and Region**
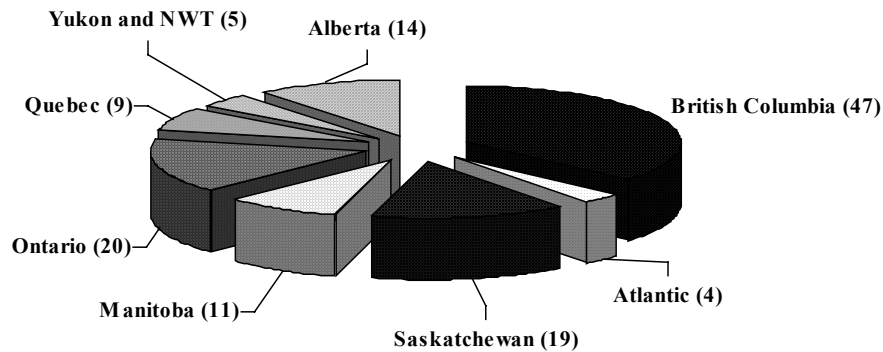
Projects are widely distributed across the provinces and territories of Canada. The distribution of DIAND funded projects by province, region and territory is set out in the diagram above.

b) Content and Products

Since DIAND intended the First Nations governance pilot projects to address implementation issues and the requirements of Bill C-7, the proposed *First Nations Governance Act*, eligible categories of project activity included:

1. band government support systems,

2. code development,

3. aggregations of functions and authorities,

4. costing of implementation activities related to C-7.

Of the four potential categories for project activity identified in the initiative's terms of reference, most are concerned with new code development, or the codification of existing or modified First Nation (Band) government systems, procedures and policies.

Several reports are prepared by treaty, tribal and regional aggregations of First Nations. A few of these include proposals for government structures and institutions at levels of aggregation that go beyond the individual First Nation, or provide for the exercise of First Nation authority at aggregated levels (e.g. Ktunaxa Kinbasket Nation Council, Treaty #4 Public Service Commission, Lower Stl'atl'imx Tribal Council, Battlefords Tribal Council, Hul'qumi'num Treaty Group).

Some projects propose generic laws, codes or policies in key areas of governance that could be adopted by participating member First Nations or serve as templates for other interested

First Nations (e.g. Prince Albert Grand Council, Confederacy of Mainland Mi'kmaq, Sandy Lake First Nation).

Overall, less attention is directed to assessing the financial implications of the *First Nations Governance Act.* However, many reports note the fiscal requirements associated with completing the work of First Nation governance reform and development and implementing new structures, procedural codes and administrative policies. Many reports recommend subsequent phases of activity, including community ratification of codes developed, development of codes in other areas, and training and other capacity development. As a result, an important by-product of the First Nation governance project reports is the overall picture of financial implications and capacity requirements.

First Nations variously set out to meet the objectives of developing concrete products and governance tools, and carrying out processes aimed at engaging leaders, staff and community members in governance capacity development. In some instances, project report content consists only of a description of the processes of community engagement. Others simply deliver the tangible products of the project (i.e. codes, laws, policies and procedures in key areas of governance such as elections, appeals, core government procedures, human resources and personnel management) without comment on how these were developed.

Other projects report on both a process, and the products of a process. Many projects were multi-faceted, delivering products that address different aspects of First Nation governance. For example, a project might have involved the concurrent development of a leadership selection code, an appeal mechanism and a governance policy describing roles, responsibilities and procedures for Chief, Council and administrative staff. In general, the trend is to combine the development of codes, laws or policies in key areas of governance. Other projects focused on a single aspect of First Nation governance, for example, the development of an election code or human resource policy.

An analysis of the collection of First Nation governance reports, and the inventory contained in Appendix D of Volume 2**,** indicates the following distribution of governance projects according to content and the type of tangible products that resulted from the project.

> ➢ 30% of projects (35) undertook an ***internal review*** of First Nation governance circumstances and/or led to the development of an organized strategy or plan to reform or modify First Nation governance, develop governance tools and/or engage the community in governance related processes and activities.

> ➢ 17% of projects (20) included a proposal for a ***new First Nation government structure*** that either would displace, modify, overlay or interface with the existing Band Council structure of government.

> ➢ 28% of projects (32) included a component defining the duties, roles and responsibilities of existing ***structures of government***, namely Chief and Council and First Nation administration. These projects also frequently were concerned with clarifying the relationship between political and administrative structures.
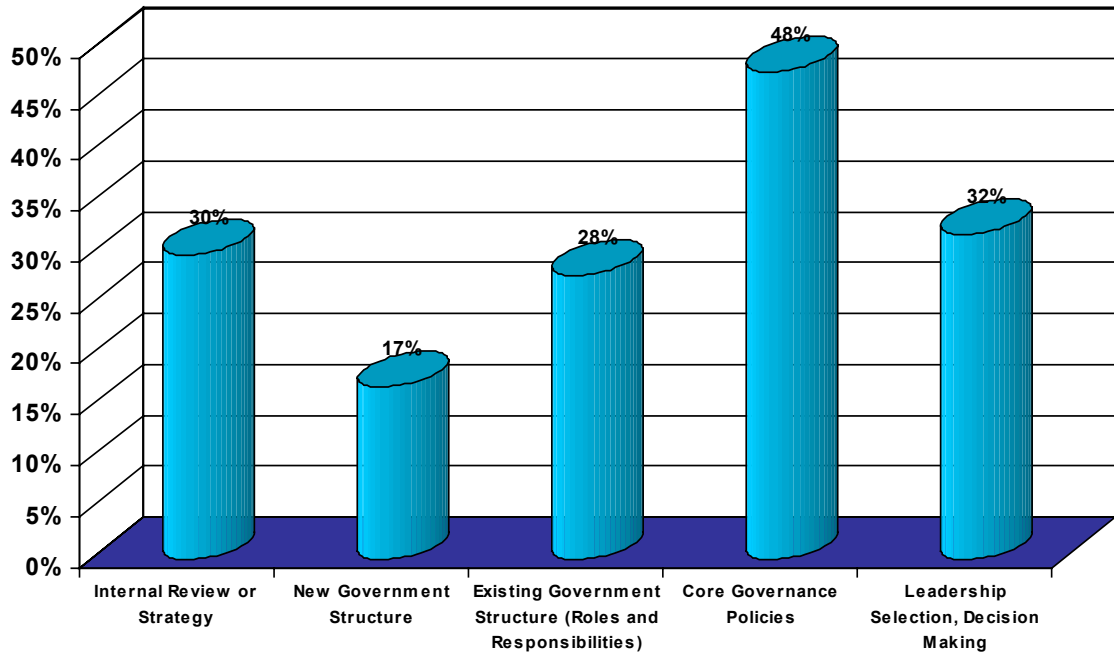
- 48% (55) developed ***core governance policies and procedures*** including, for example, procedures relating to the conduct of meetings of the community and Council, conflict of interest rules or codes of conduct for public officials, staff and others.

- In 32% of projects (37), a ***leadership selection*** (election) code, law or procedure was included as part of the project documentation, and/or a community decision making process such as a ratification procedure or referendum law was developed.

- For 13% of First Nation governance projects (15), a primary focus was the development of procedures concerning the ***appeal and redress*** of administrative decisions and/or dispute resolution mechanisms.

- 26% of projects (30) produced a code, policy or law concerning ***financial management and/or government administration***.

- 24% of projects (28) addressed ***human resource*** management and policy issues, including through the development of codes, policies, manuals or procedures.

- 11% of First Nation governance projects (13) resulted in ***codified policies*** for program and service delivery, for example in the area of housing, recreation and social services.

- 5% of projects (6) were focused on developing either a plan or set of tools to facilitate ***communication*** on governance matters, or to use ***information technologies*** in First Nation government administration.

The distribution of First Nation pilot project "products" is depicted in the bar graphs on the following page. Many projects fall into more than one category, since a significant number of First Nations chose to work on several aspects of First Nation governance concurrently. Each of these initiatives was counted – that is, some projects are counted under more than one category.

Many of the codes and policies developed are similar to those used by other, non-First Nation, governments and organizations, especially in such core administrative matters as human resource and financial management. If the principles are the same, variations may result as the new codes and policies are put into practice in a manner that expresses individual First Nation and community circumstance and culture.

Some reports present creative outcomes and unique products that are highly community-specific (e.g. York Factory First Nation, Nakoda-Wesley First Nation, Musqueam, ?Akisq'nuk). Others result in more generic and therefore more easily transferable governance tools and products.

Governance Project Products (1)

Category	Percentage
Internal Review or Strategy	30%
New Government Structure	17%
Existing Government Structure (Roles and Responsibilities)	28%
Core Governance Policies	48%
Leadership Selection, Decision Making	32%

Governance Project Products (2)

Category	Percentage
Appeals, Redress, Dispute Resolution	13%
Financial Mgmt and/or Government Administration	26%
Human Resource Management and Policy	24%
Codify Existing Program Policy	11%
Communication and Information Technology	5%

c) Process

The review of project reports revealed a diverse and interesting set of processes adopted by project organizers in order to:

➤ provide oversight and direction to the project,
➤ prepare "products" including codes, policies and procedures, and
➤ engage communities directly in the development of governance frameworks, strategies and products.

First Nation projects were led, coordinated, managed and written by:

• Chiefs and Councils,
• First Nation project coordinators,
• First Nation project management committees or teams (e.g. with representation from Council, staff and community),
• governance committees (community or Council),
• external resources (e.g. consultants), and
• external resources working with designated First Nation representatives.

Processes can be distinguished by project team composition, and by evidence of community involvement in all or some aspects of the project. The bar graph below shows the distribution of projects by levels of community participation and engagement.

Project Processes & Levels of Community Participation
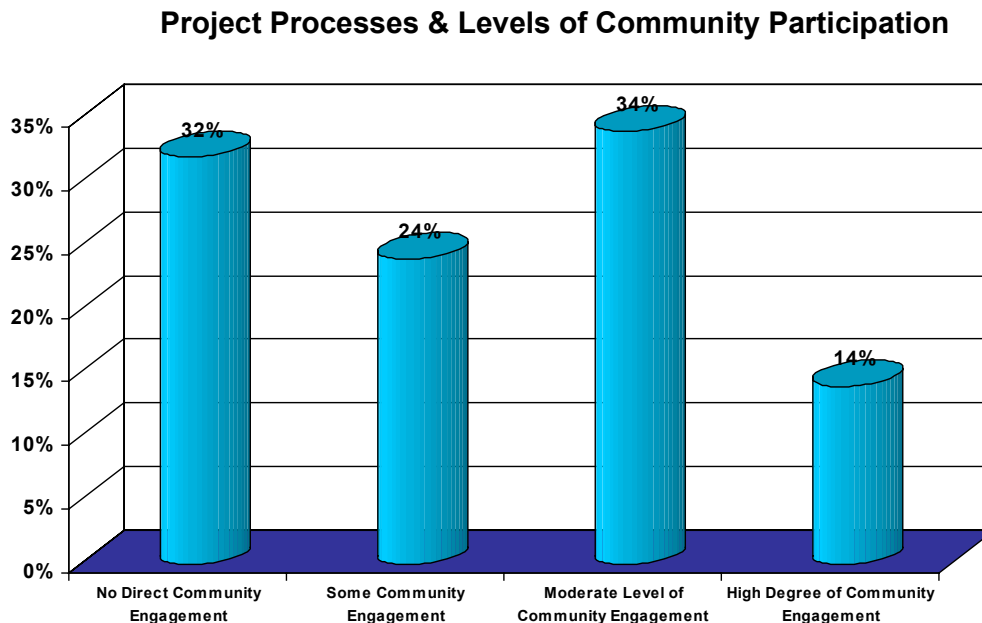
In general, there appears to be some correlation between the level of community engagement in a project, and the type of product that was being developed through, or resulted from, the project.

> Those projects that were aimed at developing codes or laws in areas where some degree of uniformity might be expected, for example, human resource policies, financial management and administration codes, more frequently though not always involved either no direct community engagement or a lower level of participation on the part of community members.

> Projects that focused on developing core governance policies and procedures, and defining existing government structure roles and responsibilities normally engaged staff and leaders, and in some cases the community membership.

> Projects that resulted in the development of internal plans and strategies, or specific proposals for new or modified government structures, as well as leadership selection codes and appeal mechanisms more frequently involved either a moderate or high degree of community involvement, as well as innovative processes of community participation and engagement.

A very large and innovative set of techniques were applied for the purposes of directly engaging communities, leaders and staff in project activities. Some of the most common forms of outreach, communication and consultation that were employed in projects or were recommended for the future include the following:

- general community meetings and consultations
- targeted meetings and consultations with specific groups (elders, youth, off-reserve)
- focus groups
- home visits
- surveys
- questionnaires
- community fairs
- retreats
- interviews (e.g. with individual community members and elders)
- traditional and cultural activities
- youth-facilitated activities
- elder-facilitated activities
- web-sites (e.g. project specific web sites)
- community newsletters
- brochures, pamphlets, posters, advertisements
- radio broadcasts and talk shows
- presentations in schools
- presentations in power-point format
- theatre play
- story telling

- mentoring and job-paralleling programs (e.g. bringing community members into First Nation administration)

In contrast, some project participants set out about to achieve their objectives through a research-based, rather than a consultation-based project format. Examples of this approach include the projects completed by the North Shore Tribal Council and Northwest Tribal Treaty Nations.

It is clear from the documentation that a large number of First Nations were already engaged in First Nation governance assessment and developmental processes prior to DIAND's announcement of the First Nation Governance projects. Project funding allowed First Nations and groups of First Nation to continue with or conclude processes already well-established and advanced (e.g. St. Mary's Band, Stanjikoming, Kapawen'o, Musqueam, Fort Severn).

d) Implementation

Because the pilot projects had to be proposed and completed within one fiscal year, together they can be seen as a "snapshot" of First Nations' work on governance. Indeed, a review of the project reports reveals First Nations and organizations to be at various stages in the development and implementation of their overall work to develop appropriate governance institutions and policies. Thus:

> 50% of projects indicated their tangible products and governance processes were still works-in-progress.

> 43% of projects completed governance products (codes, laws, policies) that are in a draft form but ready for formal approval either by the community or Council.

> 4% of project outcomes were noted as having been approved-in-principle by Chiefs and Councils.

> 1% of projects were approved-in-principle by the community.

> 3% received formal approval by the community (e.g. through ratification, referendum or consultation).

For most of the projects, an impression forms of consistent planning and significant capacity on the part of First Nations to implement the products of their work and carry forward community processes planned for the future. However, successful implementation of project results in many cases is premised on availability of additional funding. Funding on either a one-time basis or sustained basis is identified as required for:

> training and capacity building
> facilities
> staff
> remuneration
> translation of codes into First Nation languages
> annotation of codes
> preparation of orientation and briefing kits

- ➢ code ratification
- ➢ dissemination of results
- ➢ further consultation, development and study.

One First Nation report highlighted the fact many of its recommendations could be implemented through actions requiring little or no additional funding. For example, adherence to traditional values, providing elders with certificates recognizing their participation and contributions to community governance, communications activities such as community meetings and home visits by leaders are all identified as "no cost" or "low cost" solutions.

Legislative and policy change is required before some project results can be implemented without legal challenge. This is particularly notable in the area of elections, appeal and redress, and financial management and administration.

Several reports note that a change in community governance has already been effected as a result of the project and/or the implementation of its products and outcomes. For example, one community reported improved communication between Council and community, greater openness in Council meetings and procedures, formal responses by Council to recommendations from a newly-established advisory structure, and publication of results in community newsletters.

2. Main Findings

What can be learned about the current condition and priorities of First Nation governance from the pilot project reports?

It is not possible to comment on the overall state of First Nation governance from the information in the reports. As explained earlier, the 115 projects in this study came from First Nation governments and organizations who were willing to accept the terms of the project, and who were able to respond quickly to the opportunity. First Nations who did not accept the terms of the funding, or who were preoccupied and not able to respond in the short timeframe available, are not represented in this discussion. Furthermore, this report is based primarily upon an analysis of project reports: no independent evaluation of project outcomes was done.

With these qualifications in mind, it is possible to draw some important generalizations and themes from the collection of governance project reports themselves.

a) Aspirations for First Nation Government and Reform

The First Nation governance project reports are recognizably related to the themes of the proposed *First Nations Governance Act* –not surprisingly, since the project funding guidelines themselves were connected to the now abandoned legislation. What is perhaps more notable is that the aspirations of First Nations, as embodied in the pilot project reports, were not exclusively tied to the *First Nations Governance Act.*

The project reports contain significant evidence of a concerted effort on the part of First Nations to address the current legislative context of the *Indian Act,* including issues of political participation, accountability and transparency, *as well as* the immediate issues of First Nation government operation, management and administration under the Act.

At the other end of the spectrum, First Nations are looking well beyond the legislative base for First Nations governance, exploring different concepts of self-government – some rooted deeply in tradition and culture, others in contemporary expressions of the inherent right of self-government.

Located between the two ends of the spectrum described above are First Nations and organizations that are developing governance tools and products, especially codes, that anticipate modification of the current legislative framework of *Indian Act* administration, and associated administrative and management regimes. Many of the products of these projects would be compliant with the *Indian Act* and successor legislation such as the *First Nations Governance Act.* Other proposals would require a more fundamental realignment of the existing or proposed legal framework – a realignment that is more consistent with and attuned to First Nation objectives for self-government.

There is also significant evidence within the collection of reports of First Nations attempting to increase the number and types of governance tools available to First Nation leaders, administrators and staff, and community members. Projects addressed the codification of core First Nation government procedures (e.g. elections, decision-making, appeals/redress, conflict

of interest and codes of conduct) as well as administrative policies in areas such as finance and human resources. The achievements are particularly noteworthy in view of the constrained time frame in which the projects, including their developmental and community engagement components, were completed.

The diagram below depicts, in graphic form, the full spectrum of approaches to First Nations government and reform reflected in the projects.

Approaches to First Nation Government and Reform Reflected in Pilot Projects

First Nation Vision, Strategic Thinking, Innovation and Optimism Evident throughout all Pilot Projects

Indian Act Administration
• Codify existing policies & procedures
• Clarify roles, relationships & responsibilities especially among political structures, First Nation administration and community

Modified Governance Arrangements
• Develop new codes for core governance matters
• Anticipation of Indian Act successor legislation
• Change existing structures & procedures
• Add new structures & procedures to increase accountability, transparency & community participation

First Nation Self-Government
• Traditional & cultural forms
• Contemporary forms
• Assertion of Inherent Right
• Governance approaches outside existing legislative and policy framework

Indian Act Administration ⊗ Modified First Nation Governance ⊗ Self-Government ⊗ Traditional Government

Regardless of the location of individual First Nation governance projects on the spectrum, all project reports provide evidence of First Nation vision, innovation, strategic thinking, planning and optimism with respect to First Nations governance in the future.

b) Four Linked Processes of Change

It is possible to see all of the approaches to First Nation Government and reform depicted in the diagram in terms of four linked processes of change, or change occurring on four levels.

**Realizing and Implementing Aboriginal Rights and Treaty Relationships**.
Fundamental to evolving First Nation government are Aboriginal rights and the Treaty relationship with the Crown. Section 35 of the *Constitution Act, 1982*, recognizes and

protects Aboriginal and Treaty rights. It provides the constitutional expression and foundation for nation-to-nation and treaty relationships and for First Nation self-government. For the last several decades, First Nations have driven a process through which the meaning of Aboriginal and Treaty rights has been undergoing rehabilitation, renovation or renegotiation.

Community development. A second process of change is the process of development underway in rural and urban First Nation communities. By its nature this process is difficult to document, but it evidently underlies many of the pilot projects. This process of change encompasses a wide range of social, political and community activity aimed at overcoming the legacy of colonialism, as experienced through the Indian Act, the residential school system and other imposed institutions, as well as through the displacement of First Nations from their traditional land and resource base.

Institutional development Building better and more suitable government institutions, administrative structures and other organizations is the focus, one way or the other, of most of the pilot projects undertaken by First Nations governments and organizations. Institutional development is closely associated with, and in many instances is the natural outcome of the more complex community development processes referred to above.

Improving Capacity for a Government-to-Government Relationship. Each of the three processes above has implications for the content and direction of First Nation relations with the federal government and consequently for federal machinery of government. Despite a long period of internal questioning and attempted reform, federal institutions and practices remain keyed to an earlier period of top-down control through a single federal department, the Department of Indian Affairs. The pilot projects rarely comment directly on this arena of change, but many point in the
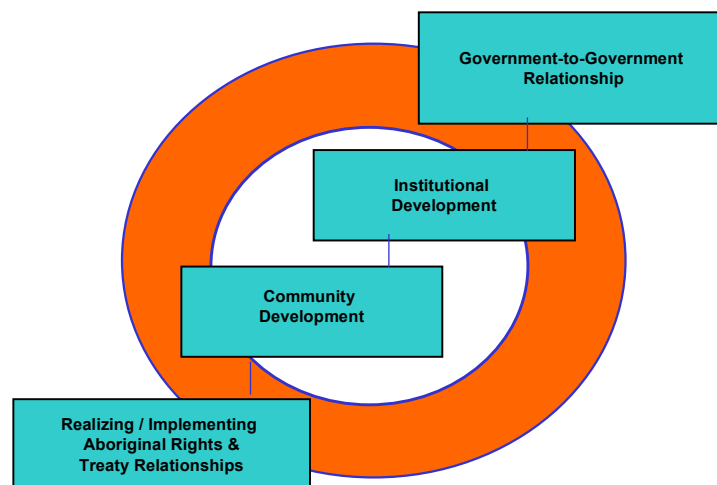
direction of required changes to law, changes to First Nation, federal and other government structures, and to associated management and administrative practice and funding arrangements..

Developments in any of these four arenas of change affect the other processes, all of which are simultaneously underway. The interrelated nature of these processes of change is depicted in the diagram above. Each of the pilot projects under examination here is affected, in different degrees, by these processes of change Equally, we suspect, substantial change in any one arena will require change or adjustments in the others.

c) Aspects of First Nation Governance Development and Reform

Probing further the finding that First Nations are pursuing governance development and reform on a much wider terrain than that offered by the *First Nations Governance Act*, we find First Nations concerned with developing a wide range of tangible products and processes addressing different aspects or facets of governance.

Some of these were contemplated by the *First Nations Governance Act* (e.g. appeal mechanisms, leadership selection). Terms of reference for the First Nations governance initiative ensured that these aspects of governance were a significant area of focus in First Nation governance projects. But many projects lie outside the *First Nations Governance Act*`s package of reforms. For example, the *First Nations Governance Act* was not concerned with fundamentally altering the Band Council system of government or allowing traditional forms of governance to emerge. Neither did it contemplate the development of First Nation constitutions.

For the purposes of exploring and discussing these different facets of governance further, the First Nations governance projects can be generally organized according to nine thematic categories or "clusters", each of which relates to an aspect of First Nation governance, or a facet of governance capacity development. These areas of focus are described briefly below. They are the subject of more in depth discussion and investigation in Volume 2, and form the basis for the organization of the case studies reported on in that volume.

Planning for the Future

> Through governance projects, some First Nations chose to engage in a diverse set of community-based processes of reflection, development and planning for future governance arrangements. This occurred both at community and at aggregated levels of First Nation political organisation.

> Examples include: Lytton First Nation, West Moberly First Nation, Mamaweswen (the North Shore Tribal Council), Berens River First Nation, Conseil de la Nation Innue de Natashquan, Conseil de la Premier Nation des Montagnais Essipit.

Traditional Forms of Government

A smaller set of projects include proposals for First Nation government structures and procedures based on traditional and cultural forms, or modified versions of these. In general, the form of government these projects propose extends beyond the *Indian Act* and successor legislation such as the proposed *First Nations Governance Act*.

Examples include: Ktunaxa Kinbasket Tribal Council, Northwest Tribal Treaty Nations, Sliammon First Nation, Shoal Lake First Nation, Pheasant Rump Nakota Nation.

First Nation Constitutions

There are several examples of First Nations engaged in the development of First Nation constitutions or constitution-like documents, wherein a comprehensive but interrelated set of governance structures, procedures, codes and laws is described. In most cases, the First Nation government "system" that is contemplated takes the First Nations involved beyond the legislative scope of the *Indian Act* and the anticipated *First Nations Governance Act*.

Examples include: West Moberly First Nation, Key First Nation, Mistawasis First Nation, Skidegate First Nation, Stoney Nakoda Tribe, Taku River Tlingit First Nation, Long Plain First Nation.

Government Procedure, Administration and Financial Management

Consistent with the direction established by the First Nations Governance projects terms of reference and the proposed *First Nations Governance Act*, a large number of First Nations developed tangible products and codes in the areas of First Nation government procedure, administration and financial management.

Examples include: Lheidli T'enneh, X'axlip First Nation, Keewaytinook Okimakanak First Nations, Campbell River Indian Band, Pasqua First Nation, Prince Albert Grand Council, Thunderchild First Nation, Mushkegowuk Tribal Council.

Leadership Selection and Community Decision Making

An equally large number of projects resulted in the development of First Nation leadership selection (election) codes and laws. In a few instances, First Nations proposed new community decision-making procedures including the use of ratification votes and referendums.

Examples include: Chippewas of Kettle and Stoney Point First Nation, Chemainus First Nation, Kwakiutl Band, Smith's Landing First Nation, Peter

Ballantyne Cree Nation, Little Pine First Nation, Opaskwayak Cree Nation, Wauzhushk Onigum Nation, Dogrib Rae Band, Confederacy of Mainland Mi'kmaq.

Appeals and the Redress of Grievances

The lack of mechanisms available to individuals to appeal decisions made by administrative officials and leaders was addressed in several First Nation projects. These proposed the establishment of grievance, appeal and redress mechanisms and procedures. In many cases proposals are attentive to First Nation community traditions of dispute resolution.

Examples: Katzie First Nation, Madawaska Maliseet First Nation, Whitebear and Ochapowace First Nations, Sakimay First Nation, Wabigoon Lake Ojibway Nation.

Making Indian Act Administration Work Better

A significant number of projects are anchored in an *Indian Act administration* context. They exemplify the more immediate efforts First Nations are making to have this system of government work better for them on a day to day basis. Most projects proposing solutions to be implemented in the *Indian Act* context are aimed at effecting improvements in government administration, for example by clarifying roles and responsibilities and developing clear administrative policies and procedures.

Examples: Musqueam Indian Band, Iskut First Nation, Campbell River Indian Band, Kitamaat Village Council, Conseil Tribal Mamuitum.

Conflict of Interest and Codes of Conduct

A large number of First Nation projects developed conflict of interest and/or codes of conduct, either as stand alone policies, or embedded in a broader set of core government codes, policies and laws. Conflict of interest rules and codes of conduct in some instances are cognisant of community traditions and values, and in other cases are more standardized in tone. Regardless of their orientation, the rules and codes First Nations developed through their projects could be implemented in almost any legislative or constitutional environment for First Nation government.

Examples include: Conseil de la Nation Innue de Natashquan, Anishnaabeg of Naongashiing, York Factory First Nation, Poundmaker Cree Nation, Tallcree First Nation, T'it'q'et Administration, Lower Kootenay Indian Band.

Another facet of governance that was the subject of focused attention concerns human resource management and personnel policies. First Nations and organizations proposed a range of measures to support effective human resource development and management in First Nation communities. Human resource, personnel and employment policies frequently were included as the tangible products of First Nation governance projects.

Examples include: Sandy Lake First Nation, Southern First Nations Secretariat, Chiniki First Nation, Treaty #4 Governance Institute, Lyackson First Nation, McLeod Lake Indian Band, Whispering Pines Clinton Indian Band.

d) Community Engagement and Developmental Processes

It is clear from the First Nation governance project reports that community participation in processes of governance development and reform is seen by most as an essential ingredient to success.

The project reports contain a very diverse and innovative set of techniques for directly engaging communities, leaders and staff in First Nation governance reform and development activities.

Many First Nation governance projects undertook elaborate and sophisticated processes of community research and engagement, reflecting, we believe, a recognition that the development of self-government will be a long process of community and social development, as well as a process to develop new political institutions. Innovative means were found to engage leaders, staff and community members, as well as different constituent groups such as elders and youth.

The projects abound with the inventive use of processes to engage people directly in the development of tangible products and governance tools (e.g. Kabapikotawangag Anishnaabeg Youth Council, Fort Severn First Nation, West Moberly First Nation, Communaute des anicinapek de Kiticisakik). Other projects used general community meetings and consultations, focus groups and home visits, as well as more unusual techniques, such as retreats, job-shadowing, theatre and story-telling (Wikwemikong Unceded Indian Reserve, Wabigoon Lake Ojibway Nation, Matsqui First Nation).

Although all projects differ with respect to the type of processes they employed, key elements of success appear to be a sustained level of participation by community leaders, staff and members in defining governance projects and priority areas for reform, managing and directing projects, preparing and organizing reports, and contributing ideas, solutions and perspectives.

First Nations and organizations reported on the many challenges they face in engaging communities fully and consistently in processes of First Nation governance development and reform. They also noted that a sustained and high level of community engagement and participation in the process of planning and implementing change enhances the quality of governance.

Challenges commonly encountered in the execution of First Nation governance projects included:

- lack of time and resources to complete the work,
- lack of time to heal political and other "rifts" within the community in order to allow First Nation governance developmental work to proceed,
- limited community-based understanding of issues,
- limited community experience with participatory decision making,
- lack of methods to support forms of community participation that are appropriate and acceptable to the community,
- lack of trust in federal and First Nation government intentions in pursuing First Nation governance development and reform processes, and
- difficulties contacting and engaging off-reserve/off-territory members.

Although the above mentioned challenges were commonly encountered, another finding of the research is that opportunities can be created when First Nation governance development and reform processes are organized to achieve a high level of participation by community members, leaders and staff in all aspects of the project. These include:

- opportunities for community identification, consideration and discussion of needs, issues, ideas and solutions,
- opportunities for the community to refine and put its imprint on specific products developed by project teams and coordinators, leaders and/or external resources,
- opportunities to develop community capacity for further engagement in governance reform based on direct community experience with issue identification and resolution, and
- opportunities for the community to be empowered through the experiences of community approval and ratification processes.

Some of the specific experiences of First Nations in both addressing challenges noted above and realizing the opportunities provided by effective processes of community engagement, are described more fully in the case studies in Volume 2.

Part III: Building First Nations Government, in Context

With the general themes, trends and findings from the First Nation governance pilot projects that are set out Part II in mind, it is possible to move to the next level of analysis, to consider the historical and practical context in which First Nation governance development and reform is being advanced. This will help to make the significance of the pilot projects clearer, and also assist in understanding their specific purposes.

The governance pilot projects, their products and processes, straddle differing traditions of government. They are shaped by the evolving nature of relationships between First Nations and Canadian governments, and by changes in the policy, legislative and community underpinnings for First Nation governance.

All these are changing gradually and peacefully, in the most fundamental way and, in the process, both First Nation governments and Canadian governments are themselves being changed.

First Nations completed their governance projects in an environment significantly influenced by historic policies on First Nation government, as well as First Nation community and administrative contexts and dynamics. The issues which First Nations and First Nation organizations sought to address through their projects, and the challenges they encountered, are deeply rooted within and spring directly from policy and community contexts described in brief below. They also express tensions between the very different political traditions and traditions of governance of First Nation and Euro-Canadian societies. This part of the report concludes by identifying some of these.

1. Traditions of Governance

All human societies have traditions of governance. These traditions provide orderly ways of making collective decisions, enforcing group decisions and ensuring that children are raised in such a way that they grow to become responsible and active members of the group.

The original nations of what is now called North America developed a wide variety of constitutions and political traditions.[1] Many of these shared some features in common. In a study of the political thought of the *Siikisikaawa* (Blackfoot), Ladner writes that the Blackfoot lived according to rules of proper human behavior built upon an appreciation of their place in the universe as species among many others, with collective and individual responsibilities. Constructed in a manner which reflected this foundation,

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[1]Here we only identify, generally, some examples of Indigenous nations' original political and moral philosophies. These are naturally impossible to accurately summarize, especially in English. For some more adequate treatments see, for example, Hanni Woodbury (ed and trans), *Concerning the League: the Iroquois Tradition as Dictated in Onandaga*, by John Arther Gibson (Winnipeg: Alongqoian and Iroquoian Linguistics, 1992); Kiera L. Ladner, "Governing Within an Ecological Context: Creating AlterNative Understanding of Blackfoot Governance, *Studies in Political Economy*, 70 (Spring 2003); James Henderson (sakej) Youngblood, *The Mikmaw Concordat* (Halifax: Fernwood, 1997) .

Blackfoot governance consisted of a complex system of sub-national (clan), national and confederal organizations each of which operated within its own set of responsibilities. While these structures of governance operated year-round (for example, decision-making and implementation), the various organizations were also situation-dependent, and dependent on need and the Blackfoot calendar of major events and gatherings, such as the Sundance.

Ladner notes more generally that

> Within the parameters of Indigenous thought, governance is "the way in which a people lives best together" or the way a people has structured their society in relationship to the natural world. In other words, it is an expression of how they see themselves fitting in that world as a part of the circle of life, not as superior beings who claim dominion over other species and other humans."[2]

The Governance Project Report of the Northwest Tribal Treaty Nations describes the potlatch system of government that was common among the nations (such as Carrier, Nisga'a, and Gitxsan) of the North West Coast. Though each nation had their own distinct political system, the use of the potlatch as a system of governance resulted in many similarities in structure, responsibilities and intent. The potlatch is based upon a complex system of clan governance (houses) and national governance. In brief, the potlatch served to provide a system of decision making, redistribution (social assistance was thus, non-existent) community equilibrium, law enforcement, land use and membership/citizenship.

The Haudenosaunee system of governance was also constructed in a manner which embraced the idea that governance is 'the way a people live most nicely together'. In fact the 'constitution' or the *Kayanerenkowa* (the Great Law) that brought all of the separate nations together to form a confederacy during a time of great unrest is best translated as 'the great big peace` or 'the great big nice.' In bringing these nations together, the Haudenosaunee became the first, if not one of the first, political systems to use a Confederacy design. The system of governance that exists under the Confederacy is a complex system of autonomous clan, national and confederacy governments, each of which had their own responsibilities.

It should be noted that though each of these systems are described in the past tense – as the Indigenous political traditions and structures of governance – each continues to exist in the present, as noted in the diagram on First Nation approaches to governance included in Part II above. Each exists despite the fact that until very recently, the government of Canada has continuously tried to topple these regimes and replace each with another 'official' government – the *Indian Act* Band Council. Thus, these Indigenous political traditions and traditions of governance, have come to be referred to as 'traditional governance' and European traditions of governance have become rooted in First Nations communities.

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[2] Ladner (2003) p 125.

European traditions of governance provide the foundation for Canadian political organization. In Europe and in Canada, these have evolved rapidly during the last few centuries, mostly as a consequence of an evolution from agrarian to industrial economies. What is now called 'liberal democracy' grew out of the process of economic change that attended the development of industrial societies, as did the system of nation-states now found everywhere in the world.

Canada's government is a version of the parliamentary system of government that developed in Great Britain, adapted to local Canadian conditions. When considering what form of government to establish in what is now Canada, colonial governments did so without reference to the Indigenous societies. The *Royal Proclamation of 1763* and treaties negotiated before and after the Proclamation reflect the reality that Indigenous political jurisdiction and military force were important factors in earlier periods, but by the late nineteenth century the settlers from both France and England found they could develop the terms of a commercial and a political alliance (in the form of a federal constitution) without reference to the other nations living in the lands that now form Canada. Thus, Canada's first constitution, the *British North America Act, 1867* includes provisions to accommodate francophone and Anglophone collectivities, but there is scant recognition of First Nations.

As a result, the co-existing First Nation and Canadian traditions of government were never reconciled. Instead, as described below, Indigenous forms and systems of governance were displaced through various legislative and policy impositions, and associated policies aimed at assimilation of the Indigenous population. Further, the process of ongoing evolution and adaptation of Indigenous systems of government, including adaptations that may have led to an appropriate, reconciled interface with Canadian governments, was abruptly halted.

In some cases the ongoing process of evolution and adaptation was halted by federal interference and community abandonment. In others it was halted as traditional structures, such as the potlatch and sundance, went 'underground' and adapted to a both a changing context and changing functions. In still others it was halted – even in situations where traditions have thrived and continued to evolve – because of the Canadian government's refusal to deal with the non-*Indian Act* government.

Still, it should be noted that these Indigenous systems of government and Indigenous political traditions, more widely, continue to serve as models and or theoretical frameworks for many communities. To this end, several of the First Nations involved in the governance pilot projects draw upon their own traditions in these projects, while others continue to use their traditions to frame and/or model other governance projects. For instance, in their development of political institutions accompanying the negotiation and implementation of a modern Treaty, the Nisga'a have used the lisem in designing their model of confederacy government. The Inuit also have looked to their traditions to ground change associated with the ongoing development of Nunavut. They are now in the process of adapting the norms of interpersonal conduct that they value highly to reshape modern bureaucracies.

2. The Policy Context

a) Displacement of Traditions and Introduction of the Indian Act

In the early 19th century, the British and Canadian governments began interfering directly with the autonomy and sovereignty of Indigenous nations. They forcefully disposed of traditional governments and established Band Councils. Initially viewed as an experiment in 'civilization' and 'assimilation', this system of indirect rule soon became the preferred policy option and was institutionalized in the *Indian Act*. In an attempt to realize its goals of 'civilizing' and 'assimilating' First Nations into Canadian society, the Canadian government has made many changes to the *Indian Act* over the years, including a major consolidation in 1951.

The 1969 *White Paper*, titled *Statement of the Government of Canada on Indian Policy* set forth the federal government's proposal for eliminating the 'Indian problem' by means of assimilation. This policy paper proposed to dissolve reserves, eliminate the 'Indian' as a legal category, eliminate the federal responsibility for Indians, and dismantle *Indian Act* bands. It was the federal government's attempt to bring to fruition its colonial goals of protection, civilization and assimilation.

When the *White Paper* was abandoned in 1970, the federal government began to chart a new course in its First Nations policy.[3] This new direction sought to reform the outdated system of band council government through devolution, and new (self-) administration agreements. Band councils could negotiate the transfer of administrative responsibility for federal programs in education, social services and economic development. First Nations, however, were not satisfied and during the 1980s the federal government began negotiating block funding agreements which enabled band councils to manage federal programs in accordance with community needs, priorities, and federal standards.

b) First Nation Self Government

With the patriation of the *Constitution Act* in 1982, federal policy shifted once again as the federal government attempted to deal with Aboriginal and treaty-rights claims and demands for self-government. While outdated and in dire need of reform, the *Indian Act* and its system of government was left intact. The federal government sought to change its relationship with First Nations and create new structures of First Nations governance by replacing incremental reform of the *Indian Act* with self-government agreements.

In 1986 the federal government announced its *Indian Self-Government Community Negotiations* policy. Together with alternative funding agreements, community-based negotiations were to have secured a limited form of self-government through the devolution of

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[3] For an overview, see Frances Abele, Katherine Graham, Allan Maslove, ""Negotiating Canada: Thirty Years of Change in Aboriginal Policy" in Leslie Pal, ed. *How Ottawa Spends 1999-2000*. Ottawa, Oxford University Press, 1999. Pp. 251-292

legal, political and fiscal responsibilities. In 1995, the federal government expanded its understanding of self-government and indicated its willingness to negotiate by increasing the number of negotiation tables and adopting a new policy, the *Federal Policy Guide to Aboriginal Self-Government: the Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Self-Government* (commonly referred to as the "inherent right" policy).

While the negotiation of self-government continues to be pursued today as a favored means to reforming the *Indian Act* system of government, it is not without problems -- one of the most significant being the pace of negotiations, which can take from 7-25 years. If negotiations were to proceed at the current pace, a large proportion of First Nations would still be living under the *Indian Act* in a hundred years. This is extremely problematic, given that the existing system has proven unable to deal with the contemporary demands of government, meet community expectations for transparency and accountability, and withstand significant legal challenges (such as *Corbiere*).

c) The First Nations Governance Act (Bill C-7)

Given these challenges, it is not surprising that the federal government pushed forward with blanket legislative reform as an interim step to self-government negotiations. In January 2001 the Canadian government outlined this new agenda with the goals of:

- ➢ renewing the partnership,

- ➢ strengthening Aboriginal governance,

- ➢ developing a new fiscal relationship, and

- ➢ supporting strong communities, people and economies.

Soon after, the federal government announced its decision to reform the *Indian Act,* focusing on a legislative agenda that included Bill C-7 the *First Nations Governance Act* (FNGA). Bill C-19, the *First Nations Fiscal and Statistical Management Act*, was also brought forward as a First Nation initiative.

Bill C-7, the *First Nations Governance Act*, did not survive the dissolution of Parliament before the last federal election, and it has not to date been reintroduced. The main provisions are important to our analysis, for it provides an important backdrop to the First Nation Governance projects. As proposed, the *First Nations Governance Act* had three objectives:

1) to provide bands with more effective tools of governance on an interim basis, pending the negotiation and implementation of the inherent right of self-government,

2) to enable bands to respond more effectively to their particular needs and aspirations, including the ability to collaborate for certain purposes, and

3) to enable bands to design and implement their own regimes in respect of leadership selection, administration of government, financial management and accountability, while providing rules for those bands that do not choose to do so.

One of the primary purposes of the *First Nations Governance Act* was to create leadership selection, administration of government and financial management and accountability codes. Bands could either create codes themselves or adopt code templates set out by the federal government.

Leadership selection codes would address the term of office (not to exceed five years), define proper electoral practices and establish policies for leadership removal.

Government administration codes would address, among other things, meetings of the members of the band, meetings of council, rules for the creation of band laws, and procedures to allow members to have a say in laws before they are passed.

Codes for *financial management and accountability* would have to include rules regarding the preparation of annual budgets, expenditure controls, and internal financial controls on deposits, assets and purchase of goods and services.

While the *First Nations Governance Act* was before Parliament in the summer of 2003, then Minister Nault introduced the First Nations Governance pilot project program. The projects were intended to enable First Nations to address implementation issues and the requirements of the *FNGA*. In so doing, they were to facilitate code development and demonstrate that First Nations could meet the codification requirements set out in the *FNGA* at a reasonable cost. As noted in Part 2 above, many of the First Nations Governance projects did result in the development of codes, policies and other instruments in areas outlined in the *FNGA*.

3. The Community Context

Most First Nation's have been dealing with and living under the *Indian Act* system of government for over one hundred years. During this time, First Nations have gained experience with the system, and know too well how the *Indian Act* defines and confines First Nations governance.

First Nation governments have coped under the umbrella of the *Indian Act* and have adapted to its constraints and ambiguities, including by engaging in non-compliance. First Nations have in many instances infused the system with their own structures, culture and traditions; learning and using the 'loop holes' or gaps in the system; and simply governing outside the imposed limitations of the *Indian Act*. For example, many have:

- Engaged decision-making and 'voting' in accordance with their own political traditions, including consensus.

- Selected leaders by traditional means, and then 'formalized' these decisions for recognition by the federal government.

- Asserted jurisdiction and governing authority in areas not provided for in the *Indian Act* (such as gaming).

By modifying policies and processes and engaging in governmental, administrative and business activities not defined by the *Indian Act,* First Nations have pushed beyond the legal, administrative and political boundaries of the existing system. Nonetheless, the *Indian Act* system itself remains outdated, providing a narrowly defined and restrictive form of governance that has not kept pace with First Nation needs and aspirations, and which gives them few tools with which to cope with contemporary realities.

This is most readily demonstrated when considering the administrative capacity of *Indian Act* Band Councils. The *Indian Act* does not address key areas as how bands are to manage their financial affairs, the separation of council and administration, and the ability to delegate authorities. First Nations struggle with this silence, a struggle which is magnified with the increased delegation of administrative responsibilities, increasing complexity of government activities, and constrained financial resources. First Nations have tried to rectify these matters on their own by 'just doing it' and by developing their own policies and procedures. The lack of compliance with the *Indian Act* system of governance typically raises issues for the Department of Indian Affairs, leading to further administrative and political distress (such as third party management) and increased grassroots demands for responsiveness, accountability and transparency.

As the preferred option to reforming the current system of governance, self-government offers a new, redefined, and First Nation-defined system that reflects each First Nations' culture, tradition, vision of the future, goals and aspirations. It provides for good governance through such things as enhanced jurisdiction, policies and procedures, and structures of administrative accountability. Since the late 1970s First Nations have been preparing for and increasingly have engaged in self-government and/or self-administration. Nonetheless, the reality of self-government appears as a far distant future for most First Nations.

In large measure, First Nations remain preoccupied with addressing the day to day needs of their communities. Much time and effort by leaders and staff is directed towards administration and report preparation, notably to funding agencies outside the community, and to addressing issues which individual members raise. There is limited opportunity to undertake multi-year or long term planning.

But each First Nation *is* charting its own course as it deals with today and plans for tomorrow. In so doing, First Nations confront the shortcomings of the *Indian Act*, not as an abstract discussion of public policy and *Indian Act* reform, but as a daily reality. Each First Nation faces its own unique challenges, and each struggles with the 'reality' of the

Indian Act system of administration as it seeks out solutions to real issues and challenges. These issues and challenges include the following:

- ➢ transforming the electoral system and thereby increasing First Nation capacity for long-range planning and stability (e.g. by increasing terms of office beyond the *Indian Act*'s two year term),

- ➢ increasing leadership accountability to address community concerns about longer terms of office,

- ➢ responding to the Supreme Court's *Corbiere* decision, including through electoral procedures that can meet the needs and aspirations of the community (on- and off-reserve),

- ➢ responding to the forecasted potential for the Indian status population to be eliminated over time through the application of current *Indian Act* rules governing registered Indian status,

- ➢ developing comprehensive First Nation constitutions, and

- ➢ establishing effective financial management and administrative policies and procedures to address the gaps in the current *Indian Act* system.

These are just some of the larger and pervasive issues that First Nations grapple with every day, as they attempt to forge their own path while dealing with the constraints and limitations of the *Indian Act*. They represent just some of the issues that First Nations set out to address through individual First Nations Governance projects. First Nations today are working to develop their forms of government away from the practices that have been created by *Indian Act* dominance, both by retrieving the best aspects of traditional governance and by innovating –developing new forms of governance that are both culturally appropriate and responsive to the requirements of modern government.

Each First Nation is doing this work in its own way, responding to the general challenges inherent in the large process of decolonization and political change, and the specific challenges arising from each individual situation. Always, First Nations do this in a manner that responds to the tensions inherent in their government-to-government and administrative relationship with the federal government, and on the basis of their own traditions and strengths.

4. Implications for First Nation Government Development

While First Nations are extremely diverse, each with its own unique challenges, capacities, concerns, and solutions, all are addressing most of the challenges posed by the policy and community context discussed above. Differences emerge when one looks at *how* they are dealing with these challenges, and the specific solutions that are identified as appropriate.

Historic patterns of federal policy making in the area of First Nation governance suggest the federal government will continue to propose measures that favor standardization and can be implemented nation-wide. The "one best way" of organizing First Nation government is favored because the federal government has many responsibilities across Canada, all of which are organized according to the requirement that all citizens and all regions be given similar treatment and opportunities.

The impulse towards standardization runs very deep. It is present in all modern public bureaucracies, all over the world. Present in the governing traditions imported from Great Britain, it has been reinforced in the Canadian experience of nation-building. Standardization of treatment is embodied in the *Indian Act* and its successor legislation, the *First Nations Governance Act*.

Standardization serves an important, if limited, public purpose. Treating people and communities fairly (and those in similar situations, similarly) is an important social value. But in terms of both equity and efficiency, imposed standardization is likely to be counterproductive. A "cookie cutter" form of standardization is directly contrary to what is favored and required by First Nations. They are building self-government on the basis of community strengths and traditional practices that are responsive both to specific local needs and modern requirements. The impulse of First Nations to proceed in this way, that is, in a way that in the first instance is responsive to community needs, *also* runs very deep.

The diverse aspirations of First Nations for governance development and reform, and their different approaches to reform lead to several conclusions:

> ➢ that a reconciliation of indigenous and Canadian systems of government is still required,

> ➢ that such reconciliation must find expression in the implementation and recognition of Aboriginal and treaty rights, as well as in the legislative and policy context that underpins and sustains First Nation government,

> ➢ that First Nations continue to need real and sustained opportunities to define, shape and constitute their own forms of government and governance, according to their aspirations, whether these be for traditional, modified or contemporary forms of government,

> ➢ that the process of First Nation government development and reform must be carried out according to First Nation-defined plans, priorities, processes and time frames, and be sustainable over a sufficient period of time to allow the work to be completed and realized in practice.

The administrative and policy challenge, for federal government leaders and First Nation leaders both, is to find a way to nurture these processes without sacrificing the principle of consistent and similar treatment and outcomes, overall.

5. Practical Work on the Relationship

The pilot project reports document the approaches taken by First Nations in improving their governments and organizations. These initiatives exist as part of the complex and changing relationship between First Nations and federal departments, which we earlier described as taking place in the context of four linked processes of change: constitutional, legal, administrative, social and governmental.

Another way to understand the pilot projects is to see how they respond to the historical and contemporary forces that are at play as First Nations work towards self-government. Certain persistent tensions exist that all must confront, in order for progress to be made.

The particular tensions that emerge from the First Nation governance reports, and that First Nations appear to be responding to, can be summarized as follows:

1. 'Nations within a nation': how self-government works within a nation state; reconciling competing visions of nationhood (both Canadian and Indigenous).

2. Citizenship: how competing citizenships work and how First Nations citizenship/membership manifests itself as status, non-status, on-reserve and off-reserve members, and as Canadians.

3. Jurisdiction: how far-reaching is the jurisdiction of First Nations government authority, especially with regard to off-reserve members, non-members living on reserve and matters outside the boundaries of the reserve?

4. Codification: the tradition under European models of governance to codify laws, policies and practices (allowing for consistency of application and practice) may conflict with the oral, more flexible, more situation oriented governance traditions of many First Nations.

5. Bureaucracy: codification implies the creation of a bureaucracy, with clearly delineated roles and responsibilities, to apply and control the laws and policies. This may not be in keeping with traditional First Nation governance practices. It may also be extremely difficult to achieve in small communities where the scale of government and limited availability of human and financial resources creates unique challenges for First Nation bureaucracies.

6. Community differences: how much standardization is needed? Is any amount of standardization possible and/or warranted given that confederal/national/tribal and regional differences may require different approaches that reflect the diverse array of traditions and contemporary realities.

7. Relations with other levels of government: the tensions that emerge between federal and provincial governments in relation to First Nation funding, programs and accountability.

8. Judiciary: the relation between dispute resolution mechanisms, traditional and otherwise, within First Nations and the Canadian court system. How do First Nations operate within and relate to the Canadian judiciary?

9. Accountability and transparency: there is an issue of 'double accountability' – of First Nations leaders to their communities, and also to government funders. With codification comes the additional requirement of transparent budgeting, spending, monitoring and audits, a fundamental tenet of 'Canadian' financial practice. How can First Nation governments address their citizens' priorities when the agenda is set by other governments?

10. Consistency / standardization: codification implies standardization of self-government practices even within the different traditions and cultures of different First Nations, in addition to their different locations, sizes, wealth, and capabilities.

The case studies reported on in Volume 2 provide evidence of the full range of responses to some of the tensions noted above. These responses include First Nations looking to their traditions for guidance in undertaking very fundamental reforms to First Nation government, to First Nations establishing new administrative policies and procedures that can effect improvements in day to day governance and administration under the *Indian Act.*

Part IV: First Nation Governance and Community-Led Organizational Change

What can be learned from the First Nations governance pilot projects about good governance and processes for building it? The answers to this question will be of interest to other First Nations and Indigenous governments, and also, generally, to Canadian citizens who are interested in reforming their own governing arrangements.

A striking feature of many of the approaches to governance reform reported by First Nations is a recognition of the interconnection between the social and economic health of communities, and good governance. This recognition is reflected, for example, in the highly participatory approaches many project proponents used.

In this section of the report, we consider the specific experiences of First Nations in grappling with governance development and reform through the pilot projects, in the context of what is known by organizational theorists about organizational change. The starting point is the recognition that social and community development, and progress towards more responsive, transparent, predictable and accountable government, are linked.

1. The Elements of Community Development

Four standard elements, found in a great many of the pilot project reports, provide a foundation for effective First Nation community development and governance. These include:

> - citizenship or rules of membership in a group
> - responsive and effective leadership
> - accountability of leaders and administrative staff
> - consistency and transparency in government affairs

Each of these foundational elements is discussed below with reference to the First Nation governance pilot projects.

a) Citizenship and Membership Rules

First Nations, like all human societies, must have rules about membership. These rules must address fundamental questions such as: who is included in the group (with all the rights and responsibilities that implies) and who is not? What is the procedure for becoming a member or for giving up membership?

Although historically First Nations were responsible for determining their own citizenship, through the *Indian Act* the Canadian government displaced traditional structures and processes with a divisive system of band membership and Indian

status. For many decades, the determination of band membership was a responsibility denied to First Nations and claimed by the federal government of Canada. Recently the federal government has begun to leave room for First Nations to influence the fundamental question of membership, or citizenship, though it is still federal legislation that governs registered Indian status.

Though not explicitly encompassed within the terms of reference of the First Nations Governance project initiative, some First Nations used their pilot project to address this matter directly, by developing citizenship or membership codes and laws to regulate citizenship, as well as constitutions that define more broadly how relations among citizens, and between citizens and First Nation governments will be regulated.

b) Leadership

Leadership selection by processes that all members see to be legitimate, and the means for encouraging and maintaining effective and responsive leadership, are processes central to every human polity.

The governance projects address the question of leadership from a variety of perspectives. Some of the case study projects (e.g. Mamaweswen, Fort Severn First Nation, Hollow Water First Nation and York Factory First Nation), approached this question as one of many that were addressed through community self-government planning processes. Others, such as Deh Gah Got'ie Dene Council, Chippewas of Kettle and Stoney Point, and Confederacy of Mainland Mi'kmaq, completed projects that developed leadership selection codes and election procedures.

c) Accountability

Accountability of leaders and Band staff to community members, for all aspects of their work, including political and financial accountability, and accountability in program and service delivery is an essential element in effective First Nation governance.

Accountability is addressed in a variety of ways in the First Nation governance projects - including through leadership selection codes, governance procedures, financial management and government administration codes and policies. Accountability is also given attention in projects more directly focused on improving *Indian Act* administration, such as those completed by Musqueam Indian Band, Campbell River Indian Band, and St. Mary's Indian Band.

d) Consistency and Transparency

Consistency and transparency in governance help ensure that members of a group are treated fairly, and also that they see that they are. A lack of transparency builds suspicion and demoralization. A lack of consistency eventually leads to disaffection and cynicism. One way to help ensure consistency and transparency in governance is to develop policies, practices and procedures in specific areas such as human resources management and conflict of interest. A large proportion of the pilot projects deal with such matters, including, for example, those completed by Matsqui First Nation and Treaty 4 Governance Institute (specifically focused on human resources development), and (for appeal, redress and enforcement mechanisms) Wabigoon Lake Ojibway Nation, Madawaska Maliseet First Nation, and Skeetchestn Indian Band.

All of the First Nation governance projects that addressed citizenship, leadership, accountability, consistency and transparency can be seen as part of a broader, community-defined agenda to build forms of government that foster healthy individuals, families and communities. At the same time, the projects completed by First Nations are practical. They may have been undertaken in the context of big dreams and bigger community needs, but they worked towards realizing those dreams and meeting the needs by:

➤ giving attention to process, so that a strong base for the changes contemplated is built), and

➤ focusing on specific improvements that can be made immediately.

In this respect, First Nation governance projects that worked on specific tools, such as financial management codes and human resources policies can be seen to be *aspects* of a broad process of community social and economic development and good governance.

There is serious interest in many First Nations in acquiring specific tools of governance, but these are not generally seen as ends in themselves. Taken as a group, the Governance Pilot Projects sketch a broad picture of the political development that is underway in many First Nations across Canada. Recognizing that there are many different ways of working towards self-government and diverse outcomes, there is some irony in the fact that similar processes are being developed and successfully implemented in First Nation communities across the country.

The relative priority a First Nation or community places on developing a particular governance tool, or set of tools, will be affected by the broader aspirations of the First Nation or community for governance, and in particular where the community's intentions lie on the spectrum of possibilities for First Nation governance (i.e. aspirations based on traditional forms of government, governance under the *Indian Act* or successor

legislation). Put another way, the many ways of thinking about and working towards self-government will determine how First Nations proceed to develop specific and tangible governance tools. There is strong interest in reviving or rethinking governing traditions, to learn "what works" and can be applied to meet modern requirements. At the same time, specific areas of activity (such as personnel policy) are being renovated so that local control over key aspects of collective life can be maintained.

Several of the case study projects reviewed in Volume 2 identify constraints on the implementation of First Nation plans. As much as there is very widespread interest in First Nation political and administrative development, there are also some significant obstacles in sight.

Constraints on the implementation of new governance measures are in some instances financial: funding is necessary to make plans, conduct research, undertake community processes, implement new measures and evaluate their effectiveness. There is project funding available, but not the kind of ongoing, longer term funding that is required to support orderly and sustained development, and then ongoing implementation.

Other constraints are of a legal nature. It is clear that some First Nations' plans will require changes to the legislative framework in which they work. And yet other constraints have to do with process and human resources. Probably every First Nation in Canada struggles with a shortage of well-trained, locally-based staff; those who are in First Nation government contexts balance many responsibilities, including responding to community interests, delivering programs and services, and undertaking reporting and management.

2. Change Management and First Nation Governance Development Processes

Researchers have been studying the process of organizational change, or "change management" as it is sometimes called, for many years. All organizations eventually require change, in response to new factors in their environment or perhaps because of the changing needs of the people they serve.

In a sense, development of First Nation government according to any particular First Nation's own needs and wishes can be seen as a massive, complex, variable process of organizational change. Although this phrase only partially captures what is underway in First Nation communities, some of the main conclusions of research on organizational change appear to be relevant.

a) Insights about Organizational Change

One of the main insights of research on organizational change is that it is ultimately a human centered process, with individuals and groups having varying levels of opportunity and ability to shape change, and being variably affected (directly or

indirectly) by the experience of change. Individuals in groups often respond to similar circumstances in similar ways, and so it is possible to generalize about the conditions under which favourable change can be created.

In this section, we offer four insights about organizational change that appear to be relevant to the governance processes described in the governance project reports.

Resistance to change increases when the impending change is (a) sudden, (b) large and/or (c) imposed rather than participatory.

Many project reports describe thorough and early communication about the project, intended to ensure that all members were aware of impending changes and had an opportunity to become involved. Some project reports outlined work towards aspects of governance reform in terms of several phases, reducing the likelihood that one large change would have to be implemented all at once. And a great many First Nations appear to have recognized the importance of (c), the need for a participatory approach to change.

In contrast, the failed attempt by the federal government to introduce the *First Nations Governance Act* substantiates this point from the other direction: imposed change, especially large change, does not succeed.

The short timelines allowed for the governance pilot projects might have created resistance to sudden changes, but many First Nation project proponents avoided this problem by using the funding opportunity to build on work already underway, or to plan future steps and stages phases of activity.

In almost all processes of change, there will be winners and losers. Some people will lose power, while others will gain it.

We found only limited evidence of tension arising from this factor in the collection of project reports, but this may be an artifact of timing (i.e. too little time has passed for winners and losers to emerge). On the other hand, it may be that the participatory processes enabled communities to successfully moderate or resolve conflicts. Where there was some evidence of this tension arising from the creation of winners and losers, it was expressed in the form of an undertone of skepticism that project results would be accepted and then carried forward by the community leadership.

Change needs a champion.

Virtually all cases of successful organizational change are driven by "champions" – individuals who take responsibility for inspiring, guiding and sustaining the process of change through its many ups and downs. Ideally the change champion is someone with considerable power who already commands respect. Good champions also have a clear

vision about where they are headed, along with a willingness to make changes in approach as circumstances require.

Some project reports describe very active Band staff or organizational leaders, and in a few instances facilitators from outside the community, who animated community processes and moved change forward. These change champions are an important community resource.

In other cases, it appeared that a more subtle and gradual, but enduring, form of "championship" for change was being led by traditional teachers and elders. Observable more by its effects than in any specific forms of short-term activity, the teaching of traditional leaders sustains a positive process of change intended to lead to authentic integration of traditional practices with modern needs, in a healthy community.

Keep doing it.

Organizational change rarely occurs in a straight line. It must be sustained through minor re-directions, delays, unforeseen obstacles, sudden opportunities, temporary digressions, and community disaffection. Fundamental change is rarely rapid, if it is to be deep, lasting and beneficial.

The short timeline of funding for the Governance Pilot Projects certainly works against the maintenance of sustained change. Many project reports, though, indicate that change is in fact being sustained: work was completed before the project was begun, and work appeared ready to continue after its conclusion.

Because of the human dimensions and impacts of organizational and community change, the creation of positive incentives that encourage and induce change, and processes that can dispel fear as a natural human response to the unknown should be recognized as an important part of change management in a First Nation government context. As a consequence, research, efforts to improve communication in the change process, and experimentation with change in a way that maximizes flexibility and does not close off options for First Nations, or that allows them to alter course, should be encouraged.

b) More Insights from the Study of Organizational Change

In the preceding section, we have mentioned some of the ways in which the governance pilot projects appeared to have incorporated some important features of sound practices of organizational change. This section takes the discussion one step farther, by attempting to suggest how other insights into organizational change might be useful to First Nations.

The ambitious scope and scale of First Nations governance development and reform will place considerable demands on First Nations and their leaders. They will be challenged, both as designers of change processes and as end users of the results. Some

considerations in this regard are offered below. It is easy to see in this discussion that while there are some very useful insights available from the study of other instances of organizational change, the circumstances of First Nations are distinctive in important ways. There can be no "cookie-cutter" or "`one-size-fits-all" solutions here.

Much writing about organizational change focuses on corporations and private sector and public sector organizations. Many studies deal with these organizations in their capacity as employers. Therefore, the key players in change management tend to be seen as top leaders, managers and employees. Also, the changes that are being considered or implemented are usually ones that are imposed top-down by the leadership. Such imposed change usually takes the form of discrete programs of change, such as the introduction of new technology, a changed organization structure, new processes or management system, or changed behaviours and style (culture change).

In contrast, First Nations are highly complex, multi-layered social and political organizations. First Nation governments encompass employment relationships between leaders, managers and employees, but also have strong (and distinctive) traditions of community and cultural expression with institutional and political consequences. All this is held together by shared social and community relations, experiences and values. For First Nations considering organizational change, then, the key players involved go well beyond managers and staff. They include:

- ➢ The wider First Nation community, with its cultural and political aspirations (both on- and off-reserve)

- ➢ On-reserve residents (with specific interests regarding their standard of living, including local infrastructure, policing and environment)

- ➢ The 'receivers' of First Nation services (social, housing, education etc.)

- ➢ Leaders, managers and staff of the First Nation, and

- ➢ Contemporary and traditional leaders of the First Nation (including Elders).

Adding to the complexity is that most First Nations are relatively small in size in terms of membership, lending a certain intimacy to all public initiatives. Visibly and directly, leaders, residents and receivers of service are the same people.

The reform and development of First Nation governance promises to include multiple layers of change, from the broad change of community thinking and involvement, to discrete programs of change for employees and managers in First Nation 'government', such as the acquisition of new skills, the use of new technologies, budgeting processes, and accountability measures.

Each layer of change and each discrete program of change will carry its own challenges, including degree of complexity, and lead to varying degrees of resistance, and potential for success or failure.

Resistance to Change / Managing Expectations

Four ingredients are usually necessary for successful organizational change, all of which are highly relevant to the First Nation governance project:

1. A dissatisfaction with the present situation (e.g. restrictive legislative framework, limited community empowerment)

2. Vision of a more desirable future (e.g. vision of more empowering legislation, potential for more traditional governance models)

3. Commitment (e.g. First Nation leadership and peoples, Canadian Government)

4. Knowing the first steps to take (agreed processes and timelines, clear direction, strong leadership, strong project management)

Much of the organizational change literature assumes a hierarchical organizational structure, where change can be imposed by the leadership and the buy-in of employees must be gained. This of course assumes that much of the change will be unwelcome and inspire fear and opposition.

While this may in fact occur where changes affect the employees (both staff and management) of the First Nation, it is likely that change in First Nations government will be less an issue of resistance as one of high expectations and ambition, as evidenced by many of the First Nation governance reports.

Therefore, it may be a case of managing expectations and gaining understanding and commitment through community involvement. Many of the changes are likely to affect the entire First Nation, as opposed to a certain number of employees. Therefore the change process is likely to be less top-down, and more community-driven. Evidence found within the governance project reports indicate that there is considerable participation in the current debate. This is likely to increase the chances of success.

Dealing with any resistance to change by the management and staff of First Nations administration is fundamental to the success of the change program, due to their key role in delivering services and interfacing with the community. Education, training and skills acquisition are critical to engendering confidence and therefore a key factor in successful change management.

Acceptance of large scale change

There are five key issues to ensure the buy-in of people affected by change, including leaders and management, employees, 'receivers' of services, and the wider community[4]. Each of them can be related to one of three necessary conditions:

> Awareness (energizing)
>> 1. understanding the new circumstances (I understand)
>> 2. knowing how things work, how things can be corrected as the change process progresses (I know)

> Capability (empowering)
>> 3. providing the resources, skills and time to do the job (I can)
>> 4. instilling confidence (I can cope)

> Inclusion (will)
>> 5. commitment of leadership and the people (I choose, I value, I will)

Communication of the case for change and evidence of why things are changing, what will change, and how it will change is essential to genuine community involvement. Similarly, there needs to be an honest assessment of whether there are winners and losers, and what they will win or lose.

Leadership

One of the central difficulties of the First Nations governance project at this stage is the uncertainty about what the change may be and how long it could take. Clearly, every facet of the project is still at an early stage, with considerable debate still continuing over the legislative framework, the institution of traditional forms of governance, and financial and human resources, among many other issues.

This underlines the importance of strong leadership and strong managerial performance, to promote and direct the organizational change and gain the commitment of those affected. The literature on the role of leaders, or 'change champions', in organizational change is extensive. However, the role of a change champion can be summarized in the following[5]:

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[4] Adapted from A. Judson, *Making Strategy Happen*, 1990.

[5] Adapted from Jane Keep, 'The Change Practitioner', in Hamlin, Keep and Ash, *Organizational Change and Development*, 2001.

Leadership action	Skill / competence
Project management	Planning, resource allocation, etc.
Contracting (with 'clients')	Defining the task, establishing relationships
Team building	Defining roles, maintaining good working relationships
Analysis and diagnosis	Data collection, problem solving
Data utilization	Qualitative or quantitative data, reviews, surveys
Interpersonal skills	Communication, time management
Communications	Listening, written and oral presentations, persuading
Political awareness	Sensitivity, influencing
Intervention implementation	Participation, involvement
Monitoring and evaluation	Criteria setting and reviewing, measuring effectiveness
Technical skills	Financial interpretation
Process skills	Facilitation
Self-awareness and insight	Reflection, critical thinking, intuition.

As the shape and scope of the First Nations governance project becomes clearer, the application of organizational change concepts could assist in defining the challenges of each element of the change program and the likely impact on First Nations peoples.

Results measurement as a tool for change

Governments of all types are increasingly focused on defining and achieving results. This stems from the need that governments have to be able to respond to the changing circumstances, priorities and needs of the day, and to ensure a good future. The increasing degree to which politicians and government officials are held to public account is another impetus for "management by results".

It is important that the specific results that must be reported are:

- Related directly to the priority outcomes, from the perspective of those implementing the program, and
- Measurable in a way that is not cumbersome or likely to divert resources away from the core activity.

The reporting requirements and deliverables associated with funding for the First Nation governance pilot projects are consistent with this focus on results. It is important that the burden of reporting requirements always be in balance with the two principles identified above. Further, it is important that the specific measures against which progress is to be made are generated by the project proponents, so that they will maximize effectiveness as management tools.

In addition, consideration can be given to the importance of *process* in making a positive or negative contribution to change generally. In First Nation communities "process"

should be neither ignored nor discounted. Within the First Nation governance pilot projects there is strong evidence of the tremendous value that can realized by communities simply by engaging in community defined and driven processes of reflection, discussion, priority setting, and strategy or plan formation[6].

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[6] For more on evaluating process outcomes, see Sheri Torjman, *Are Outcomes the Best Outcome?* (Ottawa: Caledon Institute, 1999).

Part V: Conclusions - Towards Further Research and Development

The First Nations Governance Pilot Project reports document a significant, widespread process of political and social change undertaken at the grassroots level by First Nations citizens and staff living in every part of Canada. It is important to recognize, however, that the projects themselves were undertaken in the context of a prescribed and limited framework. In this way, they can not be said to be representative of the full scope of First Nation preferences and aspirations for First Nation governance.

Some lessons from their experience and an analysis of this experience are displayed in this study, but a full sense of the breadth of experience and skill that is revealed in the project reports can only be gained by reading project reports directly. Nonetheless, it can be anticipated that every section of this report will give rise to further questions and the need for more research.

In all phases of the research we have been struck by the extraordinarily challenging circumstances of First Nation leaders, managers and administrators. They face all of the fiscal and organizational challenges faced by the leaders, managers and administrators of other Canadian governments; as any mayor or premier will avow, these are substantial.

First Nations governments and organizations also confront challenges that are particular to their circumstances. These include:

> The need to work within a very constrained environment, defined by federal and provincial legislation (including but not limited to the *Indian Act*) and by policy oversight lodged in the Department of Indian Affairs and Northern Development, and other federal departments.

> Working for change while coping with and repairing the material, social and psychological effects of decades of colonialism and political domination.

> Meeting daily governmental and organizational responsibilities while addressing far-reaching questions of long-term institutional design and the challenges of multilevel governance.

> As a consequence of the relatively small size of most First Nation communities, the number of people from the community who are both willing and able to take on leadership and administrative tasks is limited, and limiting.

At the same time, First Nations governments and organizations have significant advantages and strengths:

- People working for change in First Nations organizations may draw upon very long-standing traditions of decision-making and practices to ensure well-being, as well as upon the best of what is available from modern arrangements. They have the advantage of bi- or multi-culturalism.

- The last two generations of First Nations leaders, and the active members of the fastest growing population in Canada, have been among the most politically engaged residents of Canada. They have built a bank of expertise and insight concerning how to bring about fundamental change. It is important to note that this expertise is held not only by the more visible leadership, but by hundreds of people working in First Nations-related governments and organizations.

- First Nations populations are young, and increasingly well-educated.

- Despite adversity and their diversity, First Nations have developed a significantly common political purpose and vision.

What's Next?

In conclusion, we would like to offer some suggestions for further research, based on the collection of First Nation governance pilot project reports, and our analysis of these.

1. How can "practical flexibility" be created at the same time the benefits of standardization are retained?

Our earlier analysis explored the tension that persists between the impulse for standardization common to many public bureaucracies, and the countervailing impulse in First Nations for political development that is rooted in community-specific, local approaches to the common tasks of governance.

More research is needed to determine practical ways to mitigate or dissolve this tension, at the practical level. In the pilot project reports may be found many projects that take similar approaches to such practical matters as membership, elections, and human resource policies. These may provide clues about how to proceed.

In addition, it is likely that deeper analysis of the administrative relations that exist between First Nation governments and other Canadian governments will reveal more options.

Finally, more research is required to identify those processes of community engagement that commonly appear to work well for First Nation communities as they strive to develop practical First Nation governance tools as well as strategies and plans for First Nation government in the future.

2. How are administrative, and government-to-government relations between First Nation governments and organizations and other Canadian governments changing? How should these relations change?

The broad processes of social change that are discussed throughout this report have left the existing institutions behind. People working through both First Nation institutions and the institutions of other orders of government struggle with the heavy hand of historical patterns and institutional rigidity.

Research is needed on practical ways to make administrative government-to-government relations more nurturing of the process of positive political change. This work should focus on at least (1) project management (2) program development (3) evaluation and (4) negotiation.

For example, further research could explore what can be done about the "double accountability" problem, whereby First Nations governments are responsible to their membership who elect them and to the Department of Indian Affairs, whence comes funding. How are communities coping with this and associated problems (administrative and political)? What are First Nations doing to mitigate this problem or even eliminate it?

3. What are the key obstacles faced by First Nations in implementing their current plans for self-government?

More research and developmental work needs to be directed towards:

a) sustainable and flexible financial policies and arrangements that can support First Nation governments operating in a variety of legislative and constitutional contexts (e.g. under the *Indian Act*, self-government, and traditional forms of government),

b) ways and means for removing legislative, policy, program and administrative obstacles that prevent First Nations from undertaking the full range of reforms that are contemplated (in relation to all aspects of governance), and achieving the full spectrum of First Nation government arrangements that are envisioned, and

c) addressing capacity obstacles within First Nation communities, especially with respect to human resources, levels of community engagement, and processes for community participation in the direction and management of change.

4. What are the implications of codifying tradition?

There are many initiatives underway to revive and consider what guidance can be provided by the governance traditions of each nation in building self-government in the future. Research questions that should be addressed include:

a) What can be discovered about how the revival of governance traditions, the re-traditionalisation of governments, and their modern reinterpretation might work?

b) Can governing traditions suitable to another way of life and time be translated into successful governments for the future? Can these traditions be codified?

c) Is there a need for a balanced approach, that allows both grassroots processes, community healing and the development of governance tools to take place concurrently, or in an appropriate sequence? Should a traditional consensus on the way forward be achieved before codification of results takes place? How can flexibility be built into codified core governance laws, procedures and mechanisms? What room can be created for the oral tradition?

Conclusions

The First Nation governance pilot projects were funded in response to proposals submitted by First Nations to DIAND from all regions of Canada. They reflect their origins in a particular funding opportunity keyed to the now-defunct *First Nations Governance Act*. They also bear the marks of the very short lead time that was available for the work, and funding constraints.

Even so, taken together, the projects provide a record of grassroots concerns and priorities with respect to governance. Above all, they provide a set of excellent examples of practical governance tools, successfully developed by and within First Nation communities.

The pilot projects provide a rich source of transferable experience and innovation, both in terms of process and product. They can serve to highlight how the unique circumstances of governance in First Nation communities currently operating under the *Indian Act* may be addressed through community-driven initiatives and innovative processes, both traditional and contemporary.

The high level and high quality response by First Nations across Canada to the First Nations governance pilot project opportunity provides an indication of the priority that is being placed on issues of governance by First Nations facing diverse circumstances and challenges across Canada.

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Note: *There are many excellent publications dealing with Indigenous government and governance issues. We provide here a select list of some sources most relevant to this report.*

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