BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

Governance Toolkit

A GUIDE TO NATION BUILDING

LETTER FROM REGIONAL CHIEF JODY WILSON-RAYBOULD

Dear Leaders,

The BCAFN is pleased to present the first edition of the ***BCAFN Governance Toolkit: A Guide to Nation Building*** in accordance with our ***Building on OUR Success*** action plan and the first pillar of that plan, "Strong and Appropriate Governance." The Governance Toolkit is a comprehensive guide intended to assist your Nation in building or rebuilding governance and navigating its way out from under the *Indian Act* at its own pace and based on its own priorities. Since it was first conceived, this project has taken on a life of its own and continues to grow. The Governance Toolkit also continues the work of previous BC Regional Chiefs and draws on the growing governance experiences of BC Nations working together to improve the lives of our people.

Simply defined, "Governance" means "establishing rules to coordinate our actions and achieve our goals." As societies, the institutions we create to make rules and then enforce them, we call "government." "Governance" and "government" come in many forms but are always needed. They can, of course, be done well or badly. Research and experts tell us the quality of governance, much more than its specific form, has a huge impact on the fortunes of any given society. Ours are no exception. Societies that govern well simply do better economically, socially and politically than those that do not. Strong and appropriate governance increases a society's chances of effectively meeting the needs of its people.

In many diverse ways, based on our different cultures and traditions, this is exactly what our peoples did for centuries before the arrival of Europeans. The reality that we lived in productive, sustainable and viable societies is testament to the fact that our governing systems worked. With the arrival of the newcomers, all this quickly changed. During the colonial period, while we may have had some form of government under the *Indian Act*, we were for the most part denied the powers (jurisdiction) we needed to govern and the governing institutions that could exercise power effectively.

During the colonial period, our governments were based on models developed by the federal government to deliver its programs and services. The powers of our governments were very limited. The effects on us were unfortunate, as the *Indian Act* system promoted an impoverished concept of government. "Government" for us became little more than managing programs (education, health, housing, social assistance, etc.) and distributing limited resources (money, jobs, influence and services). The concept that government should be about making laws, resolving disputes and generating the means to pursue a collective vision was smothered under the need for federal programs and services and the fact that the local "band office" was the instrument to deliver them.

Thankfully, this is changing and a more robust concept of governance is re-emerging as we slowly rebuild strong and appropriate governance. This is happening for many reasons. One of them is the advancement of our rights of self-determination, both domestically through section 35 of the *Constitution Act, 1982* and internationally through the *United Nations Declaration on the Rights of Indigenous Peoples*. It is also a reflection of the growing political realization that our Nations truly need strong and appropriate governance in order to succeed. And this is not just a realization by us, but by others. Finally, it is also because our Nations are increasingly raising more of their own revenues to provide strong governance. In BC, our Nations are leading the way. Among them, they have made over 2,500 laws/by-laws and they are the leaders in numerous "sectoral" and "comprehensive" governance initiatives in Canada along a continuum of governance reform.

The Governance Toolkit draws on all of this work in post-colonial governance and brings it together in one document. Much of this work has, in truth, only taken place in the last 20 years as we have translated legal and political victories into practical benefits on the ground and in our communities.

The Governance Toolkit includes a number of parts. The core of the toolkit is the ***Governance Report*** that comprehensively looks at options for governance reform and considers, subject-by-subject, the powers (jurisdictions) of our Nations. The Report is written from the perspective that the Nation is the building block of governance and that our Nations have the inherent right to govern. It looks at how we are moving in this direction along a continuum of governance options and reforms by providing a snapshot of what our Nations in BC are actually doing.

The Governance Toolkit also includes a ***Governance Self-Assessment*** in two modules that your Nation can use to evaluate 1) the effectiveness of your institutions of governance, and 2) the effectiveness of your administration. The evaluation is an important exercise that any Nation can undertake to identify what is working well and what not so well, and where the institutional framework may be deficient and where there are gaps, both in terms of the institutions of governance and of the powers of government that may need to be advanced. The third part is ***A Guide to Community Engagement*** that will assist your Nation to begin or continue discussions with your citizens about the importance of strong and appropriate governance and options for governance reform, including moving beyond the *Indian Act*.

I am pleased to say that the Governance Toolkit has been developed in-house by the BCAFN with the support and contributions of many individuals and organizations. Drafts of the Report were reviewed by peer groups and the Self-Assessment modules were piloted in a number of our communities and revised extensively following insightful dialogue. Pilots continue. The Governance Toolkit is available on the BCAFN website www.bcafn.ca, including most of the primary documents that are referenced in the *Governance Report*.

Finally, transforming *Indian Act* governance is no small task. After years of living under the *Indian Act*, it may be difficult for some Nations, as indeed it has been for the federal government, to shed the routine of colonialism and tackle the seemingly overwhelming task of Nation building or Nation rebuilding. For some, the status quo works and unfortunately serves their self-interest. For others, it may be hard to shed the old ways. Many more they will simply be afraid of change preferring to live "with the devil they know rather than with the one they do not." There will at times be tensions between current and traditional practices, and a challenge to reconcile them. What is encouraging, though, is that despite the challenges, many of our Nations have already walked through, or are walking through the "post-colonial door" and are establishing strong and appropriate governance with their own institutions of governance and the range of powers they need to govern. While considerable work remains ahead in realizing our collective vision, we are well on our way.

I hope the Governance Toolkit will be a practical and useful resource for your Nation during this exciting period of change and of Nation building. *Gilakas'la*.

Respectfully,

Puglaas (Jody Wilson-Raybould)
Regional Chief

PART 3 ///

A Guide to Community Engagement

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FOREWORD FROM REGIONAL CHIEF PUGLAAS (JODY WILSON-RAYBOULD)

As First Nations people, we all appreciate the need for strong and appropriate governance and know that under the present *Indian Act* system, our opportunities for developing effective institutions of governance and exercising jurisdiction are seriously compromised. Yet in many of our communities, if a vote were held tomorrow to get rid of the *Indian Act* in favour of self-government, the vote would fail and the status quo would prevail. We have to ask ourselves why and then we have to find the solutions.

In order to find solutions, we must first have a common understanding of where we have come from as historically self-governing peoples and where we are today under the *Indian Act*. We need to do this so that we can actually begin to address the challenge of deconstructing our colonial reality and moving past the *Indian Act*. This process must be part of building a collective vision for our future and of creating a movement for social change in our communities to support the implementation of that vision — a vision that includes an improved quality of life for our people, with practising and thriving cultures.

Like many of you, I have been trying to figure out what can be done to empower our citizens and facilitate social change in our communities so that more of our Nations are ready to move beyond the *Indian Act*. Today, our rights are protected under section 35 of the *Constitution Act, 1982* and ensured through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The challenge is now to translate the promise of section 35 and the UNDRIP into practical benefits on the ground in our communities, so our people can enjoy their title and their rights.

What I have come to appreciate during my time in regional and national politics and being on council in my own community is that before there can be any significant social change on the ground in implementing our Aboriginal title and rights, our people have to support it, not just verbally and politically by electing leaders who share the same vision, but by actually exercising their franchise and voting in favour of social change. Together we have to "vote the colonizer out." This is because the colonizer, in our case Canada, has a fiduciary relationship to our people and cannot simply legislate the *Indian Act* away until our people tell them it is okay to do so. Perverse but true, this requires the full engagement of our citizens.

For change to occur, each of our communities must go through its own processes of empowerment and local transformation. Through healing, rebuilding, capacity development — call it what you may — our colonial period must officially end. We must walk through what we talk about in this guide as the "post-colonial door." As this process of decolonization continues to unfold, we need to support what is essentially basic community development work.

As Regional Chief, I have travelled throughout BC introducing our Governance Toolkit to various chiefs and councils, their staff and our citizens. At one session, a chief used an analogy of the *Indian Act* being like a balloon. He reflected, if we stick a pin into the *Indian Act* balloon, it will burst and the *Indian Act* will be gone. But he said our citizens are afraid, and are asking "What comes next?" and "Are we ready?" Taking his analogy further, what we are doing through numerous governance initiatives, as discussed in the *Governance Report* (Part 1 of the Governance Toolkit), is actually not "popping the *Indian Act* balloon" but rather letting the air out slowly, and replacing the balloon with our own strong and appropriate governance.

No other segment of Canadian society has had to decolonize and therefore go through this process to establish basic structures of governance or create the tools for economic and social development. The legal framework and institutional structure for strong and appropriate governance is in place for the rest of Canada, but not for us unless we vote "yes" for change.

The BCAFN action plan to support our ongoing process of decolonization focuses on four key and interrelated areas: (1) fair access to lands and resources, (2) strong and appropriate governance, (3) improved education, and (4) individual health. The action plan is based upon the fundamental principle of community empowerment, which assumes that at some point every community in our province will be voting to walk through the post-colonial door and that each will need to develop an "exit" strategy for moving beyond the *Indian Act*.

I have been privileged to meet with and receive the support of many First Nations leaders who have taken on the challenge in their own communities and are either fighting to walk through or have already walked through the post-colonial door to take their rightful place in confederation and capitalize on their title and rights, including treaty rights. I have also heard the concerns of our leadership that despite the fact that the door is now opening, too few of our people and our communities are passing through it. To open that door fully and for all to be able to walk through it, we need to continue to work together and ensure that our citizens are fully engaged. To that end, *A Guide to Community Engagement: Navigating Our Way Through the Post-Colonial Door* has been designed to assist our Nations with this most important and rewarding, but also the most challenging, work in our communities.

Puglaas (Jody Wilson-Raybould)
Regional Chief
BC ASSEMBLY OF FIRST NATIONS
June 11, 2012

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BC ASSEMBLY OF FIRST NATIONS

About the British Columbia Assembly of First Nations

The British Columbia Assembly of First Nations (BCAFN) is a provincial-territorial organization whose membership is made up of 203 First Nations in British Columbia. The BCAFN is one of the ten regional organizations affiliated with the national Assembly of First Nations whose members include over First Nations across Canada. The Regional Chief of the BC Region also serves as a member of the Executive of the national Assembly of First Nations. The Regional Chief represents the regional concerns of the BCAFN constituents on the Executive Committee to ensure that regional perspectives are included in National political discussions and decision-making. The Regional Chief holds specific portfolios that deal with national policy issues and concerns. The BCAFN is an incorporated society under the BC *Societies Act* (S-45919). This allows the BCAFN to operate with its own regionally specific mandates and to establish relationships with the Provincial government and other organizations. The BCAFN operates to create linkages between the regional and national political processes to ensure that these activities are communicated and represented at a First Nation level.

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USING THE GUIDE

PART 3 /// A GUIDE TO COMMUNITY ENGAGEMENT — NAVIGATING OUR WAY THROUGH THE POST-COLONIAL DOOR

In this, the third part of the *BCAFN Governance Toolkit: A Guide to Nation Building*, we explore the complex and often controversial subject of governance reform in our communities and ways to approach community engagement. The Governance Toolkit is intended as a resource for First Nations leadership. It provides a conceptual framework for engaging the citizens of First Nations on governance and the challenges of decolonization and moving through the metaphorical "post-colonial door." Part 3 of the Governance Toolkit looks at ways to approach community engagement as a transformative process of empowerment as a community moves towards the post-colonial door, opens the door and, ultimately walks through the door and beyond. Part 3 is divided into three sections:

Section 1 — Social Change and Governance Reform: Moving Towards the Door
This section considers ways to introduce the concept of "governance" and "governance reform" in your First Nation. The section explores our current reality and the challenges to effecting governance reform by locating our experience as "Fourth World" peoples in the difficult process of decolonization. Accordingly, we consider the need to approach our work on governance reform as an aspect of community development.

Section 2 — Community Engagement and Organizing for Change: Opening the Door
Section 2 looks at what community engagement is and why it is necessary. The section considers ways to overcome the challenges of community engagement by using approaches such as community development, as discussed in Section 1. This includes a discussion on the need for "safe spaces" in which to engage, and developing group skills and trust. Basic but useful information about conducting and facilitating meetings and engagement activities, including using the Internet and social media, is also provided. Finally, the section considers how communities can mobilize resources, plan and organize for change and develop their own community engagement strategies.

Section 3 — Exploring Governance Options: Walking Through the Door
In this section, the focus on community engagement shifts from simply having a conversation about change and the need for change to what it will actually look like and how a Nation might achieve that change. The section covers the development of core institutions of governance, including developing a constitution. It also considers the ratification process, communications, and monitoring and evaluating change.

Additional tools
Several tools are included at the end of each section, behind separate tabs. These include PowerPoint presentations, Q&As, charts, "top 10" lists, templates, questionnaires, surveys and other tools. Many can be used as is or modified to meet specific needs. For convenience, these documents are also provided on the disc attached to the inside back cover. These tools, including any updated versions, will also be made available on our website at www.bcafn.ca.

PART 3 /// SECTION 1

Social Change and Governance Reform — Moving Towards the Door

1.0

SOCIAL CHANGE AND GOVERNANCE REFORM — MOVING TOWARDS THE DOOR

INTRODUCTION

In this section, we begin by considering how to approach introducing the concept of "governance" and "governance reform" in our First Nation communities and start the necessary yet difficult conversations about social change. We provide context for First Nation governance and some tools to help you begin to deconstruct the *Indian Act* reality and learn the truths about self-government with your community. These materials are based on the more complete consideration of the issues contained in Part 1 of the Governance Toolkit, *The Governance Report*.

Next, the section explores our current reality and the challenges to effecting governance reform by locating our experience as "Fourth World" peoples in the difficult process of decolonization and moving towards the "post-colonial door". Accordingly, we consider the need to approach our work on governance reform as an aspect of "community development," an approach that has frequently been used elsewhere to support empowerment and Nation building or Nation rebuilding, particularly in the developing world to empower social change. Finally, we consider triggers for governance reform that can lead to "opening the door".

INTRODUCING THE CONCEPTS OF "GOVERNANCE" AND "GOVERNANCE REFORM"

Introducing the topic of governance, governance reform and moving beyond the *Indian Act* in our communities can, as most leaders know, be politically challenging for leadership; but while it may not be very popular with citizens, it is a fundamental and necessary topic to engage on if we are to move towards the post-colonial door. So what is the best way to broach the subject? In truth, the need for governance reform may be raised in your community not just because of leadership direction, but for any number of reasons, triggered by other events in your community or by external forces. In fact, in some cases the trigger for reform can come despite the leadership. The types of triggers for governance reform are discussed later on in this section.

Most councils contemplating governance reform, whether triggered by them or not, will likely want to raise the idea with their citizens first, before even considering, let alone embarking on, any specific governance reform activities. Experience shows that this is wise. However, raising the concept of governance reform in your community does not have to be through a "band meeting" or led by council. The chances for successful governance reform are increased where the need for governance reform emerges as a solution to issues raised by citizens as part of a broader community development strategy that empowers citizens to address a range of issues important to them, and to all of us (e.g., culture and language preservation, education, healthcare, housing, employment, etc.). In this way, governance reform becomes identified as part of the solution and is placed squarely in the category of "needs to be done" in order to resolve the priority issues of the citizens and move through the post-colonial door.

SO… WHAT IS GOVERNANCE?

Simply defined, governance means "establishing rules to coordinate our actions and achieve our goals." It relates to decisions that define expectations, grant power or verify performance. It consists of either a separate process or part of management or leadership processes. As societies, we call the institutions we create to make rules and then enforce them "government" and we call what a government does "governance."

A good way to begin a conversation about governance and governance reform in your community is to talk about what governance means generally, and then to ask citizens to express their views on what governance means to them personally. In fact, this is exactly what we did to help frame our perspective on governance reform for the purposes of this Toolkit. We asked a number of leaders from our communities to tell us how they would describe governance. The responses included:

- The ability to make decisions for oneself based on one's traditions, and as appropriate
- Who decides what and who pays
- The agreed process of making and implementing decisions with respect to the collective interests of a Nation or people
- Lead by example
- Make change for the future
- Making rules and following them
- Making decisions and rules under lands, people and resources
- Rules to live by
- Governance is responsibility

- Something that sets out rules of how we live work and make decisions; governance provides authority to carry out those rules
- How we make decisions for the whole community
- Exiting the *Indian Act*, and Nation building; those two aspects are rules to live by; changing the processes and how you make decisions

We can summarize how these leaders see governance as "a set of rules that guides how we work, live and make decisions on a day-to-day basis."

As an exercise in your community, asking people what they understand "governance" and "government" to mean can quickly lead to a discussion of how we used to govern our lands and our peoples pre-contact, or "traditionally," and how we attempt to govern ourselves today, and, more importantly, how Canada still governs our peoples and lands through the *Indian Act*. This is the first step in realizing that there may be a better way to run the "band," govern the reserves and eventually exert greater control over the broader traditional territories that our Nations have historically occupied.

UNDERSTANDING WHERE WE HAVE COME FROM

Historically, our Nations were self-governing and each had their own established core institutions of government — such as the potlatch or feast. Since the passage of the *Indian Act*, the primary political unit for our Nations has been the "band" and the primary governing body for the band has been "chief and council." As we move beyond governance under the *Indian Act*, we have an opportunity to re-design culturally appropriate and effective governing institutions to replace the institutions of governance imposed on us under the *Indian Act*. For all bands in Canada, until they re-establish their own institutions of governance, under either the *Indian Act* (e.g., membership codes, election codes) or other authority, all the core institutions of governance are legally established and regulated in accordance with the paternalistic rules set out in the *Indian Act*.

Before there can be any healthy discussion in any community about governance reform, everyone in the community, to the extent possible, should have a common understanding

of where we have come from and how the "status quo" operates. Our citizens need the facts and the truth about the limitations and restrictions of living under the *Indian Act* and the degree of control Canada exercises over our lives, and how the lack of freedom under the status quo continues to reduce our chances of success as a peoples. This is the basic information about our history that should be taught at school or in more detail as the subject matter of Indigenous Studies "101" at Canadian colleges and universities. While each of our Nations has a distinct and unique culture that needs to be celebrated and understood by its citizens, we all share a common colonial history and since 1876 a common history of administration, control and wardship under the *Indian Act*. This common and contemporary history has displaced our traditional institutions of government with new institutions and limited the powers of government and our ability to actually govern.

In providing the historical context of governance reform and developing a common understanding in your community of where we have come from, it can be useful to provide information on the differences between the pre-colonial systems of Indigenous organization and government and Western models of government, and critically, the twisted paternalistic variation of those models created by the *Indian Act*. To assist you with this, we have provided a simple PowerPoint presentation, entitled "Rebuilding First Nations' Governance: Our Challenges, Opportunities, Rights and Responsibilities," that can be adapted for your purposes by adding some basic information about your own culture and social organization pre-contact (see *Section 1 — Social Change Tools*).

UNDERSTANDING THE PRESENT: FACTS ABOUT THE STATUS QUO AND DEBUNKING THE MYTHS

Our *Indian Act* reality

CONSOLIDATION
CODIFICATION
Indian Act
Loi sur les Indiens
CHAPTER I-5
CHAPITRE I-5

"Few documents in Canadian History have generated as much debate, anger and sorrow as the *Indian Act*."

Ken Coates, "The Indian Act *and the future of Aboriginal Governance in Canada. NCFNG, 2008*

Our communities have been trapped within the *Indian Act* system since 1876. Unfortunately, over time as a colonized people we developed an unhealthy comfort with an impoverished system of governance that has only weakened our own systems of governance and strengthened our dependence upon Canada. Today we can recognize this and thankfully many are finding solutions to rectify the situation. Still, overcoming the challenges of our colonial legacy and finding the trust of citizens to take the leap of faith to move beyond the *Indian Act* has been, and will continue to be, the challenge facing every *Indian Act* band.

People can be very cynical about government, particularly our citizens about their own governments. However, no one is going to support changing even a bad system of government unless they are confident that it can, and will, be better. It is important for citizens to discuss what it is about the current system of governance that does not work or is causing problems. Our people will need to understand this before they will expend the time and effort to change the system. If you do not understand how the system is broken, it is hard to have a discussion about solutions to fix it. Alternatively, if you know the system is broken, you have to have the conviction, knowledge and inner strength to do something about it.

It will require a concerted effort to speak the truth about the *Indian Act* and debunk the myths of self-government while still operating under the very system you are trying to change. We have therefore provided in this section some useful tools containing information about the *Indian Act* and self-government to help your Nation to engage in a discussion in your community. Some of these tools have been used by other Nations in their own governance journey or have been developed specifically for this Toolkit by community-minded people who have witnessed first-hand the conflict that can occur as the process of rebuilding unfolds at the community level.

One of the tools we have developed in this section is a list of some of the most egregious problems with the existing *Indian Act* system. When discussing these problems, it helps to illustrate them and bring them home (make them real) to your community by using actual local examples and real experiences from your own community of where the problems of the existing colonial system have resulted in poor decision-making, bad government or lost opportunities.

The truth about self-government

In the same way that it is important to discuss the *Indian Act* reality, it is also important to debunk the myths and misunderstandings about what self-government means or could mean. While there are a number of incremental steps along the path to self-government, citizens will likely look beyond the incremental steps and ask what self-government might ultimately mean for them and for their community. Forty years ago, we did not have an answer. There were no examples of post-*Indian Act* self-government in the modern era. Today, of course, we have many examples. In order to assist your community in its discussion about self-government and what it means in practice for these Nations or might mean for your Nation, a number of tools are provided in this guide. They have been developed on the basis of the material contained in Part 1 of the Toolkit, the *Governance Report*. They include frequently asked questions about self-government and the *Indian Act*, a comparative chart, and some “top-10” lists.

When talking about self-government and what it might mean in your community, it may prove useful to focus on the type of work that self-governing communities undertake independently of other governments when building their institutions of governance and the rules that they follow. Essentially, this is the fundamental work of developing a constitution and community planning activities that will govern and guide the community. This internal governance work is quite distinct from the work involved in developing relationships with other governments including governance related negotiations and drafting agreements. It is work that needs to be undertaken regardless of whether moving beyond the *Indian Act* or engaging in any negotiations with Canada and/or BC. This is discussed more fully in Section 3 of this guide, where we consider the various options for governance reform today and how, through community engagement, we consider and act on these options.

DECOLONIZATION — GOVERNANCE REFORM AND THE PROCESS OF HEALING

"Aboriginal Peoples must have room to exercise their autonomy and structure their own solutions. The pattern of debilitating and discriminatory paternalism that has characterized federal policy for the past 150 years must end. Aboriginal people cannot flourish if they are treated as wards, incapable of controlling their own destiny..."

Report of the Royal Commission on Aboriginal Peoples, 1996

Our leaders have described the reality of our peoples as living in the "Fourth World" — that is, living in Third World conditions within a "First World" nation state. It is a good analogy and worth understanding when approaching governance reform and community engagement. Far too many of our people are poor, dispossessed of their lands, uneducated, dependent upon state services and generally unhealthy. Most families have direct experience of sexual abuse, violence, alcohol and substance abuse and suicide at levels far greater than in any other segment of Canadian society. Sadly, for a lot of our citizens there is still a sense of hopelessness. This sense of hopelessness can be overwhelming at times and is evidence of a far greater pathology that many of our citizens need to overcome — namely apathy, alienation, dependency and powerlessness — concepts which are more fully described below. Rather than ignore these problems, we need to have a plan for attacking the root causes of them. The strength to develop this plan comes from knowing we can and already are making progress. For all the despair that might still exist there is hope and plenty of examples of success to build on. The indicators of social malaise, and ways in which community engagement through community development can be used to overcome them, are considered in more depth below.

In order to overcome this reality, our people have to find the courage and strength to take back control of our own lives and by extension our communities — to decolonize. Where the call for change has been triggered, we need to approach and design community engagement and the process for effecting social change in a manner that reflects our Fourth World reality. This requires basic community development work, starting from the individual up, working through family, to village, to Nation. The work is difficult — even dangerous at times — the challenges immense.

Colonialism Definitions
"The policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically." — OXFORD DICTIONARIES
"Colonialism is a practice of domination, which involves the subjugation of one people to another." — KOHN, MARGARET, "COLONIALISM", *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (SUMMER 2012 EDITION)
"Colonialism is the establishment, maintenance, acquisition and expansion of colonies in one territory by people from another territory. It is a process whereby the metropole claims sovereignty over the colony, and the social structure, government, and economics of the colony are changed by colonizers from the metropole. Colonialism is a set of unequal relationships between the metropole and the colony and between the colonists and the indigenous population." — WIKIPEDIA, JUNE 2012
"The control of one nation by 'transplanted' people of another nation — often a geographically distant nation that has a different culture and dominant racial or ethnic group." — THE AMERICAN HERITAGE® NEW DICTIONARY OF CULTURAL LITERACY, THIRD EDITION COPYRIGHT © 2005
"1. the control or governing influence of a nation over a dependent country, territory, or people. 2. the system or policy by which a nation maintains or advocates such control or influence." — DICTIONARY.COM UNABRIDGED, BASED ON THE RANDOM HOUSE DICTIONARY, © RANDOM HOUSE, INC. 2012
"Colonialism is the extension of a nation's sovereignty over territory beyond its borders by the establishment of either settler colonies or administrative dependencies in which indigenous populations are directly ruled or displaced." — *NEW WORLD ENCYCLOPEDIA, 2007*

The impact of colonialism

The social impact of colonialism on the individual is harsh and debilitating for many. As a colonized peoples still governed under essentially a piece of colonial legislation, the *Indian Act*, some of the challenges we face in getting our citizens to engage are very similar to those in the developing world and by other colonized Indigenous people. They include:

- Apathy
- Dependency
- Alienation
- Powerlessness

When undertaking community development and engaging citizens, it is important to be aware of and work to address these potential challenges. The following textboxes describe these challenges in more detail. They are adapted from a manual for community development workers in developing countries.

Challenges to Citizen Participation	
Apathy	• One of the main behaviour patterns of the oppressed people is apathy. • "The way things are now is the way it will always be," is a common theme. • There is little time to think outside the present reality.
Alienation	• Different styles of leadership (both at the federal and provincial level as well as within our own leadership) can lead to alienation of citizens. • Too much reliance on any one leader can make people apathetic and dependent. • The development of structures and methods to encourage citizen input and partnership between governments and organizations of civil society needs attention. • There is no confidence that it is even possible for communities to take control of their own destinies.
Dependency	• When people (or groups of people) have been disempowered, they believe that they are not capable of doing tasks that, in fact, they can do. • There are different types of *dependency* — for example, when a person (or group) is fully dependent and relies upon another person (or government); and, being subordinate, or under someone else, when individual or group confidence often turns into a belief that you must rely on others to do things for you. • A response to dependency is often *counter-dependency*, where a dependent individual (or group) will do the opposite of what the authority figure (or government) suggests, regardless of whether it is reasonable or not.
Powerlessness	• Citizens do not believe they have or could gain access to the resources they need to succeed (Resource Empowerment). • Citizens do not realize that they have the skills and resources to get what they need. • There is a lack of recognition that governments cannot always respond to all the needs of a community.
Adapted from *Training for Transformation: A Handbook for Community Workers*, chapter 5, "Transforming Governance," 1984	

In order for our communities to begin to break the bonds of colonialism, we need to work with our citizens and communities to address these challenges through effective community engagement. The pattern of "power over people" that is an essential part of the colonial model and the resulting lack of self-confidence and sometimes silence among our citizens must be broken.

Our citizens are "empowered" when they have the strength to tackle the hard issues, overcoming the challenges of apathy, alienation, dependency and powerlessness, in other words, when our citizens have the strength to take back responsibility for their own lives. Empowerment does not happen overnight, and certainly the impacts of colonialism are not resolved by empowerment alone. However, it is only after people have been empowered that the long hard journey of rebuilding can really begin. Strong and healthy citizens are the roots that support strong and thriving Nations.

Getting our citizens to engage simply on the promise of good governance and governance reform is not realistic. Rather, it requires a concerted effort to address other aspects of peoples' lives from a community development perspective and based on their needs and priorities (e.g., health care, housing, education). To get people to engage, whether with respect to governance reform or to any other issue, we all must start by encouraging them to work with one another, with their leadership and with government.

Deep social change in our communities will not occur until there is a critical mass of our citizens who have been empowered. Obviously not everyone will become empowered at the same time. This is why group interaction and support is so vital to the success of any movement of social change. In other words, people need to help one another in overcoming their challenges through interaction. This is true for communities as a whole and is why as First Nations we also need to support one another.

Decolonization and building healthy communities

The BCAFN *Building on OUR Success* Action Plan considers our process of decolonization in four interrelated areas:

1. Fair access to lands and resources
2. Strong and appropriate governance
3. Improved education
4. Individual health

The focus of this Toolkit and the component of decolonization we are looking at is, of course, strong and appropriate governance. However, while community engagement with a focus on governance is important, it will need to be balanced by ongoing community development work in the other equally important and fundamentally interrelated areas: health reform, education, land and resource settlements and so forth. Our people will need help and support in all of these areas. Governance reform will need to be linked to a broader healthy communities plan and to engage people involved in these and other aspects of community development. To put it another way, simply empowering the people through community engagement to change the legal framework through governance reform is not in and of itself going to solve all the problems our communities face. It is important to be open about our collective challenges and locate the work of governance reform within a broader community development strategy.

Governance reform and self-government will not be a panacea for all the deeply rooted social, health and economic problems that we face in our communities. But it is a necessary part of it. The challenge is ensuring that our citizens see governance reform as part of this process of healing and invest the necessary time and energy in it. There is a positive connection between community healing and self-government. There is no question: they are inextricably related. Individual healing produces people who are firmly committed to the idea of cultural revitalization and self-determination and self-government. Individual healing leads to community healing and ultimately to collective approaches to change that enhance our identity as First Nations peoples.

THE NEED FOR A "COMMUNITY DEVELOPMENT" PERSPECTIVE

The work of decolonization benefits from taking a community development approach. Anyone involved in the process of decolonization and Nation rebuilding should really have a good appreciation of what community development is all about.

"Community development" as an approach to social change is a term used by community leaders, activists, involved citizens and professionals to describe the overall process of improving communities. It is defined in any number of different ways and is often used in the context of inner city revitalization, but applies equally well to many of the challenges involved in creating empowerment and social change, both on-reserve with respect to "band" government and moving away from the *Indian Act* and off-reserve, and gaining access to lands and resources within our Aboriginal title lands. Community development is an approach that has been followed by other Indigenous peoples, including the Maori in New Zealand. In the Third World, the concept of community development is also well understood and is the approach taken by many NGOs and their community development workers, who are carrying out local projects to effect social change in regions of the world where systems of colonial government have been imposed and where people are rebuilding their Nations.

Community Development (has been described or defined as)...
1. The overall process for improving communities — it is about Nation building or Nation rebuilding.
2. Is all about empowering individuals and groups or people by giving them the tools they need to effect change in their own communities.
3. Is a process whereby the efforts of Government are united with those of the people to improve the social, cultural, and economic conditions in communities.
4. Is about active involvement of people in the issues which affect their lives. It is a process based on the sharing of power, skills, knowledge and experience.
5. Is a collective process, but the experience of the process enhances the integrity, skills, knowledge and experience, as well as equality of power, for each individual who is involved.
6. Seeks to enable individuals and communities to grow and change according to their own needs and priorities, and at their own pace.
7. Is a way of working underpinned by a commitment to equality, social justice, participation and empowerment that enables people to identify common concerns and supports them in taking action related to them.
8. A set of values and practices which plays a special role in overcoming poverty and disadvantage, knitting society together at the grass roots and deepening democracy.
9. A process of fully involving our citizens in the community decision-making process. It is a process of shared decision-making between citizens in support of effecting social change. It is the process by which community determines the vision and direction of the Nation and ultimately participates in decisions respecting that vision and direction.

THE WAY COMMUNITY DEVELOPMENT IS SUPPOSED TO WORK

One component of the community development strategy involves changing the relationships between the ordinary citizen and people in positions of power, so that everyone can take part in addressing the issues that affect their lives. The community development approach starts from the idea that within any community there is a wealth of knowledge and experience which, if used in creative and constructive ways, can be channelled into collective action to achieve the communities' desired goals. Community development workers (which in our communities could be our "community champions" — namely community leaders, staff employed by the band, and other facilitators) work alongside people in communities (in our case, our citizens) through issues they may have with each other, to build relationships with key people and organizations and to identify common concerns. This creates opportunities for the community to learn new skills and, by enabling people to act together, helps to foster social inclusion and equality.

Community development is, to use a metaphor, the transformational work "at the river's edge" in our villages where the work at the river's edge is linked to and supported by the "treetops" and the "mountaintops". At the mountain tops the role of our leadership and our advocates is to "create the space" for social change and governance reform. It is the job at the treetops to help "define the space". However, it is the work in our communities, at the river's edge, where we will ultimately "get our results."

We need to understand the relationship between the work from the mountaintops and the role our leadership plays in advocating to "create the space" for self-government and recognition of Aboriginal rights, including treaty rights, to the work at the river's edge. When we look at the work that needs to be undertaken at the river's edge in our communities to take advantage of the legal and political opportunities created at the mountaintops, we can begin to see how our efforts and approaches to Nation rebuilding work together to support community development.

Adapted from a presentation delivered by Dan George, Four Directions Management Services Ltd.

We need to approach our work at the river's edge in our communities from the perspective of fundamental community development work, where those leading community development take on the role of a community development worker. Anyone who works for our Nations and is involved in the process of Nation rebuilding and of decolonization is involved in community development work, whether they realize it or not. Community development work, whether in the Third World, the inner cities of North America or the Fourth World on our reserves in Canada, is all about empowering individuals and groups of people by providing them with the tools they need to effect change in their own communities.

The key stages of community development work to collectively bring about social change and justice by working with communities have been identified as:

1. Identifying community needs, opportunities, rights and responsibilities
2. Planning, organizing and taking action
3. Evaluating the effectiveness and impact of the action

This section is essentially about the initial stage in the community development process and developing awareness about the need for governance reform — the first step in a path that can lead to empowerment and a call to action. In Section 2, we look at some of the ways to conduct community development work, engage citizens and prepare for and plan to take action. The second stage and third stage of community development are primarily considered in Section 3, which looks at our options here in Canada for governance reform, planning a course of action and developing a critical path, and evaluating the effectiveness of the actions taken, including in this case monitoring the progress of governance reform.

Principles for Community Development
• Promote active and representative citizen participation so that community members can meaningfully influence decisions that affect their lives.
• Engage community members in problem diagnosis so that those affected may adequately understand the causes of their situations.
• Help community leaders understand the economic, social and political environment, as well as the psychological impact associated with alternative solutions to the problem.
• Assist community members in designing and implementing a plan to solve specific problems by emphasizing shared leadership and active citizen participation in that process.
• Disengage from any effort that is likely to adversely affect the disadvantaged segments of a community.
• Actively work to increase leadership capacity (skills, confidence and aspirations) in the community.
Adapted from the Community Development Society

THE TRIGGER FOR GOVERNANCE REFORM

The momentum for social change, including governance reform, can come from one or more sources, either at the same time or separately. It is important that these can be identified and acted upon given the need to build on every opportunity to open the door. Some of these are discussed below.

As a result of community engagement

Where a community has established practices for community engagement — not necessarily with respect to governance, but on other issues of importance to them (e.g., healthcare, education, housing) — an outcome of that engagement may be a recommendation that governance reform is necessary. On a provincial level in BC, the engagement of our chiefs in discussing the provision of both healthcare and education led to the specific regional governance initiatives dealing with the interim First Nations Health Authority and the BC Education Initiative, respectively.

For any of the other governance reform triggers discussed below, successful governance reform will require community engagement. However, perhaps the strongest trigger for governance reform is where the community is engaged as part of a broader community development strategy. It represents the group's own realization of what is needed in order for the community to move forward. An idea that germinates in the community has the most impact and power, and is an indication that the community is becoming empowered and that hope has been created.

The need to respond to crisis

Often the impetus for social change, including governance reform, comes out of a crisis. For instance, a protracted election dispute or allegations of misuse of funds by chief and council or the band office sparks calls for change. Alternatively, the crisis might be a result of a breakdown in service provision by Canada or decisions made by Canada contrary to

the wishes of the community in those areas where Canada currently has responsibility and exercises control over the affairs of the Nation. Sadly, it might also be a question of social tragedies, such as a spate of suicides, an escalation in gang violence or the proliferation of drugs on the reserve. It could even be a natural disaster like a flood or a fire.

Crises on our reserves typically make the failures of the existing *Indian Act* system become even more visible. Often the system breaks down so badly that there can be a "grassroots" uprising calling for change. In the wake of the crisis, the challenge then becomes harnessing the call for change in a process that leads to that change, including governance reform — setting up a process that continues once the worst of the crisis is over and that does not "peter out" until the next crisis.

In some cases, a movement that calls for governance reform may simply be one faction in the community wanting to unseat another under the same *Indian Act* system. However, where the call is real, it indicates far greater community unrest, and support for change that could be engaged and mobilized to support real change. Some of the most successful First Nation governance initiatives have stemmed from crisis.

A desire for economic development

Without strong and appropriate governance and clear rules that investors can rely on, there is decreased opportunity and potential for economic development on First Nation lands. The push for change, therefore, has often come from a desire to stimulate economic development and attract private investment on-reserve — in short, to create a local economy. The *Indian Act* system of governance is not conducive to business, and we often hear our leaders talk about the need for our governments to "work at the speed of business" and say that it is "10 times harder" to undertake development projects on-reserve than off-reserve. So the motivation might be that we need to reform our governance and assume jurisdiction away from Canada to create a favourable climate for business. This was a large part, although not the only, motivation behind a number of the sectoral governance initiatives considered in the *Governance Report*, such as developing land codes under the *Framework Agreement on First Nations Land Management* or exercising jurisdiction over local taxation under the *First Nations Fiscal Management Act*. The First Nations behind these initiatives understood that the business world wanted to see that the Nation was run in a particular way before investment would flow onto the reserve.

In recognition of a youthful and growing middle class

Our population is young. Many of our young people do not want their reserves and the band to be the same place as their parents or grandparents knew it to be. The younger generation, armed with increased education, has come to understand that those communities that are governed outside of the *Indian Act* have a greater chance of success than those governed within it, and that with changes their opportunities for continuing to live and make a living on-reserve, or to move back and do so if they have left, are far better. Many in the younger generation know what we can achieve as peoples and are a part of a growing middle class that simply will not tolerate non-Aboriginal governments still holding the power over us and restricting our opportunities. This group of already empowered people is pushing for change, and in doing so is encouraging others who may be less fortunate than they are, or who are not yet empowered, to become part of the movement for social change. Throughout world history it has been the middle classes that have typically been the instigators of social change — not the power elites in charge, nor the poorest in society. With a growing First Nations middle class, this is becoming our reality too.

As directed by the courts

Some of our Nations have gone to court in order to obtain a declaration of their Aboriginal title to their homelands and their inherent right to govern themselves. When the courts ultimately do grant declarations of title, then the governance arrangements on-reserve and beyond where title is declared will logically have to change. The *Indian Act* may very well be ruled not to apply. So, as recognized Nations we will need to know what governance structures legally replace the *Indian Act* and our Nations will have to provide that answer. We will now be required to fill the gap to ensure that there is no uncertainty of governance in our communities, challenging us to find legitimate solutions that our people support. In other words, the *Indian Act* "balloon" will be popped and what replaces it will need to be figured out.

Similarly, though less dramatically, the court may find that some or all sections of the *Indian Act* may be *ultra virus* (illegal), as it did recently for some of the provisions dealing with who is eligible to be registered as an "Indian."

Both the "title declaration" and the "reading down" of the *Indian Act* are examples of where, while the impetus for change may have initially come from litigation commenced by our own leadership, the court ultimately imposes on our communities the responsibility to rebuild and reform our governance. At that point, the question will not be whether we can govern ourselves but rather how we will do it: "What do we do next?"

In response to federal legislation and directives

The trigger for governance reform can also be a response to the government of Canada developing post-*Indian Act* solutions for us and enacting legislation over aspects of First Nation governance without our support. When the government does this, it does so arguing that it is in our "best interests" and that it has a responsibility to protect and look after the citizens of our communities. For example, in the area of matrimonial property on-reserve and the division of property, Canada is looking to pass legislation setting out new rules with respect to what happens to property in the event of marriage breakdown involving one or more of our citizens. These rules will apply to the citizens in your community after one year unless your Nation establishes its own matrimonial property law. Essentially, Canada is challenging us to act and therefore challenging our capacity for self-government. This approach — challenging our capacity to govern and then setting the policy for our people when we do not — is increasingly becoming the norm for the government of Canada.

In these instances, as with the division of matrimonial property, the government of Canada decides what policies should guide our community development and enacts legislation accordingly. This is a form of "neo-colonialism," which, however well-intentioned, is misguided. History has shown that it will not work and must be avoided. However, it will not be avoided if our citizens do not support social change, assume control of our rights and exercise their responsibilities of governance moving beyond the *Indian Act*. Could the fact that this is happening perhaps be the trigger for change in your community? The message here is, "If we do not sort out our own self-government, Canada will do it for us."

Further, as most of our First Nations are reliant on federal funding to support our core governance activities, including the running of our governments and providing programs and services to our people, Canada can and does exercise considerable control over our government when it so chooses. Canada can require First Nations to enter into certain governance-related undertakings to be set out in our funding agreements, and regularly

does — for instance, with respect to financial and political accountability. Imposing solutions from above, filling governance gaps through contracts can potentially short-circuit local community processes for developing our own governance reform solutions. Tying funding to whether or not a Nation is meeting the funder's governance requirements, such has having developed a financial administration law, may in the future become more commonplace as Canada encourages First Nations to govern themselves outside of the *Indian Act*, but on its terms and for certain defined and limited purposes. This control through funding arrangements may also occur in conjunction with new federal legislative measures addressing aspects of governance, as discussed above.

Through strong leadership

Regardless of what other factors may give rise to support for governance reform, reform may be triggered by strong leadership and the will to reform. There have been few, if any, significant reforms to First Nations' governance that have not been led by strong community leaders. In many cases, it was through personal leadership and sacrifice that reform occurred at all. We should never underestimate the power and the strength of conviction.

In some cases, leadership may be demonstrating a pragmatic response to the need for governance reform (e.g., to support economic development). In other cases, the will to reform may be more principled and based on a desire to see inherent rights recognized. It can also be both, as these responses are not by any means mutually exclusive. Despite the myriad hurdles our peoples face, the struggle to govern under the *Indian Act* system and the need to be pragmatic, our leaders support self-government because it is simply our right as peoples. While this view might seem somewhat idealistic, it inspired our leaders to go forth and create the space for the recognition of our Aboriginal and treaty rights within section 35 of the *Constitution Act, 1982*, and the power and inspiration behind the UNDRIP.

It is hoped that the desire for change for all of our people is fuelled by a belief that the promises of section 35 and the UNDRIP and the 'spirit and intent' of treaty mean something. This belief can be inspiring in and of itself and lead people to take up the governance challenge, even when translating a right of self-government into practical, strong and appropriate governance post-*Indian Act* is incredibly difficult, or even if the reform efforts are incremental and aimed at something more modest than full self-government.

Regardless of the trigger, you will need leadership within your community. Seeing governance reforms and the accompanying necessary social change through will require leadership. How leadership is exercised and understood will vary from community to community, based upon individual circumstances — bearing in mind, of course, that leadership does not necessarily mean the elected chief and council, but comes in many different forms.

Developing leadership skills within your community is an important aspect of community engagement, particularly among the youth. We can all be leaders.

Building on success

Success begets success. As more of our Nations move along the continuum of governance reform and implement reforms that result in improved outcomes for their citizens — for example, increased economic activity, more jobs for citizens and generally healthier communities — the citizens of other Nations and their leadership will ask, "Why are we not doing the same?" Where citizens look over the proverbial fence to adjacent or other Nations to see what is being done or what can be achieved, it is only logical that they will ask questions and apply pressure in their own communities to emulate and perhaps seek out their own success.

This awareness and trigger for social change is being fuelled by the Internet, social media and the connectedness of all of our citizens throughout the province and across the country. In many cases, citizens from one Nation live or work in another Nation, and so experiences are shared between and among us. Increasingly, our communities are prepared to share information about their activities, and willingly do so with our provincial and territorial organizations, on their own websites, and when other First Nations contact them. This sharing of experiences and building on success is fast becoming the most important trigger for social change within our Nations. By working together, and understanding how interconnected our world is, we can be a more powerful and influential social movement for governance reform. Sharing made the Governance Toolkit possible. The Governance Toolkit will continue to be expanded as more of our Nations move along the continuum of governance reform.

The challenge in any community is to find the trigger that will galvanize support to begin a deeper discussion and community engagement process on the options for governance reform, and then to act on those options, to help you move beyond the *Indian Act*. Central to this challenge is first knowing and understanding where we have come from, where we are now and where we want to go.

"As leaders we all share the same objective: to make the lives of our people better, for me, this means an improved quality of life for our citizens and practicing and thriving cultures. In pursuit of this objective a change has already begun throughout our Nations. There are many new and exciting opportunities that have been hard fought for during the ongoing struggle to recognize and implement our Aboriginal title and rights, including treaty rights. We are developing our own modern economies and moving away from *Indian Act* governance. Throughout this change, we must share, communicate and build on our success."

Building on OUR Success

1.1 TOOLS

RE-BUILDING FIRST NATIONS' GOVERNANCE — OUR CHALLENGES, OPPORTUNITIES, RIGHTS AND RESPONSIBILITIES

PowerPoint

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Rebuilding First Nations' Governance:

Our Challenges, Opportunities, Rights and Responsibilities

A new beginning....

- After years of litigation, lobbying, negotiations, and persistence First Nations in BC are rebuilding our institutions of governance and re-establishing jurisdiction, both on our existing reserves and within our traditional territories
- We are in an exciting period of change
- But change is not easy… We must share, communicate and build on our success in order to open the post-colonial door

"*Building on OUR Success*"

- First Nations' success stories show that strong and appropriate governance is necessary if we are to reach our full potential and maximize the opportunities created as a result of advancements in the recognition of Aboriginal title and rights, including treaty rights
- Societies that govern well simply do better economically, socially and politically than those that do not
- Effective governance increases a society's chances of meeting the needs of its people
- Effective governance is demanded by our citizens, our leaders, the Federal and Provincial governments and industry partners

Understanding where we have come from

- In order to begin to address the challenges of deconstructing our colonial reality, moving past the *Indian Act* and rebuilding our Nations we need to:
    1) have a common understanding of where we have come from as an historically self-governing peoples, and
    2) understand our current reality and governance today under the *Indian Act*
- This learning process is the first step in building a collective vision for our future and creating a movement for social change to support the implementation of that vision – a vision that includes an improved quality of life for our people, with practising and thriving cultures

Pre-contact

How did we live pre-contact?

- Prior to colonization, our Nations were self-determining within our traditional territories and our laws applied to these lands and the people living on or moving across them
- As described by the Elders and others, ask yourself:
  - How was our society organized?
  - How did we decide who was a citizen of our Nation?
  - How were our leaders selected?
  - How were rules (laws) made in our community?
  - How were land and other decisions made?

A brief timeline of contact

After the newcomers arrived what happened?

- 1763 Royal Proclamation – recognized the "various tribes or nations of Indians" and said they "were not be molested"
- 1849 Colony of Vancouver Island established.
- 1850s Douglas treaties were entered into on Vancouver Island
- 1858 Mainland of British Columbia became a colony.
- 1867 Canada formed (Confederation) - Indians and Lands Reserved for the Indians become a federal responsibility (s.91(24) of the *Constitution Act, 1867*)
- 1871 BC joins Canada
- 1876 Imposition of the Federal *Indian Act* 1876. Joint Reserve Commission established and our people gradually moved onto reserves.
- 1880's Government begins to take Aboriginal children and place them into residential schools
- 1884 Parliament outlaws the Potlatch and other activities
- 1927 *Indian Act* prohibits Indians to hire lawyers to make claims
- 1938 Reserves formally transferred from BC to Canada (OIC 1036)

What is Colonialism..

Definitions:

"The policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically" [Oxford Dictionaries]

"Colonialism is a practice of domination, which involves the subjugation of one people to another." [Kohn, Margaret, "Colonialism", The Stanford Encyclopedia of Philosophy (Summer 2012 Edition)]

Colonialism is the establishment, maintenance, acquisition and expansion of colonies in one territory by people from another territory. It is a process whereby the metropole claims sovereignty over the colony, and the social structure, government, and economics of the colony are changed by colonizers from the metropole. Colonialism is a set of unequal relationships between the metropole and the colony and between the colonists and the indigenous population. [Wikipedia, June 2012]

Colonialism is the extension of a nation's sovereignty over territory beyond its borders by the establishment of either settler colonies or administrative dependencies in which indigenous populations are directly ruled or displaced. [New World Encyclopedia, 2007]

What was the impact of colonization?

- What was the impact of colonization on …?
  - our ancestors
  - our institutions of governance
  - our culture, language and traditions
  - our community
- If the newcomers had simply left our Nations alone and respected the *Royal Proclamation,* 1763, how would we be living today?
- How has colonization affected you and your family?

An holistic approach to decolonizing

BC First Nations are working together focusing on four key and interrelated areas:

1. **Strong and Appropriate Governance** to take advantage of our opportunities in implementing our Aboriginal title and rights, including treaty rights, and grow our economies by providing stable and sound governance that is transparent and accountable to our Citizens;
2. **Fair Land and Resource Settlements** to ensure our peoples and our governments have access to the resources required to support our societies including both our traditional and modern economies;
3. **Improved Education** to ensure our Citizens can participate in our growing economies and our governments and are able to make informed decisions about change; and,
4. **Individual Health** to address the colonial health legacies to ensure our Citizens are strong and can actually benefit from and enjoy their title and rights

BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS /// WWW.BCAFN.CA JUNE 2012

The truths about the *Indian Act*

- Since colonization systems of governance have been imposed on our Nations and our lands and economies have been governed separate and apart from non-Aboriginal Canada under federal administrative authority
- Today there is an impoverished notion of governance under the *Indian Act* [imposed institutions of governance with limited powers (jurisdiction) where for the most part we just deliver federal programs and services]
- The *Indian Act* is having a negative impact on our ability to achieve success:
  - Denies us the right to define who are our Citizens
  - Denies us the opportunity to make our own decisions
  - Denies us the opportunity to develop our lands and our economic potential
  - Denies us the ability to plan our own future and educate our own children
  - Has undermined confidence, initiative and self-respect
  - Has slowed down improvements in housing, health, education and employment

Today: Implementing the inherent right

Our Nations are taking a rights-based approach to rebuilding our Nations and self-determination which includes self-government:

- *The Constitution Act 1982*, Section 35(1)

  "Aboriginal and Treaty Rights are hereby recognized and affirmed"

- The Royal Commission on Aboriginal Peoples, 1996

  "We consider as a matter of existing Canadian constitutional law, Aboriginal peoples in Canada have the inherent right to govern themselves."

- Judicial Support for Self-Government as a right
  - *Campbell v. BC*; *Bone v. Sioux Valley Indian Band*; *Delgamuukw v. BC*…
- *The United Nations Declaration on the Rights of Indigenous Peoples,* Article 3

  "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Developing our own *Indian Act* "Exit Strategy"

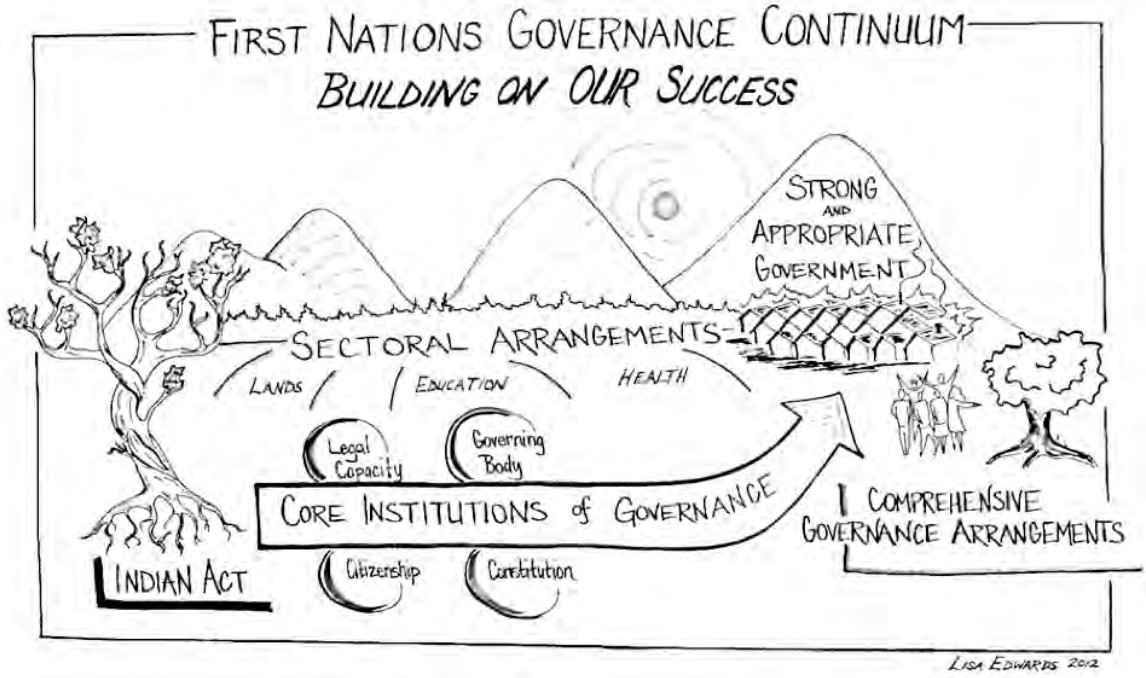
- To re-establish appropriate institutions of governance and exercise powers (jurisdiction) of government in those subject areas the Nation determines necessary, every First Nation, as part of its own critical path, needs an 'exit strategy' for getting out from under Canada's control and ultimately the *Indian Act*
- This is challenging work requiring full citizen engagement, leadership, resources and time. It is not a "federal program and service" but about us determining our own future. No one will do it for us and if they do, it will be on their terms not ours
- How has our Nation begun this process? How does moving beyond the *Indian Act* make you feel?

Moving beyond the *Indian Act*

- So if the *Indian Act* is neither an appropriate governance framework for First Nations' people – nor for any people – how do we move beyond it?
- How do we translate our hard fought for rights to self-government to practical governance on the ground in our community – replacing the *Indian Act*?
- What are your thoughts about getting rid of it? What would replace it?
- What are our rules that we live by going to be? What are the rules we need to support our priorities and achieve our goals?
- What are the institutions we need to make the rules and enforce them?

Moving towards self-government

- Governance reform does not occur over night. Rather than 'popping the *Indian Act* balloon' we can let the air our slowly replacing it with our own strong and appropriate government
- There are a range of governance options along a continuum of reform:
  1. Under the *Indian Act*
  2. Sectoral Self-government initiatives (land management, BC education initiative, financial administration laws, etc.)
  3. Comprehensive self-government arrangements (whether as part of treaty or not)
- What options we chose will depend on our needs and priorities and what is currently available to us



Where are we along the "Governance Continuum"?

Some challenges & issues

- Overcoming the impact of the colonial legacy (health & social conditions, education/capacity, relationship with the Crown etc.)
- Determining the appropriate institutions of governance and for what powers (jurisdiction(s)? [e.g., band, First Nation, Tribe, Nation, region? over what powers, health, lands, education, citizenship etc.?]
- Relationship between our traditional governance structures (hereditary systems) and non-traditional (the *Indian Act*)
- Understanding the role of provincial and territorial organizations (e.g., BCAFN, Union of BC Indian Chiefs & the First Nations Summit) other institutions/bodies in our Nation rebuilding work

Some challenges & issues

- The need to share information between and among First Nations – working together – to avoid duplication
- Ensuring adequate resources to undertake governance reform (financial and other)
- Lack of options for getting past the *Indian Act* and our ability to get Canada to negotiate/act
- Ensuring full community engagement to find the solutions and develop our options

1.2 TOOLS

OUR *INDIAN ACT* REALITY

Handout

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Our *Indian Act* Reality[1]

Introduction

The *Indian Act* is federal legislation that was first passed in 1876. Its purpose and current 122 sections were drafted as a means for the federal government to administer "Indians and lands reserved for the Indians." The *Indian Act* was intended as a stop-gap measure to facilitate the gradual assimilation of our people into settler society. Although amended from time to time, it still exists today and governs all aspects of our lives on-reserve and even some aspects of our lives off-reserve. This has created a unique set of realities that, despite a lot having been said and written about the *Indian Act*, are still not all that well understood. However, most commentators, whether First Nations or otherwise, agree that the *Indian Act* is not an appropriate mechanism for First Nations governance in modern society. It is also widely recognized that it does not provide a proper mechanism to address the governmental relationship between First Nations and Canada, based on our inherent right to self-government as recognized under the Canadian Constitution and the United Nations Declaration on the Rights of Indigenous Peoples. To help you better understand our *Indian Act* reality, this short paper looks at the *Indian Act* from the perspective of three fundamental areas that it controls:

(1) peoples
(2) lands and resources
(3) governance

Peoples

The *Indian Act* represents the worst type of colonial legislation, as it defines for our peoples their identity and internal community rights. Generally, nothing is more fundamental to a people or Nation than the right to determine its citizenship. This fundamental right is denied by the *Indian Act*. Sections 5 to 14 of the act set out rules under which a person may be recognized as an "Indian." First Nation communities have never had the jurisdiction to determine who is an "Indian" recognized by Canada.

Today, the statutory benefits (perceived and real) of being an "Indian" as defined by Canada under *the Indian Act* often colour our understanding of the *Indian Act* and citizenship. The two most commonly cited statutory benefits flowing from recognition of Indian status are tax exemption from federal and provincial taxes under section 87 and protection of property from seizure by a non-Indian under section 89. Non-insured health benefits and post-secondary education are provided to "status" Indians under federal government policy. There is no statutory guarantee of adequate funding for education or health care or to what standard it might be provided.

[1] Note: This document has been developed to generate discussion and is not intended to provide any legal advice.

The *Indian Act* also determines who can be recognized as a "member" of a particular band. The rights that flow from band membership generally include rights to reside on-reserve, rights to vote in elections for Council, rights to receive certain services provided by the First Nation, and other community rights. There is a process in the *Indian Act* under which a First Nation can adopt its own membership code to replace *Indian Act* rules for band membership. The process through which a band can take control of its band membership rules is determined by Canada, not the band.

The *Indian Act* places significant restrictions on the rights of First Nation citizens. For example, an individual is not free to transfer or sell an interest in reserve land to another citizen when alive or to will an interest to another citizen when dead. Under the provisions of sections 42 to 50, the Minister of Indian Affairs has full jurisdiction and authority in relation to matters relating to wills of Indians and descent of property upon the death of an Indian. The minister's approval of an Indian's will or a court order is required before an Indian's will is of legal force (section 45). No jurisdiction rests with the First Nation government in this regard, and the minister's authority and discretion are comprehensive.

The minister, rather than the family or the band, has complete authority over all the property of a mentally incompetent Indian. The minister has broad authority to spend the money, manage or sell the property, or do such other things with respect to the property as he or she decides (section 51).

Under section 52, the Minister of Indian Affairs has power to administer or provide for the administration of any property to which an Indian child (under the age of 18) may become entitled. Further, the minister has the power to appoint guardians of the child for that purpose. There is little or no power within the community with respect to the guardianship or management of the property of an Indian child who is a member of its First Nation. Limited power exists under section 52.1 for the Council to require distribution of monies held for an infant child where required for the maintenance or benefit of that child. This is a rarely used power.

Under sections 114 to 122 of the *Indian Act*, the Minister of Indian Affairs has comprehensive authority in relation to the education of Indian children. The minister may enter into agreements with the provincial or territorial government for the education of Indian children and may make regulations for buildings, teaching, education, transportation and other matters in relation to schools on reserve lands. The minister also has extensive authority in relation to requiring the attendance of children at school and the appointment of truant officers. While some communities have entered into local education agreements and taken over administration of their schools, ministerial power under the *Indian Act* remains.

Land and Resources

A second core element of a people's identity deals is control over their lands and resources. The *Indian Act* addresses only reserve lands, which we all know represent only a fraction of our lands, but even here the *Indian Act* fails to recognize our peoples' control over our lands and resources. Instead, through sections 18 to 41, the act provides for a weak governance regime under the minister's control. Some of the key provisions are:

- Section 18 allows the minister in his or her discretion to authorize the use of reserve lands for purposes of Indian schools, the administration of Indian Affairs, Indian burial grounds and Indian health projects. There is no limit on the minister's discretion. Consent of Council is only required when other purposes are involved.

- Section 19 allows the minister to authorize surveys of reserves, the division of reserves into lots or subdivisions, and the location and construction of roads on reserves. For the most part, this is done under Aboriginal Affairs and Northern Development Canada policy and not under law, as is the case for the rest of Canada.

- Section 20 is fundamental to government control over our reserve lands, as it provides that no Indian is in lawful possession of lands on reserve unless the consent of the minister is obtained. There can be no dealing with the Indian's interest in land, whether by way of transfer or otherwise, without the consent of the minister. This means that neither our citizens nor our band governments have the rights and privileges of an owner with respect to reserve lands. We need the permission of Canada to grant or transfer an interest in our lands (whether to the band as whole or to an individual member). In practice, this means that if an Indian wants to transfer or sell his or her house to another Indian, the minister has to approve the transfer.

- Section 28 is blunt in its provision that no instrument granting a person other than a band member the right to use or occupy reserve lands is valid (with the exception of a permit issued by the minister with the band's consent for no longer than one year). However, this does not preclude the leasing or surrender provisions of the *Indian Act* described below, but does preclude the band granting a simple cottage lease – for example, to a non-member – without going through a complex land designation process. Section 28 has given rise to the many "buckshee" or illegal uses of reserve lands that would normally be legal off-reserve.

- The leasing of community-held reserve lands can occur under sections 37 to 41 and requires a vote of the band membership. However, the minister's approval of any lease transaction is still required. This means that the form and terms of leases are dictated by Department of Justice lawyers whose interests may not be the same as the community's or those of the person desiring to lease the lands. This is also a slow and cumbersome process that affects our ability to do business, and is not a situation that exists elsewhere in Canada. Also, under section 58(3), an individual holding a certificate of possession can lease his or her lands

without a vote or consent of the community if the minister consents to the lease. This can lead to disagreements between the community as whole and the individual land owners and create further uncertainty.

- One of the most offensive powers under the *Indian Act* is the broad powers of Canada to expropriate some of the minimal lands that we have as reserve lands. Section 35 of the *Indian Act* allows the expropriation of reserve lands where authorized by an act of parliament or a provincial legislature. Expropriation of reserve lands can be done for purposes of the federal government, provincial government, Crown corporations and municipalities. This requires the consent of the governor in council (an executive position largely acting on the advice of the federal cabinet). While compensation may be provided to the First Nation, there is no veto available to a First Nation. The power rests solely with the governor in council to authorize an expropriation of reserve lands.

- Section 34 of the *Indian Act* recognizes the ability of the minister to build or repair roads, bridges and fences on a reserve at the cost of a First Nation, if the First Nation has not ensured proper maintenance of this infrastructure. Even where the First Nation has exercised authority over proper maintenance, Section 34(1) provides that this must be done in accordance with instructions issued by the Superintendent of Indian Affairs.

- Section 38 allows the members of a band to "absolutely surrender" and sell some or all of its reserves under the *Indian Act.* It is therefore possible to extinguish the reserve using the provisions of the *Indian Act*.

- Section 58 of the *Indian Act* allows the minister, with the consent of the Council, to improve or cultivate reserve lands and grant agricultural leases. It also allows the minister to dispose of fallen timber and, with the consent of Council, to dispose of sand, gravel and other resources on reserve lands. This means that if we want to grow crops or cut and sell timber, we have to get permission from the minister – even if we have a private interest in the land (e.g., a certificate of possession). The issue of exploitation of timber and mineral resources is dealt with in regulations passed under the *Indian Act* (see *Mining Regulation, Indian Timber Regulations* and *Indian Timber Harvesting Regulations*). These regulations generally grant significant administrative authority to the Minister of Indian Affairs or department officials and can be exercised independently or in some circumstances with the consent of the Council of the First Nation.

There are numerous other examples in the *Indian Act* and regulations where significant control over lands and resources rests with the Minister of Indian Affairs or the Department of Aboriginal Affairs. It is clear that the minister and the department, rather than our elected governments or First Nation citizenship, legally control and manage our reserve lands. As First Nation owners of our lands or as Indians holding individual interests in or certificates of possession of our reserve lands, we cannot legally transfer or grant interests without the minister's or governor in council's consent.

Governance

The third perspective from which the *Indian Act* can be seen as inappropriate for modern First Nations is First Nation governance. As with the other two core elements of a people's identity, the *Indian Act* does not recognize First Nations' control over governance matters. The *Indian Act* was not intended to promote Indigenous systems of governance; in fact, the intentions were the opposite. Our traditional institutions of governance were supplanted by *Indian Act*. Under the act, control over First Nations' governance rests largely with the Minister of Indian Affairs – beginning with the choosing of our community leaders.

With respect to selecting the band's governing body (leadership selection), which is central to a community's governance of its affairs, the *Indian Act* provides that elections of band Councils are held under the rules of the act if the Minister of Indian Affairs so declares under section 74. Until recently, the election procedures for most First Nations were determined by this provision until recent years. A policy mechanism now exists in the *Indian Act* to allow a First Nation to establish its own election law; if the law is approved by the First Nation's membership and its criteria are accepted by the minister as not contravening the Canadian *Charter of Rights and Freedoms*, the First Nation's election law will replace *Indian Act* provisions. However, this is a policy of the Department of Aboriginal Affairs and not of First Nations' design. For First Nations continuing to hold elections under the *Indian Act* there is no mechanism for recognizing their election codes other than this policy.

For those First Nations continuing to hold elections under the *Indian Act*, sections 75 to 80 demonstrate the extensive control exercised by the minister and the act. For example, section 75 of the act sets out rules for candidate eligibility. A person does not even have to be a band member to run for Chief. Section 77 sets out the eligibility for electors. Section 78 determines the term of office. The actual rules under which elections are held are established by the governor in council under section 76 of the *Indian Act* (see *Indian Band Election Regulation*). In addition, the matter of appeals rests solely with the governor in council under Section 79. These decisions are virtually impossible to challenge.

In addition to having control over elections, the *Indian Act* establishes rules for procedures of the Council once elected. Under section 80, where elections are held under the *Indian Act (*see *Indian Band Council Procedure Regulations*), the governor in council may make regulations with respect to procedures for Council meetings and general band meetings. These sections of the *Indian Act*, together with the administrative reality that the Department of Aboriginal Affairs runs elections under the *Indian Act*, show how little responsibility and authority is left to the community with respect to elections of its governing body under the *Indian Act* process.

An examination of the powers available to Council under the *Indian Act* demonstrates equally the limitations of an elected First Nation Council's ability to exercise authority. The act does not provide clear recognition of the legal status and capacity bands and band Councils need in order to do business in today's world. For instance, the act does not establish our band governments' right to own property, enter into contracts, or sue or be sued. This creates

uncertainty in many situations, and reliance has to be placed on previous court decisions. This is not a situation faced by any other level of government in Canada.

Section 81 of the *Indian Act* provides delegated authority to a band to make bylaws. It is limited, and bylaws are subject to ministerial disallowance. A minister's decision to disallow a bylaw passed by a First Nation is virtually impossible to challenge legally. The authority to make bylaws under the *Indian Act* is not based on recognition of our inherent right and is not an exercise of our real "jurisdiction." In addition to these limitations, a bylaw made under section 81 of the *Indian Act* cannot conflict with the *Indian Act* or regulations passed by the governor in council under the act. The experience of First Nations has shown that even where we attempt to utilize section 81 powers to advance our communities' interests, the Department of Aboriginal Affairs and the Department of Justice advising the minister take a narrow and restrictive view of powers available and many of the bylaws submitted by a First Nation under that provision have been disallowed by the minister. In practice, this means we have less effective government and less law and order on our reserves, even when we try to pass laws to govern responsibly in order to meet the needs of our citizens.

There are additional First Nation powers under section 83 (taxation of real property interests, financial administration, raising of revenues) and section 85 (prohibition of sale, manufacture or possession of intoxicants). However, section 83 bylaws must also be approved by the minister. Section 85 bylaws require the consent of a majority of electors of the First Nation and do not, given their nature of prohibiting rather than regulating an activity, require the consent of the minister. When dealing with intoxicants, for example, the real power would be in regulating and licensing their use. This is a power exercised by provincial governments but denied to First Nations under the *Indian Act*. With respect to fiscal relations, First Nations also have limited revenue-raising powers under the act (e.g., the ability to raise fees, charges and taxes). A band can tax members to support band projects (in addition to property taxes) but not non-members living or operating a business on the reserve. A band's ability to raise revenues other than property tax is very limited.

Another area that highlights the governance limitations of the *Indian Act* is the management of "Indian monies." Indian monies are defined as monies received by Canada for the use and benefit of a band and include both capital and revenue monies (e.g., monies raised from the sale of surrendered reserve lands, lease revenues, timber or gravel revenues, etc.). Section 61 of the *Indian Act* provides that, with the exception of the few specific provisions in the act where monies can be expended with direction of Council only, the general rule is that the governor in council determines whether the proposed use of monies is for the use or the benefit of the band. The management of Indian monies is the responsibility of the minister, and purposes for expenditures are set out in the act. In contrast, modern self-government agreements transfer First Nation monies to the self-governing community. Clearly, the management of community monies should rest with the First Nation, and the powers resting with the governor in council and minister under the *Indian Act* are an anachronism in a modern society.

Because First Nations were never really supposed to govern under the *Indian Act*, the normal checks and balances on effective governance are not included in the *Indian Act*. The *Indian Act* says almost nothing about the rules needed to ensure that First Nation communities are run efficiently, openly and fairly – in other words, in an accountable way. There is no clear recognition in the act of a First Nation's power to establish accountability rules. This is another example where the act should recognize First Nation jurisdiction rather than imposing rules made by Canada. Problems with the *Indian Act* and not having a legitimate and recognized alternative include:

- The *Indian Act* does not clearly set out the roles and responsibilities of the Chief and Council or band employees.

- There are no provisions to provide citizens with ways to question or challenge decisions or actions of the Chief and Council or other First Nation institutions that affect them (i.e., no system of checks and balances that most governments have to guide them in their work).

- Members also do not have the clear right to participate in certain kinds of decision-making (e.g., the setting of band budgets) and do not have the right to receive information about such matters.

- There is nothing in the *Indian Act* that requires that members have notice of band council resolutions (BCRs), which record the decisions of council. The same goes for bylaws, annual reports, accounting and the band's budget, so members of a band often do not have information about what is going on in their communities.

- There are no requirements for any conflict of interest rules for Chief and Council.

- Chief and Council are not "officials" within the meaning of the *Criminal Code*, and so it is hard to prosecute them for breaches of trust.

- The *Indian Act* does not contain any guidelines with respect to the relationship between the government of the band and any commercial business the community may be involved with.

Analysis of the *Indian Act* band governance provisions clearly shows that the core governance arrangements and powers (jurisdiction) available to a First Nation under the *Indian Act* are wholly inadequate to deal with the modern needs of our communities.

Conclusion

Looking at the *Indian Act* from these three fundamental perspectives shows that it is not suitable for First Nations in the twenty first century. To some extent, First Nations can remove *Indian Act* control over elections and membership; however, there are numerous other areas dealing with lands and resources and governance where the *Indian Act* still applies. To get beyond *the Indian Act*, some First Nations are currently engaged in the process of Nation building/rebuilding and in some cases are negotiating with Canada for recognition of their jurisdiction and establishment of their own comprehensive model of governance. There are also several federal statutes under which a First Nation can exercise jurisdiction outside of the *Indian Act*. These mechanisms provide some alternatives but are limited by federal negotiation mandates, funding considerations and other matters controlled by Canada.

It is clearly in a First Nation's interests to remove the provisions of the *Indian Act* and replace them with rules and structures of its own design as accepted by our citizens. Negotiated agreements and sectoral initiatives offer part of the solution or one option; however, a more broadly based alternative is also needed. While a court case for recognition of the inherent right is an option, it is expensive, time consuming and subject to the tests and risks to establish a constitutionally recognized Aboriginal right. A constitutional court case should not be required for a First Nation to move forward in governance.

There should be a clear, simple mechanism, through a federal statute or otherwise, for legal recognition of a First Nation's governance code or constitution that, once approved by its citizens, provides the realistic powers and accountable governance institutions required to meet the modern needs of First Nation communities and allow our communities to move beyond the *Indian Act*.

1.3 TOOLS

MOST FREQUENTLY ASKED QUESTIONS ABOUT SELF-GOVERNMENT

Handout

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Most Frequently Asked Questions about Self-Government[1]

What is self-government?

As First Nations peoples, we have the right of "self-determination," which includes a right of self-government. In Canada, this right was hard fought for by our peoples and is recognized and affirmed by section 35 of the *Constitution Act, 1982.* This right is also enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. What self-government means in practice in each community depends on the vision, needs and priorities of the community and how a community translates these rights into practical arrangements on the ground. There is no single model of self-government, and self-government is continuing to evolve. At a minimum, however, self-government includes recognition of 1) our right to develop our own core institutions of government (e.g., how we determine who are our citizens and select our governing bodies, such as Chief and Council) and 2) essential subjects over which our governments have law-making power (e.g., our "jurisdiction" over such things as lands, education, health, culture and language). Self-government is our right and it is also our responsibility.

Why do we need self-government?

"Government" comes in many forms but is always needed. Governance can, of course, be done well or badly. Research and experts tell us that the quality of governance, much more than its specific form, has a huge impact on the fortunes of any given society. Ours are no exception. Societies that govern well simply do better economically, socially and politically than those that do not. Strong and effective governance increases a society's chances of meeting the needs of its people. Experience also shows us that one of the key factors in the economic and social success of First Nations is their being self-governing (for example, see the Harvard Project on American Indian Economic Development). Governance under the *Indian Act* is not self-government. In fact, it is quite the opposite. The act makes us "wards" of the state, where the rules are set by Canada and all the important decisions are made for us. The *Indian Act* system of governance has promoted an impoverished concept of government in our communities. "Government" for us has become little more than managing programs (education, health, housing, social assistance, etc.) and distributing limited resources (money, jobs, influence and services). As First Nation citizens and governments, we need to move past this current reality and make our own rules as to the structure of our institutions of governance and, with accountable First Nation governments, make our own laws and decisions. Until we change the *Indian Act* system, the way our communities are run and the rules that apply to their day-to-day operations will remain the same.

[1] Note: This document has been developed to generate discussion and is not intended to provide any legal advice.

Who is going to pay for self-government?

Under self-government, new funding arrangements will be negotiated with Canada that must take into account the increased jurisdiction and responsibility of self-government. Some self-government agreements include principles to guide these negotiations. All governments need to generate revenues to provide a government and the programs and services provided by that government. Ours are no different. The cost of First Nations' government is a responsibility shared by all orders of government in Canada (Canada, BC and First Nations). Today, most First Nations, even under the *Indian Act*, raise some revenues to provide programs and services for their people, although most rely on federal transfers where the terms and conditions for what and how the money is used remains highly regulated. Funding for First Nations governance in Canada is inadequate, and First Nations either struggle to function or, if they have independent revenues, contribute those to pay for their own government. Funding support from Canada needs to be more realistic in recognizing First Nation responsibilities. In the future, more of our revenues will come from fees and charges, resource royalties, and taxes levied by us. Consideration needs to be given to expanding the power of First Nations to raise revenues from activities on our lands. These revenues and continued transfers from other governments will be used to ensure that our citizens receive programs and services comparable to those received by other Canadians.

Will I lose my tax exemption under self-government?

The issue of personal tax exemption under section 87 of the *Indian Act* is one of the most controversial issues – if not the most controversial – that our First Nations need to address. Whether other governments should be able to tax our citizens is one issue. Whether we tax our own citizens is another but, of course, related issue. Some self-governing First Nations collect taxes from their citizens and others do not. Some collect taxes only from non-citizens and businesses or resource extraction activities. Some self-government agreements retain section 87, while others do away with it over time. These are complex questions for each community to address. Whether you pay tax and to whom will be a matter for your Nation to consider and may be a matter for negotiation with Canada.

Will I lose any existing programs and services?

One of the intentions of self-government is that our Nations will be able to design and deliver programs and services that can meet the needs of their citizens better than those provided by Canada. This will not mean that Canada is relieved of its financial obligations in relation to payment for these programs and services. The goal is to improve the design and delivery of these programs and services to better serve our people. When a First Nation becomes self-governing, its citizens continue to be entitled to all of the rights and benefits (e.g., old age security) of all other Canadian citizens or permanent residents of Canada. Citizens are eligible to participate in and benefit from any federal programs for Aboriginal people that their Nation has not assumed responsibility for providing. Citizens are also entitled to rights under applicable

federal legislation for Indians, bands or Aboriginal people in accordance with general criteria established under that legislation.

Is the fiduciary relationship with Canada ended with self-government?

The overall fiduciary relationship between Canada and a First Nation will continue. However, any fiduciary obligations owed to the First Nation by Canada will be determined in accordance with how involved Canada was in the decision being made. Where a First Nation exercises jurisdiction and authority under self-government, and consequently Canada is not involved in making a decision, Canada cannot be held responsible. This would be contrary to the principles of self-government.

Are we capable of self-government?

Our Nations were historically self-governing and we are capable of being self-governing once again. The colonial period has severely tested our confidence, but we are strong and resilient. Our Nations are full of intelligent and dedicated people who are more than capable of governing ourselves. Of course, self-government will not happen overnight. There will be a time of relearning, with some inevitable hiccups along the way. But, as experience shows, we can do it. For most of our Nations, there will be a transition period that will allow communities to adapt to being in charge of our lives and being responsible for making our own decisions once again. The range of law- and decision-making powers should be sufficient for us to govern our lands, peoples and natural resources in a modern world, but they do not need to be exercised all at once. Some Nations, depending on their size or resources may, at least initially, choose to exercise fewer powers (less jurisdiction) than others and some may choose to work jointly with other First Nations to create economies of scale.

Will we still have reserve lands after self-government?

Title to land is held in different ways by self-governing First Nations. In some cases, the land remains "lands reserved for Indians" under section 91(24) of the *Constitution Act*, with, therefore, underlying title staying with Canada (federal Indian reserves). In other cases, the First Nation may take "title" to the land and the lands are no longer held in trust by Canada. In all cases, the lands identified are the lands over which the Nation has jurisdiction and self-government applies. Regardless of how underlying title is held, the types of interests that can be created in the land are determined by the First Nation's citizens and set out in its constitution or laws. If a First Nation wants to create private property rights in the land (e.g., certificates of possession), that decision will be made by each community and set out in its laws.

Can Chief and Council take us into self-government without our approval?

Chief and Council cannot finalize a self-government agreement (either sectoral or comprehensive) without the approval of the citizens. No agreement resulting from any negotiations is binding on a First Nation or its citizens until there has been a formal community ratification process, through either a referendum vote or a comparable democratic process where each citizen eligible to vote will have his or her say.

How is self-government working for other First Nations?

First Nations with sectoral or comprehensive self-government arrangements are generally doing better economically and socially than when they functioned under the *Indian Act*, with some doing exceptionally well. Those First Nations looking at becoming self-governing today have the benefit of over 30 years of self-government experience in other Nations. Information about existing sectoral and comprehensive self-government arrangements can be found in the BCAFN *Governance Report* on the BCAFN website, with links to further resources and dozens of examples of what BC First Nations are doing in the area of governance reform along the "governance continuum." Most self-governing Nations are more than happy to share their experiences with other First Nations.

Why are some people so against self-government?

This is a difficult question. As colonized peoples, we face many challenges in finding the strength and confidence to reclaim our rights, including our right to determine our own future. In many ways, we are dependent on the very *Indian Act* system that is suffocating us. Some of our leaders see self-government as it is developing for our peoples in Canada as not enough, and they argue for "sovereignty" and greater First Nations independence. At the other end of the spectrum, others are dependent on the system and believe Canada should be totally responsible for our lives. Ultimately, it is up to the citizens to decide together what they want to do and what self-government will look like in their own community. Assuming that "standing still" will protect us is not a realistic option, for, as an Elder once said, **"**If you cannot govern yourselves to your own satisfaction, there are always those who are willing to govern to their satisfaction**."**

1.4 TOOLS

MOVING BEYOND THE *INDIAN ACT* — THE PROS AND CONS

Handout

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Moving Beyond the *Indian Act*: The Pros and Cons[1]

General	
Pros	**Cons**
We can no longer live under the paternalistic and colonial rules of the *Indian Act.*	We are accustomed to and comfortable living under the *Indian Act*. It has always been a fact of life.
A prosperous and healthy government is not one that is imposed by another government, but comes from the heart of a Nation.	The *Indian Act* adequately addresses our needs. Why change this?
We want to take control of our future and destiny and maximize opportunities.	We are not ready.
It is our inherent right to be a self-governing Nation.	We will never let the federal government off the hook – they are responsible to us. They owe us.
The federal government's ongoing fiduciary responsibility will be clearly laid out. It is not clear now.	Canada's fiduciary responsibility will be reduced in those areas where Aboriginal Affairs and Northern Development Canada (AANDC) is no longer directly responsible.
With less than 10% of our First Nations self-governing, we have the opportunity to be creative. Other models cannot be imposed upon us, but we can learn from the experience of other Nations that are self-governing.	There are still only a few self-governing Nations in Canada and we need more successful models to look at before we should consider change.
Our Peoples	
Pros	**Cons**
First Nation citizens take pride in being self-governing and not being under the colonial model of the *Indian Act.*	It does not matter if we are under the *Indian Act.*
Determination of citizenship rules by a Nation will ensure there are always citizens of the	The Nation will not be able to determine who is a "status" Indian, so what does it matter?

[1] Note: This document has been developed to generate discussion and is not intended to provide any legal advice.

Nation and therefore people who can participate in First Nations government, "own" land on reserve, etc.	Having a status card is all that is important to me.
Non-citizens reside on reserve lands and pay property and other taxes to the First Nation. The role of non-citizens in the Nation's affairs will be clarified so that it is clear that only citizens can participate in or vote for our government.	Non-citizens living on our lands or having interest in reserve land may demand a greater say in our affairs and our government and we do not want this.
There will be more employment opportunities with higher-paid skilled jobs for our citizens within the reserve economy generally and within our government specifically.	There will be increased responsibility and stress on employees of the Nation. There are not enough skilled workers to fill the jobs in the administration anyway.
Our Lands and Resources	
Pros	**Cons**
The Nation will have full control over our land and lands management and will be free to make decisions about the types of interests created in lands and decisions about using the land. These are our land and resources and therefore our responsibility to manage.	We would rather have Canada make the final decisions, as it means they are ultimately responsible and have to manage our interests accordingly.
First Nation management of lands and natural resources is more efficient than AANDC management.	We do not have the capacity to do this and might make mistakes, so AANDC management is safer.
It will ensure that reserve lands are governed and developed as the community wishes.	The Nation will be in a significantly stronger position than the neighbouring First Nations, which may strain local relations.
We will be able to attract private investment and develop our lands.	If our reserves are developed, there will be fewer places for our citizens to live and only "land owners" will benefit.
We will be able to use interest in land as security to get financing.	We could lose our land if we mortgage it.

Our Governance	
Pros	**Cons**
The Nation would be a clear legal entity (i.e., a recognized governing body) and therefore, in addition to our legal powers to make laws, there will be greater certainty as to the Nation's legal capacity to enter into agreements and contracts (e.g., to provide sewer and water services to citizens and others) or sue in its own name in the courts.	We do not need to have our legal capacity recognized. We have it by virtue of our inherent right. The way to sue our Nation would be clearer, and we do not want that.
Our citizens would be directly involved in the law-making process and will be responsible for approving many of our Nation's core laws, including our constitution.	Apathy within the community may mean no laws are passed.
No external approval of First Nation laws by the Minister of Indian Affairs is needed. Our Nation can make the laws the community needs within its recognized powers.	We do not make that many *Indian Act* bylaws now, so why does it matter? And if we do make bylaws, it is good to have an outside body look them over to make sure they are "legal," meet basic standards and are fair.
Our governing body (e.g., Chief and Council) would be more accountable to the citizens, both politically and under law.	There will be continued uncertainty as to whether or not the past will simply repeat itself. Today the Chief and Council can be charged for breaching their responsibility to the community and nothing happens.
We cannot wait for the other First Nations in our Tribal Council/Nation to be ready for self-government. We need strong and appropriate government now in our individual community.	Our First Nation has no right to self-government by itself and we must wait for the other First Nations in our Tribal Council/Nation and proceed together.
Self-government may be implemented by the old "band" but nothing is preventing the Tribal Council/Nation or other group to confederate or amalgamate for the purposes of self-government now or in the future. The right to self-determination is not affected. An individual self-governing First Nation member of a Tribal Council can bring its experience to development of a Tribal Council self-governing	Our First Nation should negotiate or implement self-government beyond the *Indian Act* as part of a Tribal Council/Nation. There would be a greater economy of scale, and besides, it is legally and politically right.

model (federated Tribal Council model or other).	
Self-government will limit the ability of other governments to tax our citizens. It will strengthen and clarify our Nation's revenue-raising powers over non-citizens.	Self-government will mean that over time we will have to pay taxes – if not to other governments, then to our own government.
The roles and responsibilities of AANDC would be clarified in certain areas (e.g., they could be legally responsible for the land registry), and in other areas the AANDC bureaucracy would no longer be involved in the Nation's affairs.	We need the AANDC bureaucracy because the Nation does not have the capacity (e.g., financial and human resources) to carry out its responsibilities. We may not trust AANDC but we trust it more than our own administration offices.
New funding arrangements with a different form of agreement can be negotiated with Canada, providing a more realistic level of funding and greater flexibility and reflecting the fact we are a self-governing First Nation.	If we are self-governing, over time Canada will reduce its funding to us and make us pay for our government and the services and programs provided by our government.

1.5 TOOLS

GOVERNANCE REFORM — TOP 10 LISTS

Handouts

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Top 10 Lists
First Nations' Governance Reform[1]

The top 10 reasons citizens give for not becoming self-governing:

1. I do not understand it.
2. The new system of government will be even worse than the existing system of government.
3. I will be taxed.
4. We cannot afford self-government.
5. We are too small to be self-governing.
6. My Nation does not have the capacity to negotiate and implement self-government.
7. We will no longer receive benefits from Canada such as education or health care.
8. Our lands will become fee simple lands and sold off.
9. Our chief and council are not interested in governance reform and are more interested in per diems.
10. We do not trust government.

The 10 top reasons for not considering governance reform:

1. Life will be no better – I do not see any benefit from governance reform.
2. Canada is responsible for me so why do I need to worry about governance?
3. What is the point? The next chief and council will just change it all anyway.
4. The existing system works just fine; all we need are different leaders.
5. It is too much work and too daunting a task.
6. It is easier to receive services today than it will be in the future.
7. I do not care.
8. My kids and grandkids are not going to live here anyway; they are going to move away from the reserve.
9. The grassroots people do not want it.
10. There is not enough on the table.

[1] The following "top ten" lists were developed by the BCAFN and should in no way be read as definitive of any opinion on governance reform and in many cases do not represent statements of fact but rather conjecture. They certainly have not been endorsed by the BCAFN Chiefs-in-Assembly nor do they represent the collective opinion of the Chiefs. They are, however, intended for what they are - that is, to be thought-provoking, stimulate discussion and, perhaps, to be somewhat amusing.

The top 11 reasons why the *Indian Act* is not an appropriate system of governance:

1. First Nations are not in control of our own institutions of government.
2. Chief and council are not accountable and transparent enough under the *Indian Act.*
3. First Nation should determine our own citizenship and not Canada determining status and/or membership.
4. First Nation people should not be treated as wards of the state and we should have the same personal freedoms as other Canadians.
5. The bylaw powers of a First Nation are limited, delegated and bylaws made are subject to ministerial approval/disapproval.
6. There are no rules about how a First Nation makes laws.
7. Education of our children is controlled by Canada, is not guaranteed and limited in scope.
8. The government of Canada owns, manages and controls reserve lands including what types of interests in land may be created and any terms and conditions.
9. Revenue raising powers for band governments are too limited.
10. The *Indian Act* prevents the First Nation from using its assets as security.
11. The application of provincial laws on-reserve is unclear and confusing.

The top 10 stated reasons why the *Indian Act* is good:

1. Better the devil you know than the one you don't.
2. The *Indian Act* provides exemptions from taxation.
3. The *Indian Act* means my personal property located on-reserve is not subject to seizure.
4. The *Indian Act* is how I get my status card.
5. I get free education.
6. The government manages our land for us so we do not have to.
7. The chief and council are free to do what they want as there are few controls.
8. There are so few rules/laws that apply on-reserve so we can do what we want.
9. The *Indian Act* reflects our historic relationship with Canada.
10. It is never going to be replaced; no one really cares anyway, so why bother.

The top 10 reasons for governance reform (First Nations):

1. We cannot realize our full potential without strong and appropriate governance.
2. If First Nations do not find our own solutions to improve our own systems of governance Canada will do it for us.
3. Our own governments will be more accountable and transparent.
4. It will improve the business climate on-reserve and therefore improve business opportunities where a location permits.
5. Our institutions of government will be our own and not someone else's; our powers of government will be significantly greater.
6. The financial health of the Nation will improve.
7. Everybody will know the rules and be expected to follow them and there will be serious consequences for not following them.
8. We will have full control over our lands and resources on-reserve; decisions will be based upon our own laws and priorities.
9. Other Canadians will treat us differently and with more respect; our relationship with other governments will become stronger.
10. It will encourage people to return to and participate in community life; our culture and traditions will be better protected.

The top 10 reasons for governance reform (Canada):

1. We will no longer be responsible to govern First Nations; they will be responsible for governing themselves.
2. It will eventually save Canada money; both with respect to federal transfers and the cost of providing the social safety net.
3. The world community will look more favourably upon Canada; we will be implementing the UNDRIP.
4. Canada's gross domestic product (GDP) will increase.
5. There will be more jobs created and a stronger First Nations' workforce.
6. It will improve the business climate on-reserve generating more tax revenues to Canada.
7. We will not have to administer land or make business decisions about First Nations' assets.
8. There will be less legal uncertainty and conflict.
9. As a political party, we will increase our political support from First Nations' peoples.
10. As a country our relationship with First Nations will become stronger.

The top 10 biggest impediments to governance reform:

1. The *Indian Act.*
2. Political unwillingness of Canada or the Provinces to share real power with First Nation governments.
3. Inability of Aboriginal political organizations to effectively represent a collective vision of the future.
4. Lack of leadership (First Nations and Canada).
5. Little political incentive for federal government to support governance reform; First Nations people perceived to have limited political power or influence and their problems do not directly affect most Canadians.
6. Apathy of First Nations people.
7. Social dependency.
8. Disconnect between political dialogue and reform at the national level and the reality of life in community.
9. Lack of financial resources available to First Nations to govern; lack of revenue sharing or unwillingness to share revenues with First Nations.
10. No effective mechanisms or support to facilitate transition from status quo to a post-*Indian Act* world.

The top 10 most important steps to governance reform:

1. Having a vision for your community.
2. Ensuring community engagement and creating "safe spaces" in community to discuss governance reform.
3. Electing strong First Nation leadership.
4. Finding passionate community "champions" for reform.
5. Establishing effective First Nation administrations.
6. First Nations sharing their experiences and building on our success.
7. Agreeing on the structure and core institutions of your government.
8. Lobbying Canada to implement new mechanisms to recognize First Nation governance when our First Nation is ready, willing and able.
9. Securing the money to support and implement governance reform.
10. Implement incremental governance reform where possible using existing mechanisms until new mechanisms are in place.

The top 10 reasons why Canada won't support First Nations driven governance reform

1. Political unwillingness of Canada or the Provinces to share real power with First Nation governments.
2. Would cost Canada too much; do not want to share revenues with self-governing First Nations.
3. Lack of unity amongst First Nations so better to do nothing and upset no one.
4. No effective mechanisms to facilitate transition from the status quo to a post-*Indian Act* world and no consensus on creating the mechanism; It has been tried before.
5. It is better if Canada establishes the policy framework for First Nations governance reform.
6. Does not believe that most First Nations are capable of self-government.
7. Lack of broad public support; seen as giving First Nations peoples special rights.
8. Limited political upside; First Nation people perceived to have limited political power or influence and their problems do not directly affect most Canadians.
9. The complexity of the issues compounded by the fiduciary relationship.
10. This is a legal and constitutional matter; the departments of justice lawyers call the shots.

The top 10 reasons why First Nations won't support governance reform

1. Sense of powerlessness; it is never going to happen.
2. Social dependency and apathy created by the status quo.
3. Not sure what it would mean; better the devil you know than the one you don't.
4. Lack of leadership; governance reform is not popular with the people.
5. Some individuals benefit financially and politically from maintaining the status quo.
6. Inability of Aboriginal political organizations to effectively represent a collective vision of the future.
7. Disconnect between political dialogue and reform at the national level and the reality of life in community.
8. Lack of financial resources.
9. The grass roots people don't support it and our citizens would vote "no".
10. Not enough political/legal power available; a desire for full sovereignty.

PART 3 /// SECTION 2

Community Engagement and Organizing for Change — Opening the Door

2.0

COMMUNITY ENGAGEMENT AND ORGANIZING FOR CHANGE — OPENING THE DOOR

INTRODUCTION

Community engagement has been called "the Achilles heel" of governance reform as a result of the failure of so many governance reform initiatives undertaken by our communities in the past, despite great intentions. In a 2004 study looking at 115 First Nations governance projects across Canada, the Carlton Centre for Community Innovation concluded that almost one third had no direct community engagement (or it was not clear what the Nation was doing), about half had some degree of community engagement, and only 14 percent had a higher degree of community engagement. This is telling and speaks to the fact that our collective efforts at community engagement need to be reassessed and the underlying purposes of community engagement better understood in order to open the post-colonial door.

Accordingly, this section looks at what community engagement is and why it is necessary. Next, we consider ways to overcome the challenges of community engagement — for example, by using approaches such as "community development" and embracing concepts like the need for "empowerment" and "Nation building" or "Nation rebuilding" as introduced in Section 1. This includes a discussion on the need for "safe spaces" to engage, developing group skills and trust. We also provide some basic, but useful, information about conducting and facilitating meetings and engagement activities, including using the web. Finally, we

"On the Inherent Right of Self-Government — 1. The fundamental imperative for federal policy — "Opening the Door"

This Commission concludes that a fundamental prerequisite of government policy-making in relation to Aboriginal peoples is the participation of Aboriginal peoples themselves. Without their participation there can be no legitimacy and no justice..."

Royal Commission on Aboriginal Peoples, 1997

consider how communities can mobilize resources, plan and organize for change and develop their own community engagement strategies to support opening the post-colonial door.

WHAT IS COMMUNITY ENGAGEMENT?

Ask yourself, "What does community engagement mean to you?", "When and how is it achieved?" and "When is it considered successful?" In the context of our approach to governance reform, as part of broader community development, community engagement is much more than simple "consultation" and the communication of a message from the top down. It is more than just a two-way conversation where someone in a position of power or authority ultimately makes a decision about what he or she has heard. Rather, in the context of true community development work, as part of Nation building or Nation rebuilding, community engagement is the process of fully involving our citizens in the community decision-making process. It is a process of shared decision-making among citizens in support of effecting social change. It is the process by which community both determines the vision and direction of the Nation and ultimately participates in decisions about that vision and direction.

"Ultimately, community engagement is about dialogue. It's about citizens sharing their individual and collective voice. It's about sharing your voice in why government matters."

www.digitalcommunity engagement.com

Examples of the way effective community engagement works in practice show that it is much more than just meetings of the whole community called by the governing body or the administration (e.g., band meetings called by the chief and council) to consult and get feedback on matters deemed important by that body. It is important to keep in mind, though, that it is often a lack of productivity of meetings of the whole community (e.g., few people attend, or when they do it is because of a "hot topic" or "crisis" and the meetings are often disruptive) that sparks a call for more effective community engagement, either by the citizens at large or within the political leadership.

"Community engagement can be defined as the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to address issues affecting the well-being of those people. It is a powerful vehicle for bringing about environmental and behavioral changes that will improve the health of the community and its members."

First Nations Communications Toolkit, 2007

Community engagement will take place in different forums and through different activities where our citizens can come together and share ideas, express their opinions and generally interact as a "community" or as "groups" within the community. It therefore includes traditional work conducted through cultural institutions such as the potlatch or feast. It means meetings such as focus groups or special interest groups, more informal drop-in activities and open houses, and door-to-door visits and "kitchen table" conferencing in people's homes. More formally, it means chief and council meetings, planning and other committees of council, or working groups within the community.

Community engagement can use more old-fashioned forms of communication, telephone, mail, radio and print media. But increasingly, it also means engagement through the virtual world of the Internet and of instant messaging, email, chat rooms, blogs or micro-blogs like Twitter, webinars, Facebook and YouTube. And, yes, it can also involve gossip and the rumour mill in any forum, but especially now, with the ability to compose messages and, with the push of a button, immediately deliver them to groups of people.

WHY IS COMMUNITY ENGAGEMENT NECESSARY?

Effective community engagement is the cornerstone of any community development work. Governance reform initiatives should be built around the need for effective community engagement, as any initiatives will be far less likely to succeed without effective engagement. This becomes increasingly important as a Nation moves along the governance continuum. True self-government at the end of the continuum will not be possible without having fully engaged community. The "self' in self-government comes from the "community."

From a general community development perspective, it has been said, engaging local people is recognition that:

- the local voice and the local knowledge is respected and important
- local people have their own distinct way of looking at issues and contribute new ideas
- local people understand and know their own community best, and
- every person has a role to play, can help and is needed to build a strong, healthy and sustainable community.

From a First Nations' perspective this also includes recognition that our citizens know their culture, local customs and traditions best and actually practice them.

However, there are a number of other good reasons why it is necessary to ensure effective community engagement during our post-colonial transition or movement away from governance under the *Indian Act*.

A tradition of consensus building: For many of our citizens, there is an expectation that they have a right to be involved in decisions that affect their community, based on how our societies traditionally governed. Our citizens are tied to community both geographically and culturally in ways most other Canadians are not. As First Nations people, we live and continue to live as "community." Those of us who live at "home," where our roots are, typically live in small communities or villages that have been in existence for hundreds, if not thousands, of years. Others who do not live on-reserve participate in community in different ways. Everyone knows everyone else. In our communities we share, for the most part, a common culture, language and traditions, and as such have a tradition of living, working and governing in small groups. Often our traditional governance practices are built on principles of consensus building and working in those groups. The ideal of consensus decision-making is still very prevalent among our people and something to aspire to, even if it is not always achievable. In short, we have had "community" and have been engaged in shared decision-making through community for centuries. Consequently, consensus building through community engagement is very much a part of who we are as First Nation peoples and will inform our priorities and actions as we move forward.

Rights are held collectively: Our sense of community is legally strengthened by the fact that our Aboriginal rights and title are held collectively by "community." We have a collective interest in land — both our existing reserves and our Aboriginal title lands. Lands on-reserve are held in trust for the use and benefit of Indians. Accordingly, the most important decisions affecting reserve lands must involve the community, as everyone has a stake. With respect to our Aboriginal title lands, the courts have said quite clearly it is also collective interest in the land. Legally, this means that our citizenry should be involved in all significant Aboriginal title matters affecting their Nations. Today, before the Crown can make decisions that could impact Aboriginal title and rights, including treaty rights, it has a duty to consult with our Nations. In many cases, First Nation leaders and governments have become legal experts and champions in the protection of Aboriginal title and rights, including treaty rights, and demand that the Crown consult with our Nations on all things affecting Aboriginal title and rights. The day is coming when our citizens will demand the same of our First Nation leaders and their own governments — that is, that the citizens are consulted and are a part of key decisions made respecting those lands. Many of our Nations, in accordance with their customs and traditions and often outside of *Indian Act* governance arrangements, are not waiting for that day, but rather are walking out to meet it. This is the opportunity that community engagement provides.

Free, prior and informed consent: Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) sets out that:

> States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Essentially, our citizens must be afforded free, prior and informed consent when dealing with governments. This means that when the state is passing laws that affect Indigenous peoples, our citizens can agree freely to governance reform after being given sufficient information to make a decision. Like the evolving legal duty to consult with respect to title and rights, the principle of free, prior and informed consent could also be a useful lens to look through as we develop our own institutions of government and move beyond the *Indian Act*, whether in response to or under a federal legislative initiative, but also when simply acting on our inherent right.

Fiduciary (statutory) relationship with the government of Canada: Distinct from but related to the principle of free, prior and informed consent, the reality of our post-colonial transition is that before there can be significant governance reform in our communities, our citizens need to vote in favour of change. Our citizens need to vote in favour of getting rid of the old system under the *Indian Act* — we need to vote the colonizer out. This legal reality exists because the *Indian Act* makes our people "wards" of the state, with Canada governing over our peoples and our reserve lands accordingly. Notwithstanding the UNDRIP and the standard of free, prior, and informed consent, and how they may run afoul of Canada's legislative forward-looking agenda, seeking governance reform for us outside of the *Indian Act* is more complicated. Canada will not remove itself from our lives because of its "fiduciary responsibility" — unless our citizens tell Canada that it is okay to do so. The *Indian Act* is the primary legal source of our dependency on the Crown, and this dependency is one of the biggest challenges to governance reform, as discussed later in this section. Canada wants to be sure and — actually it insists upon — our citizens approving any significant change in governance in order to reduce the risk of a successful lawsuit in the future for a breach of its responsibility if we are not successful in managing our own affairs post-*Indian Act*.

Obviously, this is very ironic, given that we were historically self-determining, but it is nevertheless our current reality under the *Indian Act*. So without community engagement, even with strong leadership and vision, if your community is not engaged and ratification fails, your community will not move forward. No other segment of Canadian society has had to address this reality in the same way. Because of our historical relationship with Canada under the *Indian Act*, there is an increased requirement and responsibility on our shoulders, as First Nations people, to ensure that our citizens are onside with reform. It is not just political rhetoric but a legal requirement and a challenge that every community seeking to break free of its colonial past must take seriously. This is part of the twisted reality of our post-colonial transition. It is also important because at this point in time there is no way to comprehensively exit the *Indian Act* without involving Canada and negotiating an agreement permitting our Nations to do so. Until there is a more streamlined and effective process for decolonization and Nation building or Nation rebuilding, or there is a court case striking down all or part of the *Indian Act* as unconstitutional, Canada will continue to play a "gatekeeper" role in our governance future. The best way to remove the gatekeeper is to engage the people penned in by the gate — our citizens — and find a way to open it up.

Federal capacity to negotiate: Canada does not undertake governance negotiations with every First Nation that wants to negotiate, nor does it support every Nation's efforts to establish governance beyond the *Indian Act* and to exercise jurisdiction over the range of subject matters set out in Part 1 of the Governance Toolkit. Notwithstanding the fact that the federal government from time to time passes legislation that is applicable to our governance, Canada argues that it has limited financial and human resources for self-government related activities and can only work with those communities that are serious about moving along the governance reform continuum. In making a determination about where to allocate its resources, Canada looks to the degree of community support for governance reform, and by implication the degree to which the citizens are engaged. If a Nation's governance reform initiative requires Canada's involvement, then evidence of community engagement will most likely be a prerequisite for its participation.

"Okay, but the membership still has to ratify it."

Attributes of Effective Governments:

With respect to rebuilding Aboriginal nations and reclaiming nationhood, the Commission recommends that

"2.3.29
Aboriginal peoples develop and implement their own strategies for rebuilding Aboriginal nations and reclaiming Aboriginal nationhood. These strategies may

a) Include cultural revitalization and healing processes;

b) Include political processes for building consensus on the basic composition of the Aboriginal nation and its political structures; and

c) Be undertaken by individual communities and by groups of communities that may share Aboriginal nationhood."

RCAP, 1996

CHALLENGES TO COMMUNITY ENGAGEMENT

Many of our leaders and people who work in our communities have complained that it is often difficult to get citizens to attend meetings and discuss governance reform. They call meetings and no one shows up. Or when people do come to the meetings, the meetings are not productive, lose focus or result in conflict. Getting people engaged can be a problem.

Ironically, where governance reform requires negotiations with Canada, it may end up being easier to negotiate with the Crown and have legal and technical representatives meet to negotiate the legal text of agreements or laws than it is to actually engage the community about the agreement or the proposed laws. As a result, it is the legal and technical issues that, by default, receive priority consideration in the governance process.

One reason for a lack of participation may be the way meetings and other engagement activities are planned and executed, including the skills of group leaders/facilitators. Meetings and facilitation are discussed later in this section. However, the root of the problem — or the biggest challenge — which is often much harder for us to address, and even at times admit, is that many of our people are not healthy. We need to understand this reality. We need to confront and understand the legacy of colonialism and its continuing impact on people and how this is reflected in their degree of participation in community.

We need to collectively recognize this challenge and plan engagement activities to address it. We must be empowered to take responsibility back for our own future and know that everyone has a role to play in this period of post-colonial transition. Below, we consider some of the challenges of this situation and some strategies to address them when preparing to engage and when engaging with citizens.

In order to empower people and bring them out of the colonial shadow, it is important that our citizens develop their skills for interacting in groups. We must also create "safe spaces" for that interaction, where our citizens can deconstruct their current reality for themselves and talk with one another about their needs and priorities without fear of and intimidation by those in positions of power and without the "loud voices" in the room dominating the discussion. We have provided a number of tools in this section to aid communities in understanding and developing a community engagement strategy that makes sense for them. The tools section also includes a list of community engagement resources that may be useful references.

ENCOURAGING CITIZEN PARTICIPATION

The first step in the process of community engagement is actually getting people to participate, whether to attend a meeting or a focus group or another activity. The second step, of course, is to get them to come back and to actually engage and to be active participants over the long term. How difficult the second step is will depend on how successful the first step was. And both steps will depend on how well our group skills are being developed.

Citizens have to want to participate. They cannot be forced. It has to be their choice, made in their own time. "That is all well and good," we hear you say, "but how do I get people to show up in the first place?" There is no simple answer. It is a process. It is achieved in part through strong leadership and by following principles of community development.

Some people may tell us that their lives are "so busy" that it is hard to find the time to participate. It might be work schedules, or perhaps finding child care, that gets in the way. Try to accommodate people's needs by arranging activities that fit into their schedule — for example, by scheduling group meetings when people are not working or by providing child care services when people meet. For our citizens, scheduling can be important if they are away from the community for extended periods (e.g., to fish or trap, or for other work). Be flexible when encouraging participation. If after participating, citizens feel it was worth their time and that something is going to result from their participation (e.g., they are being empowered), they generally will make the time in the future, arranging their schedules accordingly.

It can also be effective to lighten up the conversation when it is appropriate and not distracting from the seriousness of the discussion. Adding some levity is okay. Our peoples have an incredible sense of humour, a stoicism that reflects not only our culture and traditions but also a response to colonialism and our experiences under federal rule, living on-reserve and being governed by the *Indian Act*. Using this to broach difficult issues is a good way to get people to engage. If people can laugh, they can also confront and deal with a lot more of the pain.

In order to encourage participation, some communities offer inducements or employ other strategies to attract citizens to attend meetings and other activities. These include:

- providing food
- scheduling meetings and activities around another community event that is likely to be well attended (e.g., cultural events such as feasts or a powwows, or sporting events)
- covering the expenses of participants or providing an honorarium for attending
- having a draw or door prizes at the meeting
- scheduling the meeting or activity when a community distribution is being made
- inviting special guests to participate

However, exercise caution when using inducements. Paying people to attend meetings might not be a sound long-term practice — or a sound practice at all. If you are using inducements to get people out because your meetings are poorly run or unstructured and group needs are not being met, there is very little point in essentially "bribing" people to come, because the activities will not be productive anyway. Not only is this not empowering, but in many ways it perpetuates the dependency model and runs counter to community development principles (see Section 1 of this guide).

CREATING "SAFE SPACES" FOR ENGAGEMENT

Effective community engagement requires "safe spaces" for our citizens to feel confident enough to begin to engage and talk about the difficult issues raised in Section 1 of this guide and to find solutions to those issues, empowering people in the process. It requires spaces in which citizens feel comfortable talking about current realities and can explore the need for change without being coerced. Community engagement is an iterative process.

The question is how can we create spaces within the community for citizens to eventually come up with solutions and options for change and ultimately to have the conviction and strength to implement that change when called upon to do so?

Ideally, creating safe spaces should be a part of a holistic approach to community development. Safe spaces for our citizens may take a number of forms and may be multifaceted, depending on the issues being raised and the relative importance of the issues to the citizens or group of citizens. For example, they can include women-only circles, youth meetings or family meetings, as opposed to larger groups. Special attention needs to be paid to the rules for participation in the space. This means clear guidelines for meetings and using community development facilitation techniques to encourage participation. The key to creating safe spaces is to develop good group skills. There are lots of good ways to create safe space, and each community will decide what the best approach will be.

REDISCOVERING OUR GROUP SKILLS AND GROUP METHODS

Group skills are important. We need to be able to work effectively in groups in order to engage in a way that leads to empowerment. This means devoting the time and giving the necessary attention to bringing our citizens together and reviving our group skills and group awareness.

Developing group skills and group methods will help to structure the time citizens are working together so that individuals can come together and learn better ways of coordinating their efforts toward the transformation of their community. Learning group skills will assist citizens in becoming more sensitive to how others see them and more realistic about how they see themselves. For some of our citizens, this can become an end in and of itself, and they will feel more comfortable about their own existence, which is the essence of empowerment.

Historically, of course, we had very good group skills, which were reflected in our traditional decision-making practices. Today we can build on the strength of these practices and others and rediscover ways to work together in navigating transition and taking back control. There are a number of considerations in determining how to best do this, as well as some best practices that can be used to create the safe spaces that are needed for our citizens and to help make group interaction more successful.

Firstly, our citizens have to feel comfortable about speaking in groups and working in groups to talk about change. As mentioned previously, many people simply stay away. Others may show up but say nothing or do not say what they feel. To break this pattern of silence, our people need to have both self-confidence and the knowledge that what others in the group are thinking is important. They also have to believe that what they have to say is as important as anything anybody else might have to say, and everyone else has to believe this too. The person or people who called or are conducting the meeting or event, as well as those who are participating, must genuinely believe that the citizens can contribute to the transformation of the Nation. Experience has shown that if community engagement provides only lip service to the concept of full participation and is undertaken by individuals who do not sincerely believe in it, it will simply not work. When they are ready, citizens need to know that they can participate on terms equal to those of any other citizen and that every voice counts.

Secondly, just as methods are not neutral, content is not neutral. Once we understand that the participation of our people is essential to the transformation of our communities, then our methods must be consistent with our aim. Engagement cannot be indoctrination. Citizens should be allowed to come to their own conclusions after having considered the issues within the group dialogue, considered any other information they have received, and participated in the process of what is sometimes called “participatory education.”

The tools we use must uncover the structure that dominates our citizens — in our case, the *Indian Act* and the federal institutions of government that are responsible for it, namely the office of Minister of Aboriginal Affairs and the bureaucracy that administers the act — without simply telling them that it is so. To put it another way, our citizens and ultimately the group as whole has to come to the realization through their own deconstruction of their current reality that the systems that oppress them are bad and that they can actually do something about it.

One of the most challenging aspects of our current reality will be the deconstruction of our governing institutions under the *Indian Act* — namely the chief and council. In this case, citizens could look critically at their existing core governance structures and decide that they still want a chief and council but that it should function very differently, or that they do not want a chief and council at all. This conversation can be challenging, because the current chief and council's relationship to Canada, and the fact that the citizens are currently governed by chief and council and are often heavily reliant upon the services it provides, make it hard for citizens to look critically at their functions and have a conversation about the failings of the system.

Finally, when we consider group methods, we also need to be somewhat cautious. The same group methods that can empower can also be used to dominate and manipulate people. Community engagement methods must always be used in a way that genuinely enables citizens to understand the issues and grow in awareness and self-reliance. They must not be used to control citizens, and if people see this occurring, they must speak up.

DEVELOPING TRUST IN THE GROUP

One of the most important outcomes of good group skills is the creation of trust. There are some good approaches that can be taken in working to build "trust" and "group trust."

Developing trust in a group is a process. Trust must be developed in self, in others and in groups. Ultimately, trust has to be developed in a community and in its governing institutions. Because of the colonial legacy, many of our citizens have either limited or no trust — in themselves (they lack confidence), in their fellow citizens (with whom they compete for limited resources) and/or in their governments (which do not meet their needs).

With mistrust comes fear. Mistrust and fear are compounded by misinformation, lack of knowledge and weak leadership. It is important, therefore, that we conduct community engagement in a manner that will build trust.

Building on the group methods that we discussed above, trust can be developed in a group if certain "group needs" are met, regardless of whether the group is small or large, and regardless of the individuals who make up the group. If trust and satisfaction with a group's achievements are to grow and people are to engage and continue to engage, then the following four "group needs" should be satisfied:

1. a climate of **acceptance**
2. **information** sharing
   - about the people present and their experience,
   - about the issues they want to deal with
3. the setting of **goals**
4. organization for **action**

Ideally these four group needs (described in more detail in the chart below) should be met in the order shown. However, they are not always resolved conclusively, and consequently any one of these four needs can occur over and over again, either at any point in a particular meeting or over the course of a number of meetings or community engagement activities.

THE NEEDS OF A GROUP
Acceptance
• People in a group need assurance that they are respected and accepted and that it is safe to say what they think and feel.
• The uniqueness of each person (e.g., their experiences and insights) needs to be recognized.
• People need the right kind of "climate" or "environment" in order to grow, like a tree. Group leaders play a special role in the group and have a responsibility to nurture the "climate" within the group.
• People must be free to learn, rethink old opinions, change and grow, and fully share their thoughts and feelings.
Sharing information and concerns
• People working in groups need information that is accurate and reliable: – about each other, their experience, their ideas, their values and opinions, and – about the issues they consider to be important in their lives.
• People need to work out for themselves what they need to know; information given out randomly will bore them and be ignored unless they see the relevance in their own lives.
• Group leaders need the opportunity to share their concerns and information, but only after other members of the group have shared theirs. This should be provided only for discussion, not imposed on the group.
• Concerns of the group leaders and those who arranged the meeting will be to help people deepen their awareness, to move from the symptoms to the causes of the problem. The "Problem-Posing Method" is an effective way to do this.
Setting goals
• Goals should be set clearly by the group. If not people will not be interested or committed to carrying them out.
• Goals should be clear to all participants or people become frustrated.
• The way decisions are made is directly related to how committed people feel to carrying them out.
Organizing for action
• Once goals have been set the group needs to make clear plans to reach these goals and carry out decisions/action items.
• Individuals need to take responsibility publicly in the group for undertaking tasks in the plan and should be accountable to the group for seeing the tasks accomplished.
• There is a need for a structure that is appropriate to the group and that will ensure that one person will not assume all the responsibility or control all the actions.
Source: Adapted from *Training for Transformation: A Handbook for Community Workers*, 1984, after Gibb

When undertaking community engagement activities in our Nations, we should be mindful of these four group needs and accommodate them. This includes ensuring that facilitators or group leaders are aware of their role in the dynamics of the group, which can be accomplished by developing a policy or having a statement of principles or code of conduct. The requirement to have these rules or the rules themselves could also be included in a community engagement strategy, as discussed later in this section.

CONSIDERING THE SIZE OF THE GROUP

Community engagement will involve meetings of the whole community and meetings of sub-groups within the community. Group dynamics change with the size and composition of the group, as well as the subject matter being discussed and the diversity of opinion and complexity. For example, the need to make a decision at the end of a meeting (i.e., the meeting is not simply for information purposes) will have a bearing on group dynamics.

In planning our community meetings, therefore, it is important to consider both the size and the composition of the group that is meeting. For example, our citizens may find it difficult to speak in front of large groups of their fellow citizens (e.g., at band meetings). And at a large meeting, there will likely not be enough time for every citizen to speak or to speak for as long as they might want to. If everyone in your community is to have the opportunity to participate actively, smaller groups will be required for effective community engagement. The following textbox describes the basic characteristics and usefulness of different sizes of meetings.

EFFECTIVENESS AND THE SIZE OF MEETINGS	
Pairs are useful for	• Interviews • Intimate sharing • Practising some skills (e.g., listening or feedback) • A quick chat with a neighbour to stimulate interest and action
3 is very useful for	• Getting people thinking and participating actively (i.e., it is easier to be passive in a group of 5+ but more difficult in a group of 3) • Testing or floating an idea you are hesitant to present to a big group (i.e., if two people think it is worthwhile, one might risk saying it to the whole group)
4, 5 and 6	• means more variety for sharing ideas and insights. This is a good size for a planning team or committee or to discuss a more complex situation. However, the bigger the group gets, the longer the discussion will be and the longer it will take to make decisions.
6–12	• is a good size for sharing ideas when the group has plenty of time (e.g., a regular study, discussion or working group). From this point on, groups begin to need an appointed (or accepted) facilitator or group leader. All members should try to be sensitive to the needs of the group, but the facilitator fills those needs not met by other members, especially in a new group or where there may be personal conflicts in the group.
30	• can develop a real spirit of community over time or in a multi-day workshop (e.g., 4–5 days). Most people will be able to participate actively in whole-group sessions. As the group gets bigger, this becomes more difficult. However, with groups of this size it will be necessary to break into smaller groups of different kinds or for different purposes. (Rule of Thumb: The bigger a group is, the more skillful leadership and definite structure it will need to ensure that everyone is able to contribute freely and feel satisfaction in the meeting.)
30–200 (or 2000)	• can be useful to bring people into contact with new ideas, plan policy for big organizations, and so on. However, if 98% of the group is not to be passive, very skilful facilitators and a team of trained animators will be needed to lead small discussions and feed ideas into the big group. It is often helpful to train one facilitator for each small group ahead of time. If necessary, these facilitators can meet before the large group meeting for training or direction.
Source: Adapted from *Training for Transformation: A Handbook for Community Workers*, 1984	

TYPES OF MEETINGS

There are different types of meetings for different purposes. Any community engagement strategy will typically include a number of types of meetings, in addition to a variety of other activities (drop-in sessions, open houses, etc.). Regardless of the type of meeting, considerable planning is normally needed to ensure that the meeting is effective. Some Nations have developed internal protocols for meetings within their communities, and for particular community meetings of the whole (i.e., band meetings). Cultural protocols, whether codified or not, should be observed.

As described above, meetings can range from one-on-one meetings and very small focus groups to meetings of the whole. Types of meetings that might be held for the purposes of governance reform, and where we would be looking to create safe spaces for community engagement, include:

- Planning committees — to organize activities and oversee governance initiatives
- Working groups — to deal with specific matters, such as developing a law or policy or determining policy on a matter for negotiations (e.g., lands, education, health, etc.)
- Focus groups — to bring together special interest groups and/or smaller groups of citizens within the community to discuss a particular issue
- Family meetings — a particular type of focus group based on familial ties

In addition to the more formal planning meetings, having different types of meetings and other activities can help to ensure that everyone has a safe place to meet and consequently an opportunity to participate in the governance reform conversation. It is therefore useful to consider the different interest groups within our communities and plan accordingly. Citizens, of course, can belong to many different interest groups (e.g., elders, women, land owners, traditionalists, etc.), as well as to one large "community of interests," the Nation or the community as a whole. Breaking the community into specific interest groups is a good way to help create safe spaces and encourage engagement. Interest groups could include (in no particular order), for example:

- people living on-reserve
- people living off-reserve
- youth
- elders
- women
- men
- disabled people
- family heads
- land owners
- traditional and ecological knowledge holders
- church-goers
- social service recipients
- professionals
- people who work in the band office

When planning for a community meeting, a number of issues will need to be considered. For example:

- Will this meeting be attended by your citizens only?
- Will there be media?
- Will other parties be invited?
- What information will be handed out?
- Who will chair or facilitate the meeting?

Planning beforehand will ensure that all participants are prepared for the meeting and understand their role. The following textbox identifies some of the things to consider when planning a meeting.

Things to Consider When Planning a Meeting
Objective — Be clear about why you are meeting and what you expect to get out of it.
Participation — Who needs to be there and what are their roles?
Agenda — Be clear about the items on the agenda and set out and respect the time allotted to each item.
Facility — Choose an accessible location.
Scheduling — Ensure that there are no other events or happenings competing for attendance.
Facilitation — A facilitator or strong chairperson is essential to the effective management of your meeting.
Opening/closing — Identify an elder/youth to sing, dance and say a traditional prayer.
Question and answer period — It is important to ensure that there is enough time for people to have the opportunity to ask questions.
Catering — Identify caterers.
On-site staff — Identify staff to sign in participants, hand out material (agenda, kits and binders), record questions and take minutes.
Handouts — Provide relevant materials that support the objective of the meeting.
Key spokesperson — Identify spokesperson(s) and put on the agenda.
Media — Determine if it is desirable to have media (if so, provide media kits).
Meeting follow up — Identify how the information will be shared following the meeting. (Will it be posted on the website? Will the minutes be shared with each member?)
Other considerations — Budget, catering, security and transportation.
Source: *First Nations Communication Toolkit*, INAC, 2007

Where different groups in the community are meeting and discussing the same issues (e.g., governance reform), it is important that the same information is provided to each group. It is also important to relay the content of discussions at these meetings back to the larger group in a respectful and appropriate way. If not, people will be confused and group dynamics will be affected, particularly where citizens are participating in more than one group or engagement activity and ultimately come together for a meeting of the whole (e.g., a band meeting).

GROUP FACILITATION

Meetings and group discussions in many cases benefit from facilitation; with groups of over 30 people, it is almost always needed. The practices and learning of First Nation communities in BC provide some general observations about group facilitation that you may find useful.

Community engagement activities need to be structured, because they can bring together diverse groups with many different views. Discussion needs to be directed. A person who leads group discussions is typically referred to as a “facilitator,” but may also be called a group leader, chairperson, coordinator, community champion, animator, development worker, and so on. Having a facilitator lead meetings will help to ensure that everyone is heard and able to participate fully. Certainly, the larger the meeting the greater the need for facilitation. In smaller groups, people can sometimes act as a facilitator as well as participating to some degree.

The facilitator sets the tone for the "climate" of the meeting, including ensuring that all cultural protocols are followed. These protocols can vary from Nation to Nation. Facilitators need good group leadership skills, which include being responsive to group dynamics. They need to draw in those who may not be participating initially, and prevent others from dominating — to ensure that all voices are heard. They should be aware of and apply community development principles.

The main work of a facilitator in the context of community development work is to help our citizens tell their stories. Participants remember what they have said and discovered for themselves much better than what the "teacher" has told them. The facilitator should therefore speak only to stimulate discussion in the group when needed, asking the right questions and providing context for the discussion. Since it is the questions that are asked and discussed that matter most, this guide offers a number of tools that include questions about governance reform that can be used by facilitators. (The same approach is used in the governing body and administration self-assessments contained in Part 2 of the Governance Toolkit.)

The facilitator should also summarize when necessary and build on the contributions of the participants — but only after they have considered the issues before them as deeply as they are able to and learned all they can from one another.

The facilitator may also be the one to establish a structure for the meeting (e.g., agenda, timing, etc.), and at a minimum will confirm the agenda with those calling the meeting. Finally, the facilitator may be called upon to take care of "housekeeping," which might include notifying participants and setting up the meeting space, or ensuring that these details have been taken care of.

In summary, good facilitators will know their role and know how to direct the dialogue to help ensure that community development principles are followed, by encouraging participants to speak, and that the goals for the meeting are accomplished and any conflicts resolved.

If you think it might be useful to have a professional facilitator lead your meetings, try to get someone from your community. If that is not possible, try to find someone who is familiar with our current reality and our world as First Nations' peoples. Alternatively, ask someone in your community who has natural facilitation skills to take on this role, and, if resources permit, provide him or her with training.

WHAT MAKES A GOOD FACILITATOR?
A good facilitator:
Creates and maintains an atmosphere of trust by being sensitive to the feelings of individuals.
Listens to the explicit meaning of words but also to their tone and implicit meaning.
Acts for the good of the group even when this involves taking uncomfortable actions or saying something awkward.
Is committed to collaborating, including sharing facilitation with others in the group.
Has a "sixth sense" for time: knows when to bring a discussion to a close, when to change the topic, when to cut off someone who has talked too long, when to let the
discussions run over the allotted time, and when to let the silence continue a little longer.
Has a plan but is willing to be flexible in response to the situation.
Has a sense of humour.
(Source: University of Minnesota — http://www1.umn.edu/humanrts/), as used in *First Nations Communication Toolkit*, INAC, 2007

RESOLVING CONFLICT

Conflicts do and will continue to arise in our communities. It is natural for different views to arise when any group of people discusses difficult issues. The conflicts in our communities are often deep, reflecting the scars of our history, the dysfunction of the *Indian Act* system, the need for healing and basic human nature. In the case of governance reform, the opinions can be as diverse as the options and are often very strongly held — to the extent that having any dialogue without conflict is almost impossible.

A skilled facilitator in most instances will be able to work through conflicts between citizens by creating the right climate and trust within a "safe space." By adhering to best practices, the facilitator will give individuals a chance to be heard and help them determine how their interests can be addressed in a way that satisfies them with the outcome, so that neither side feels that they have to withdraw.

However, in some cases this may not be possible. We must be mindful, therefore, of the challenges that our citizens may have and of the fact that these can manifest themselves during our community interactions with one another. People can often become very angry, and this anger can lead to conflict and make any meeting space unsafe. Addressing this anger and conflict is part of the healing process and reconciliation, both internally, within community, and externally, with the broader society. Some people have issues that are so great that they may need counselling or other services to help them resolve them. Just because someone is facilitating a meeting does not make him or her a psychologist or counsellor.

In addition to personal issues, complex or historical conflicts may also need to be resolved outside of the meeting structure. If this is the case, it may be possible to use traditional conflict resolution approaches, or to involve someone with other conflict resolution expertise. It is also useful to train members of our communities so that they are prepared for these situations and can help resolve them.

THE IMPACT OF THE INTERNET AND SOCIAL MEDIA

The impact of the Internet and the way it is being used to support movements for social change cannot be overstated. It is important to be familiar with the ways in which these tools can be used to engage with our citizens. It provides many continually evolving opportunities for engagement, but also a host of new challenges.

Increasingly, like all citizens of the world, our people are using social media to communicate with one another and the rest of the world. There is no question that the rise of the Internet and social media is one of the most important developments in the effectiveness of social change movements, both here in Canada and abroad. The "Arab Spring" and the fall of the regime in Egypt in 2011 are widely attributed to the use of social media and its ability to "spread the word" and empower.

In addition to allowing people to talk to one another, the Internet gives us the ability to share information and provides access to information that in the past was available only to academics, professionals and elites. Today, the issue is not too little information but rather too much, and the challenge is to sort through the information available to find what is relevant and accurate. But it is the users themselves who act as the filter for information, sharing that which is most relevant and useful. The Internet and social media are therefore

great levellers, and as such, are already important tools in the movement for social change within First Nation communities and the growing movement for governance reform as part of a social change process. Today, with smart phones and other technologies many of our citizens have access to instant information all the time.

Most of our First Nations now have their own websites and often have websites for special projects. Many are on Facebook. Many of our leaders and citizens at large have Twitter accounts. More and more of our citizens are engaging with one another through social media on a daily basis, exchanging ideas and opinions as individuals and also in groups. Increasingly, our citizens are also interacting with their governing institutions such as band offices and political organizations such as the UBCIC, FNS and BCAFN through social media. While all age groups engage in using social media and the Internet, our younger demographic profile of peoples compared to other Canadians, make understanding the Internet and social media of particular importance.

Many of our citizens who live off-reserve use email, Facebook or Twitter to get information about home and keep informed of the issues. Today someone living off-reserve can actually know more about what is going on back home than someone who stays in their house on-reserve and does not participate in community affairs and activities. (Of course, the person staying in his or her house may also be using social media and not feel the need to go to meetings.)

What all this means is that those tasked with the responsibility for leading or who are the "champions" of governance reform need to be familiar with the Internet and social media and understand how to use this evolving medium and incorporate it into for community engagement strategies. They need to be familiar with the world of instant messaging, email, chat rooms, blogs and micro blogs like Twitter, webinars, Facebook and YouTube and know how to use them effectively. Most importantly, using the Internet and social media needs to be a part of any community engagement strategy.

It should really come as no surprise that many of the same rules that apply to creating safe spaces for engagement where people are interacting face to face and in person apply to interaction on the web. The fact that interaction through the Internet and social media is distanced in terms of physical space does not mean it is distanced in terms of social space. It is quite the opposite — which it is why the Internet and social media are such powerful tools in bringing together distant groups of people to share common interests and ideas. Chat groups and blogs on matters of governance reform can be very powerful, and if your Nation doesn't set them up, your citizens likely will.

At the simplest level, we can use the Internet and social media to send information, notices of meetings and other engagement activities, and so on to our citizens, connecting with people between the in-person meetings. But they are much more than a noticeboard and mail system.

When considering ways to engage your citizens in group discussion using the Internet and social media, it is important to understand that many of the same group skills in meetings, as discussed above, apply equally to the world of social media. In some cases, best practices are already built into the system. For instance, anybody can "speak" by simply typing a message, and everyone is encouraged to do so. Equally, group administrators or web hosts can control content and act as a facilitator to avoid conflict and censure those who do not follow the rules. Just as trust is built in the face-to-face group setting, so too is trust is built in a particular website, blog or Facebook page. In fact, the risk is that there may be too much trust developed in the group, which can create other issues (e.g., creating a culture of informality).

There are obviously many opportunities and issues to consider in using the Internet and social media. Some of these, concerning the Internet and social media generally, as well as with respect to governance reform specifically, are discussed below.

Websites: The majority of First Nations in BC have their own website. Nations that are involved in governance reform will typically have something on their website about the initiative. It is recommended that, depending on its scale and potential impact, the initiative should be reflected throughout the website, and characterized not simply as a "program" or "service" but as something more fundamental (e.g., it should be reflected on the homepage and throughout the site); if governance reform is important, and not just "another program" the band is running, then visitors to the site need to know that this is the case. Some communities may have a link in their primary website to a governance initiative website, which will in turn have links to other First Nations that are undertaking similar governance reform work.

It is important that a website be kept up to date and that the information it contains is accurate. The web administrator may not necessarily be an expert in governance reform, so in most cases someone else will need to ensure that the information being uploaded is accurate.

In addition to the BCAFN website, which includes links to all First Nations in BC and governance initiatives, along with key documents produced by our communities, there are a number of other useful websites that provide information on governance reform. Part 1 of the Governance Toolkit provides some of the most useful links for the governance matters being considered.

Facebook: Although not yet as common websites, many of our First Nations in BC have formal Facebook accounts. When a community engages in a governance reform initiative, not only proponents of the reform but also those who might be against it are likely to set up a Facebook page. These pages provide an important opportunity for sharing ideas and information. They allow us to deal with rumours and misinformation by ensuring that citizens have accurate and, most importantly, the same information and ultimately are able to make informed decisions about proposed governance reform and about whether to vote in favour of a proposal, as discussed in Section 3 of this guide.

Blogs: There are numerous blogs dealing with First Nations' issues, some general and some specific to particular Nations and their activities. As social change occurs in our communities, effective blogging can be an important way to get the information out and create a space for engagement.

Twitter: It is becoming very popular to use Twitter to send out short messages and share them with large numbers of people. Tweets are one of the fastest ways to get information out and to address an issue quickly. However, writing sensible tweets that have meaning and can influence decision making is not easy, as they can be easily misunderstood. Tweets can also be gossipy and perpetuate rumours and falsities. As with any type of communication activity, there is a skill to tweeting. Whatever governance reform initiatives your community undertakes, people will inevitably tweet about them. Each Nation will want to consider whether to establish a Twitter account. If a Twitter account represents an institution (e.g., the First Nation or its governing body), controls will need to be put in place concerning who can tweet and what can be tweeted.

YouTube: Despite your best efforts to encourage community dialogue and community participation in meetings about governance reform, some people might not be able to attend or choose not to attend. Some communities record meetings and provide copies

of recordings to their citizens so that they can hear what was said and by whom. These recording or clips are often uploaded to YouTube. With most people having cameras on their cell phones and other electronic devices, it is now very easy to take video and upload it to YouTube. Citizens may also record meetings they attend and upload the recordings or videos to the web. In some cases, this could potentially compromise the safe space of a meeting and discourage citizen participation; some people do not want to be recorded. Clear rules about recording meetings should therefore be established and enforced.

Webinars: Webinars (a play on the word "seminars,") allows for group interaction and learning through a video feed over the Internet. Someone sets up the meeting and others log in. Webinars is becoming more commonplace where the technology is available, and this can be a good way to include citizens who may not live at home in community meetings.

While there are issues that need to be considered with respect to the burgeoning use of social media, the opportunities provided by the ease with which information can be shared should support the movement for social change and help to define and implement it. Making the best possible use of the Internet and social media in a community engagement strategy is important. So too is understanding how those tools will be used by those who want to thwart social change.

MOBILIZING RESOURCES

Building a support team

Moving forward with governance reform can be one of the most challenging but rewarding experiences for your community. It takes a team effort to remove the boulder or uproot the tree that is the *Indian Act*, with its deep roots or dense mass.

It will be important for the majority of the *Indian Act* governing body (chief and council) to be supportive of the change. Often, but not always, members of the *Indian Act* governing body are also the champions for change. Ideally, all members of council would be supportive, but this is often not the case — both at the outset of any governance initiative and throughout the process. At the end of any process, the council, as leaders, will be expected to know and understand the initiative, answer questions and express opinions.

It is also important for the council to use its existing mechanisms of government (e.g., the passage of band council resolution (BCR)) to support governance reform initiatives. While movements for governance reform can develop outside of council, it is unlikely that they can be undertaken without the sitting chief and council's support, because of the need for resources to support the work and, where necessary, to engage with Canada. Any movement for governance reform will at some point need to be approved by council.

Individuals within the administration or council will need to be tasked with the responsibility for overseeing and coordinating governance reform activities. Our administrations and in particular our administrators therefore need to understand and be supportive of the community development work and any governance reform activities. This is not a position or task that is directly funded under federal transfer agreements with Canada, although it should be seen as an aspect of the job description of any administrator. Undertaking the self-assessment in Part 2 of the Governance Toolkit is a good way to have a conversation about governance reform. Many members of governing bodies have found the self-assessment to be an eye-opener, in particular regarding ways their existing practices can be improved to ensure more effective governance, even under the dysfunctional *Indian Act* system, and governance substantially strengthened through governance reform taking the community

beyond the *Indian Act*. There are limitations, of course, and effective governance requires the good will of those doing the governing, until structural reform takes place through the development of community constitutions and associated governance laws.

Using professionals, consultants and advisors

Many First Nations will look to third-party professionals, such as consultants, lawyers and accountants, to assist them with their governance reform work. Increasingly, these are our own people, but not necessarily from our own Nation. There are many good people and organizations that can assist our Nations; many institutional resources are described in the *Governance Report*. For community engagement purposes, however, the most valuable are facilitators, as discussed above, and particularly those with experience in community development work.

It is also important to know how to use professionals effectively so that they do not dominate or control the process of governance reform, or take financial or human resources away from the community development work being undertaken to facilitate social change.

Finding the financial resources

Finding money is always hard, particularly given the dire need of many of our communities, the pressures of providing the social safety net, and the fact that most of our Nations have little disposable own-source revenue. For this reason, we have to see an investment in community engagement as a critical investment in the future of our communities. And we have to be prepared to defend this principle.

You will need a budget for the community engagement strategy that will be part and parcel of any governance initiative. Finding the money may be hard. Many of the financial resources in your community will already be allocated to various other governance activities and to the delivery of programs and services. Convincing departments within your organization that a community engagement budget is important may take some work.

There may be developmental funding options from Canada for either comprehensive governance negotiations or participating in sectoral initiatives. Many Nations involved in treaty negotiations have located their governance reform work in their treaty offices.

If our Nations are serious about governance reform and understand the social and economic benefits that can result for our communities, chief and council should consider investing in our future by investing in governance reform, and use own-source revenue to fund these activities. There is arguably no better investment in our future (other than perhaps in the education of our citizens) than re-establishing appropriate institutions of governance, exercising jurisdiction in key subject matters and moving away from the *Indian Act*. The social and economic returns of such an investment are well known.

Sharing our stories

In getting our citizens to talk about and consider the pros and cons of governance reform, some Nations have found it very useful to bring in citizens from other Nations to talk about their own experiences. Many of our Nations that have gone through the process of reform are more than willing to assist and to share their experiences, both good and bad. There is a collective interest among all Nations in ensuring that more of our Nations are governed effectively beyond the *Indian Act* in order to create a stronger and more unified political force within Canada. There are still, and always will be, areas of jurisdiction and ongoing issues between our Nations and the Crown that are more easily and better addressed by a collective of strong self-governing Nations than by weak *Indian Act* bands. We are stronger together.

Other tools

To assist you with planning for meetings and other community engagement activities, we have included with this Part a number of tools, including Facilitator's Checklist, Meeting Checklist, and Citizen Governance Questionnaire.

There are also many groups and organizations that can assist you in your community engagement work. The BCAFN also conducts workshops and community dialogue sessions with interested First Nations to explore options for governance reform, and the challenges and opportunities. There are many other organizations that do similar work, some focusing on specific aspects of governance, such as financial administration, land management or education. Part 1 of the Governance Toolkit, the *Governance Report*, includes contact information for numerous resources available to our Nations for all areas of governance reform.

This guide is not intended to be a comprehensive training manual. There are a number of useful publications and other toolkits that you may wish to consult, which consider in more depth methods of and approaches to conducting meetings, and the types of activities that lead to the open dialogue and safe spaces that are needed to ensure successful community engagement.

For example, the *Community Engagement Toolkit 2005* developed by Algoma University College provides some useful guidelines for getting started, setting up community committees and using focus groups, as well as a number of community engagement activities such as developing historical timelines, using lesson learned and creating a vision map.

Other publications that consider methods of engaging for community transformation have been developed for use by NGOs and community development workers in the developing world. *Training for Transformation: A Handbook for Community Workers, 1999*, in four volumes, and from which many of the ideas in this guide have been adapted, is very useful. The handbook provides examples of group exercises to explore and discuss ideas and concepts, such as governance, gender, culture, racism, and so on, that can be adapted for our own purposes.

In the future, we hope to develop a companion "Facilitator's Handbook" to accompany the Governance Toolkit. The handbook will provide a facilitator's guide to using the Governance Toolkit, best practices for facilitation in First Nation communities, and a number of exercises related to governance that can be undertaken in different group settings (The "Facilitator's Handbook" is expected to be released later this year).

MAKING THE TIME

It is important to bear in mind that it takes time to overturn 300 years of colonial history. Overcoming the legacy of colonialism and undertaking the process of community development will not happen as quickly as some may think it should and certainly desire. Accordingly, governance reform and potentially moving to full self-government will not take place overnight. It requires a sustained and long term process of community engagement and commitment and a lot of very hard work.

One of the biggest obstacles to governance reform that our leaders have identified is, in fact, the time it takes. It is difficult to have successful community engagement that leads to supported governance reform within the two-year term of an *Indian Act* chief and council. This means the process of community engagement and the movement for governance reform must be firmly rooted in the community and be able to continue, regardless of who is in office.

Equally frustrating is where a community is ready, and community engagement is effective, but the reform cannot be implemented because an agreement is needed with Canada or some other action by Canada needs to be taken and that action is not forthcoming. In such instances, completing the governance reform work is at best delayed; more often than not, however, the chance for reform is lost, either because citizens lose interest, people move on, or the community dynamics change (e.g., a new chief and council is elected). In such circumstances, the real loss can be that the work undertaken to create a “safe space” and community engagement is compromised, and will need to be resurrected the next time a trigger for change is pulled.

Finally, the community development process is not timed to the fiscal year end. Unfortunately, funding agreements do not always take this into account. For instance, a funding agreement might require the recipient to hold a certain number of meetings within a set timeframe, which may not be realistic or practical and which could actually be counter-productive to community development objectives (e.g., we are having this meeting because someone paid for it and we need to do it by March 31.) Or although the meetings are going well and progress is being made, the issues are not all resolved yet — but the funded “project” is over and the final report needs to be completed, so the meetings stop. It is important that, wherever possible, funding support for community development work or specific governance initiatives from the government of Canada or other institutions be multi-year arrangements that do not require the work to be undertaken and finished and all final reports submitted by March 31.

DEVELOPING YOUR COMMUNITY ENGAGEMENT STRATEGY

Developing a community engagement strategy is an excellent way to show political commitment to the process of engagement.

A community engagement strategy is not the same as a communication plan, which is developed for communicating a message and seeking an outcome (e.g., for a ratification vote). Rather, it is a strategy to set out how those "safe spaces" within your community are going to be developed, along with a coordinated approach to engaging everyone in the community in the social change process and community development work. The strategy does not necessarily have to be in the context of governance reform only; rather, it can be for all purposes where community engagement is required. The strategy is really a core document stating how you are going to approach community development.

A community engagement strategy does not have to be long or detailed. It is as much a collective recognition of the need to actively involve community as it is a detailed plan to follow step by step. It is a demonstration to your citizens that the leadership understands the need for community engagement and for creating the space for a conversation on social change that is empowering and not dictated from the top down. In this sense, a simple community engagement strategy that reflects some of the principles discussed in this guide is a social contract for the community moving forward with community development and the transition away from the *Indian Act*. It should confirm principles for community development and describe how the community will be engaged in accordance with those principles. One of the best ways to start is by simply documenting what you have historically done and how, and using this to codify the convention for engagement with citizens in your community.

As this section has described, engagement can involve many different strategies, including working with individuals, families, youth, elders, administration, political leadership, land owners, social service recipients, sports teams, schools and so forth. Ultimately, engagement is about bringing people and ideas together so that specific community groups can begin to consider and resolve issues. For our purposes, these issues are with respect to governance reform.

In addition to principles and activities, the strategy might also identify the resources available to the Nation, existing institutions and structures, what may have worked well or not worked well in the past, and others who might be needed (e.g., facilitators, legal counsel, consultants).

Although it is most likely that the community engagement strategy will be developed by your administration, it should also be informed by the community as a whole.

And the strategy should be available to all citizens, using whatever means your Nation normally uses to disseminate information (e.g., website, email, letter, newsletter, door-to-door visits, posting in the band office).

Having a community engagement strategy is not a guarantee that community engagement will work, as this will ultimately depend upon the people involved in the process and whether they genuinely believe in community development. But it demonstrates to all members of the community that the process of social change and governance reform is intended to be inclusive.

The following are suggested starting points for the development of a community engagement plan and questions to consider when developing a plan with a particular focus on governance reform:

OUTLINE OF A COMMUNITY ENGAGEMENT STRATEGY	
1. Principles/ objectives	a. What are the principles that will guide community engagement? (e.g., principles of "community development")
	b. What are the objectives of community engagement? (e.g., the primary objective is empowerment, to give people the knowledge and confidence to restore their authority and control over community affairs)
2. Approaches	a. How can the objective of empowerment be best achieved?
	b. What will be the methods for engaging citizens? How did we traditionally/historically work in groups? What are our conventions — our current practices?
	c. How will engagement evolve? (e.g., Phase 1: Creating the vision and support for change, Phase 2: Considering the options and developing solutions, Phase 3: Implementing and monitoring change)
	d. How is accurate and consistent information going to be provided to citizens? (e.g., website, social media, community radio, video, newsletters, pamphlets, posters, information kits, workshops, house-to-house visits, community meetings)
	e. To what extent will Aboriginal languages be used during engagement and in documents?
3. Activities	a. What specific community engagement activities are to be held (i.e., those that best fit the community — e.g., focus groups, drop in activities, etc.)
	b. How will activities be structured?
	c. How will social media be utilized and monitored?
	d. What is role and the expected behaviors of the facilitator/group leader
	e. Who will organize activities?
	f. Will there be any incentives to participation?
4. Timeframes	a. How long will it take to get the community engaged?
	b. What are the timeframes for various stages of the process?
5. Subject matters	a. What should be communicated?
	b. Should emphasis be placed on matters that are known to be of concern to community members? (For example, with respect to frequently asked questions in community meetings, deal with the relationship of self-government to treaties and treaty rights; how life will change from the *Indian Act* to First Nation government; what will happen to AANDC; how self-government will affect existing programs and services; whether levels of funding will decrease; what are the risks and benefits of self-government, and so on).
6. Target groups	a. How do we ensure that all parts of the community are engaged?
	b. What are our target groups with the community?
	c. Are there any parts of the community that should be engaged on a priority basis or for special considerations? (e.g., chief and council, the administration, all citizens, heads of extended families, individuals with special influence in the community, specific groups, elders, youth, women, land owners and teachers)
7. Organization	a. Who is responsible for implementing the strategy? Is there a coordinator?
	b. Is there a planning committee?
	c. Who should organize and conduct community engagement activities? Who organizes activities? Do we need an outside facilitator? Is there a need to train community facilitators? If more than one community is involved in discussing governance reform, do we need a coordinator in every community? A committee in every community? A special team if we operate at the Tribal Council level?
	d. What technical support might be required?
	e. What management structures for community engagement are important and at what level?
8. Budget	a. Does the strategy have a dedicated budget?
	b. Does the budget support an effective strategy?
Adapted from *First Nations Governance: An Introduction*, Anastasia Shkilnyk, Chapter IX, "Community Consultation," 1998	

2.1 TOOLS

COMMUNITY ENGAGEMENT — REFLECTING, PLANNING AND ORGANIZING FOR CHANGE

PowerPoint

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Community Engagement:

Reflecting, Planning and Organizing for Change

"Okay, but the membership still has to ratify it."

Organizing for Social Change

- As First Nations, we are rebuilding our communities after living for years under the *Indian Act*. We want to move through the "post-colonial door"
- We have many priorities (e.g., education, health, housing, land claims etc.). Among them we have a number of options for reforming our governance and moving away from the *Indian Act*
- We need to discuss and sort through our priorities, consider our options and organize for change
- Considering our options and organizing for change is not something that can be done over night and then decided by chief and council
- We need to engage our citizens and develop a common vision

Question to consider:

The work has begun – where do we go from here?

The need for community engagement

- If ultimately our goal is to once again be "self-governing" then we, as citizens, will need to be fully involved
- **We should be involved:** As citizens we know our community best. Any governance reform we undertake will be more reflective of our needs and stronger if we develop it ourselves
  - Every person has a role to play, can help and is needed to build a strong, healthy and sustainable community.
- **We expect to be involved:** We have a tradition of "consensus building" and our rights are held collectively
- **We have to be involved:** In order to remove some or all of the application of the *Indian Act* we will need to "vote the colonizer (Canada) out." We have a responsibility

Questions to consider:

What does community engagement mean to you?

When and how is community engagement considered successful?

How important to you is being involved in determining the future of our community?

Definitions of community engagement

"Community engagement can be defined as the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to address issues affecting the well-being of those people. It is a powerful vehicle for bringing about environmental and behavioral changes that will improve the health of the community and its members."

First Nations Communications Toolkit, 2007

"Ultimately, community engagement is about dialogue. It's about citizens sharing their individual and collective voice. It's about sharing your voice in why government matters."

CIVICPLUS

Question to consider:

Are there any barriers to community engagement in our community?

Governance reform and community engagement

- Community engagement in governance reform means:
  - The development of codes, laws and policies and in some cases ratification of the core laws of the community (e.g., a constitution or land code)
  - Involvement in the preparation for any negotiations, including developing mandates for the negotiations
  - The development of agreements and their ratification
- It is not realistic to expect the our citizens will ratify change or that the change will be effective and meaningful unless the citizens are fully engaged in the development of our agreements and laws

Questions to consider:

Do we need a community engagement plan?

Do we need to set up a planning committee to organize our community engagement activities?

Developing mechanisms for community engagement

When considering how we engage our citizens we can ask:

- What do we currently do in our community? What has worked well in the past and what did not work so well? Why?
- What is the best way to involve as many of our citizens as possible and from all parts of our community (e.g., youth, elders, families, members living both on- and off-reserve etc.)?
- Would the use of 'focus groups', 'drop in activities', 'open houses', be appropriate for our community? Do you have any other ideas?
- How are we going to ensure ongoing citizen participation?

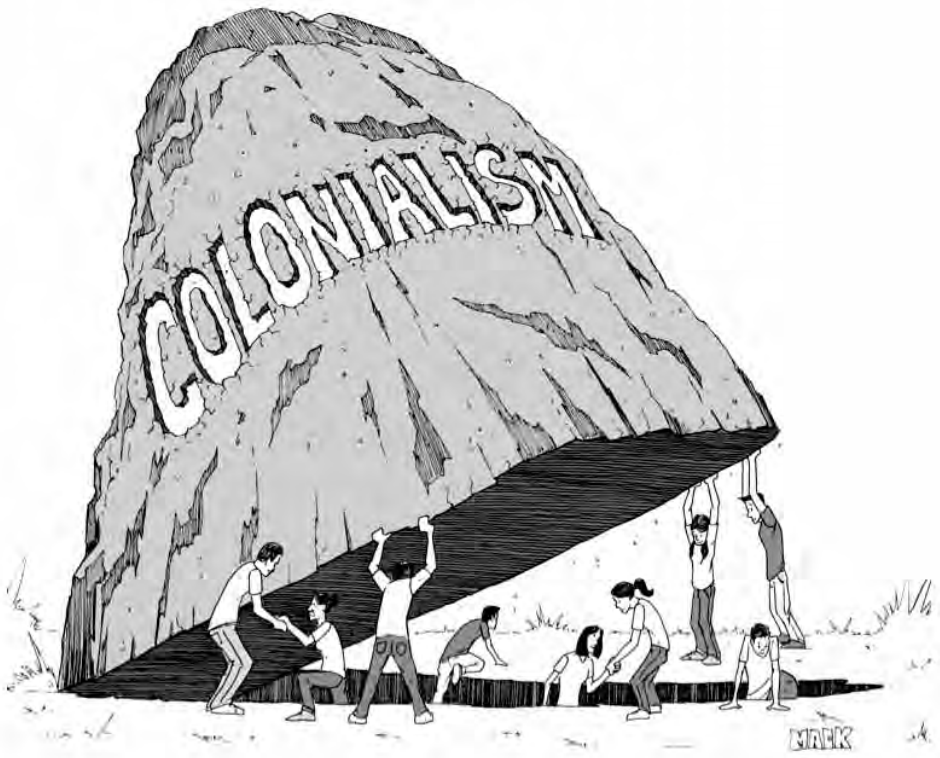
How can we ensure productive meetings?

One of the mechanism we use to engage with our citizens is through community meetings:

- What type of meetings should we be holding?
- Who should attend what meetings?
- Where should our meetings be held?
- How do we get people to attend our meetings?
- How do we get people to actively participate in discussions at our meetings?
- Who should chair or lead the meetings. Should some meetings be facilitated and, if so, by whom?

Conclusion:
The power of working together

- Our people are our greatest resource and we need everyone to be engaged during this period of transition
- The objective of our community development work and engaging all our citizens is to ensure we can move beyond our colonial past and make our lives better, take advantage of our hard fought for opportunities, and improve our quality of life with practising and thriving cultures
- We are stronger when we work together and help one another. If we do not we will not move forward



2.2 TOOLS

FACILITATOR'S CHECKLIST

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Facilitator's Checklist

Before Meeting:

- ☐ Consider the tone or "climate" of the meeting, including ensuring that all cultural protocols are followed. These protocols can vary from Nation to Nation.
- ☐ Know who you are conducting the meeting for and be familiar with the community. Identify community issues. You may need to build relationships with key people and groups to identify common concerns.
- ☐ Understand the desired outcome of the meeting. What will a successful meeting look like?
- ☐ Be aware of your role in the dynamics of the group, which can be accomplished by developing a statement of principles or code of conduct.
- ☐ Have clear direction on the purpose of the meeting and an understanding of the desired outcomes. The facilitator may also be the one to establish a structure for the meeting (e.g., agenda, timing, etc.), and at a minimum will confirm the agenda with those calling the meeting.
- ☐ Notify participants, set up the meeting space, and ensure that other logistical details have been taken care of.
- ☐ If possible, provide adequate notice of the meeting, its purpose and agenda to participants for their review and input? Before the meeting starts ensure that the participants understand and agree on the focus of the meeting.
- ☐ Select and design a process and agenda for the meeting that will help participants to engage effectively and provide the feedback required. Have a plan but be willing to be flexible in response to the situation.

During Meeting:

- ☐ Prepare to work through conflicts between citizens by creating trust within a "safe space". All participants should be made aware of this trust requirement and the need to be sensitive to the feelings of individuals.
- ☐ Identify normal participation. If participation is low you may need to adjust the meeting style/activities to get a better response. If you are working with a large group you may need to create smaller discussions and bring those ideas back into the larger group.

- ☐ Be very clear about your role as a facilitator. During the meeting, maintain eye contact with participants. Try not to talk too little or too much. You are there to bring out the views and contributions of participants. Speak only to stimulate discussion in the group when needed, asking the right questions and providing context for the discussion.

- ☐ Are you able to act as a facilitator as well as participant? Make sure this is clearly identified. A facilitator is a person that is not necessarily an expert on a specific subject (though can be), but an expert on group process.

- ☐ Be sure that everyone is heard and able to participate fully. Know when to draw in those who may not be participating initially, and prevent others from dominating – to ensure that all voices are heard. The main work of a facilitator in the context of community development work is to help our citizens tell their own stories.

- ☐ Summarize when necessary and build on the contributions of the participants. Ideally this would happen only after participants have considered the issues before them as deeply as they are able to and learned all they can from one another.

- ☐ Keep the discussion on topic. Be aware of when the group is off topic or confused and when structure may be needed; explain, summarize and help to paraphrase participants' input when necessary; decide when to extend a discussion and when to move the group onto the next topic; remind the group when they are off subject.

- ☐ Direct the dialogue to help ensure that community development principles are followed, encourage participants to speak, and that the goals for the meeting are accomplished and any conflicts resolved.

After Meeting:

- ☐ Relay the content of discussions at these meetings back to the larger group in a respectful and appropriate way.

- ☐ Ensure that a proper record / minutes are kept of the meeting (e.g., record of discussion, decisions made). Ensure accuracy.

- ☐ Distribute record / minutes of the meeting are distributed to all participants.

Source: Adapted from *The Skilled Facilitator - Schwarz, Roger. The Skilled Facilitator: A Comprehensive Resource for Consultants, Facilitators, Managers, Trainers, and Coaches. Wiley, John & Sons, Incorporated. 2002*

2.3 TOOLS

MEETING CHECKLIST

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Community Meetings Checklist

When planning for a community meeting or other engagement activity, there are many different considerations. The following list is intended to aid you in your meeting planning:

Objective, Outcomes and Agenda

- ☐ What is the objective of the meeting?
- ☐ What will the community want to know?
- ☐ What policy questions need to be asked?
- ☐ Have we developed an agenda – identifying times, locations and dates?
- ☐ What strategies do we have in place to resolve potential conflict?
- ☐ Have we prepared for a question and answer period – given thought to questions that may arise and prepared adequate answers or a process to collect and respond – open dialogue process.
- ☐ Handouts – have we considered and prepared materials that provide the relevant information to assist with the objective of the meeting?
- ☐ Have we made an effort to keep the language simple and clear?
- ☐ Do we need to rehearse any presentations prior to the initial meeting?
- ☐ Participation—who should attend and what will be discussed?

Meeting Logistics

- ☐ Have we mobilized our resources—built a support team, identified options for any required professional services, and found financial resources?
- ☐ Scheduling – have we considered other meetings or activities that may impact on our meeting or cause attendance to be low?
- ☐ Who will be responsible for coordinating and booking the venue?
- ☐ Have we planned for the size of the group?

- ☐ Where will the meeting be held? Is the venue for the meeting suitable – i.e., does it match the type of meeting?
- ☐ Have we identified a floor plan and set up for the meeting?
- ☐ What type of sound equipment and audio-visual (AV) requirements need to be met?
    - Laptop computer, projection screen, sound system for recording, microphones (standing and table), projector for PowerPoint presentation, TV and video, writing pads, pens, etc.
- ☐ Type(s) of group facilitation to be utilized—who will be facilitating and given the instruction and control of the meeting? Do we need a professional facilitator?
- ☐ Have we planned for opening/closing – protocols?
- ☐ Do we need to select a caterer and menu?
- ☐ Type(s) of meetings – will the meeting be restricted or will media be permitted to attend?
- ☐ For the meeting day have we identified in-site person(s)/staff responsible for sign-in, recording and transcribing minutes and set up and clean up?
- ☐ If transportation for citizens is provided, have we identified pick up times and locations?

Notice

- ☐ Have we planned to provide sufficient notice? Get the word out: mail, newsletter, phone, website, email, information bulletins etc.
- ☐ Will Internet/social media (websites, YouTube, Twitter, Facebook, etc.) be utilized? In what capacity?

For the meeting day

- ☐ Who will be responsible for bringing all relevant printed materials and supplies and set up of any required equipment, tables and chairs, etc.?
- ☐ Setting up the AV requirements (Laptop computer, projection screen, sound system for recording, microphones (standing and table), projector for PowerPoint presentation, TV and video, writing pads, pens, etc)

- ☐ Storing all documentation and supplies after the meeting.

Follow up

- ☐ Who will identify questions generated at the meeting and prepare responses?
- ☐ How will we distribute a record of the meeting? Who will be responsible to do this?
- ☐ Do we have a plan to make materials accessible to those that were not able to attend?
- ☐ Have we identified ways to collect and include feedback for inclusion in the record?

2.4 TOOLS

CITIZEN GOVERNANCE QUESTIONNAIRE

Handout

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Citizen Governance Questionnaire

This tool is under development

Please visit www.bcafn.ca to download updates

BCAFN Governance Toolkit

Part 3: A Guide to Community Engagement

Part 3 – Tools

2.5 TOOLS

RESOURCES

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Resources on Community Development

Aboriginal Affairs and Northern Development Canada (AANDC)

British Columbia Region
Suite 600 - 1138 Melville Street
Vancouver, BC V6E 4S3
Phone: 604-775-7114 / 604-775-5100
Fax: 604-775-7149
Website: www.aadnc-aandc.gc.ca

- *CCP Handbook: Comprehensive Community Planning for First Nations in British Columbia* Date: *August 2006,* ISBN: *0-662-43482-X,* PDF Version (2,614 Kb, 110 Pages)
- *First Nations Communications Toolkit, Date: 2007, ISBN: 978-0-662-46934-6, QS-Y292-000-EE-A1, PDF Version (2,586 Kb, 102 Pages)*
- *Governance Tools for Communities (website)*

Algoma University

1520 Queen Street East
Sault Ste. Marie, ON, P6A 2G4
Phone:
Fax:
Website: www.algomau.ca

- Community Engagement Toolkit (2005): http://www.edo.ca/edo-tools/tools/community-planning

British Columbia Assembly of First Nations (BCAFN)

Suite #507—100 Park Royal South
West Vancouver, BC V7T 1A2
Phone: 604-922-7733
Fax: 604-922-7433
Website: www.bcafn.ca

- BCAFN Governance Report: http://www.bcafn.ca/toolkit/pdf/Part1Tabs.pdf

BC Treaty Commission

700-1111 Melville Street
Vancouver BC V6E 3V6
Phone: 604-482-9200
Fax: 604-482-9222
Toll Free: 1-800-665-8330
Website: www.bctreaty.net

- A Human Resource Capacity Tool for First Nations: http://www.bctreaty.net/files/hr-capacity-tool-kit.php
- There are Compelling Governmental Reasons: http://www.bctreaty.net/files/gov_ed1.php

Carleton University Centre for Community Innovation (& First Nations Governance Centre)

2103 Dunton Tower
1125 Colonel By Drive
Ottawa, ON K1S 5B6
Phone: 613-520-5792
Website: www3.carleton.ca/3ci/

- First Nations Governance Pilot Projects: Challenge and Innovation—A Final Report: http://nwlc.ca/files/NWLC/resources/Carleton_Vol1.pdf

Cavaye Community Development

6 Martindale Court
Toowoomba, QLD 4350
Austalia
Phone: 0428-387722
Website: www.communitydevelopment.com.au

- Understanding Community Development: http://www.health.qld.gov.au/capir/documents/19747.pdf

Community Development Society

Website: www.maaori.com

- Community Development Society: CDS Vision, and Principles of Good Practice: http://maaori.com/develop/princip.htm
- Maori Development: An Outline: http://maaori.com/develop/commaori.html

First Nations Financial Management Board

Suite #905—100 Park Royal
West Vancouver, BC V7T 1A2
Phone: 604-925-6665
Fax: 604-925-6662
Toll Free: 1-877-925-6665
Website: www.fnfmb.com

First Nations Health Council

#1205-100 Park Royal South
West Vancouver, BC V7T 1A2
Phone: 604-913-2081
Fax: 604-913-2081
Toll Free: 1-866-913-0033
Website: www.fnhc.ca

- Moving Forward Together—Community Engagement Hubs & First Nations Health Council: Communications Strategy and Toolkit: http://www.fnhc.ca/pdf/Moving_Forward_Together_-CEH_Toolkit_digital.pdf

First Nations in BC Portal

Attn: Portal Team
First Nations Technology Council
1108 - 100 Park Royal South
West Vancouver, BC V7T 1A2
Phone: 604-921-9939
Fax: 604-921-9979
Toll Free: 1-888-921-9939
Website: fnbc.info/

- Getting Community Engagement Right!: http://fnbc.info/getting-community-engagement-right
- Community Strategic Planning Toolkit: http://fnbc.info/sites/default/files/documents/community-strategic-planning-toolkit.pdf

First Nations Public Service Secretariat

#1200, 100 Park Royal South
West Vancouver, BC, V7T 1A2
Phone: 604-926-9903
Fax: 604-926-9923
Website: http://firstnationspublicservice.com

- BC First Nations Capacity Building Strategy: http://firstnationspublicservice.com/documents/BCFNPSS%20Building%20Capacity%20Strategy.pdf

First Nations Summit (FNS)

1200 - 100 Park Royal South
West Vancouver, BC V7T 1A2
Phone: 604-926-9903
Fax: 604-926-9923
Toll Free: 1-866-990-9939
Website: www.fns.bc.ca

Government of the United Kingdom - Department for Communities and Local Government

Eland House, Bressenden Place,
London SW1E 5DU
Phone: 0303-444-0000
email: contactus@communities.gov.uk
Website: www.communities.gov.uk/corporate

- Communities and Local Government: The Community Development Challenge—A Report: www.communities.gov.uk.

Human Resources and Skills Development Canada

Service Canada
Canada Enquiry Centre
Ottawa ON K1A 0J9
Phone: 1-800-622-6232
Fax: 613-941-1827
Website: http://www.hrsdc.gc.ca

- Innovative Practices in Community Engagement: http://www.hrsdc.gc.ca/eng/community_partnerships/voluntary_sector/projects/page04.shtml

International Association for Public Participation

#124, 13762 Colorado Blvd
PMB 54 Thornton, CO 80602
Phone: +61 8 8120 0669
Website: www.iap2.org

Lands Advisory Board – Resource Centre

Lands Advisory Board
First Nations Land Management Resource Centre
22250 Island Road
Port Perry, ON L9L 1B6
Phone: 613-591-6649
Fax: 613-591-8373
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National Centre for First Nations Governance

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- Index of Resources: http://fngovernance.org/toolkit/resources

Office for the Community and Voluntary Section, Government of New Zealand

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Phone: +64 4 495 7200
Fax: +64 4 494 0567
Website: http://www.goodpracticeparticipate.govt.nz

- Benefits of Effective Community Engagement: http://www.goodpracticeparticipate.govt.nz/benefits-of-community-participation/index.html

Tamarack Institute for Community Engagement

PO Box 22001
Waterloo, ON, N2L 6J7
Phone: 519-885-5155
Website: http://tamarackcommunity.ca/

- Approaches to Measuring Community Change Indicator's (October 2010): http://tamarackcommunity.ca/g3_documents.html

Union of BC Indian Chiefs (UBCIC)

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Website: www.ubcic.bc.ca

Vancouver Community Network

280 - 111 West Hastings St.
Vancouver, BC, V6B 1H4
Phone: 778-724-0826
Fax: 604-800-9874
Website: www.vcn.bc.ca

- Citizens Handbook: http://www.citizenshandbook.org/

PART 3 /// SECTION 3

Exploring Governance Options and Implementing Change — Walking Through the Door

3.0

EXPLORING GOVERNANCE OPTIONS AND IMPLEMENTING CHANGE — WALKING THROUGH THE DOOR

INTRODUCTION

So now your community has had a deep conversation about the need for governance reform and what it can mean as part of a broader community development strategy aimed at improving the quality of life for your people. Where do you go next? Community engagement now shifts from simply having a conversation about change and the need for change to what it will actually look like on the other side of the post-colonial door and how you are going to achieve it. How it will look will vary among our Nations depending on our respective cultures and traditions and our needs and priorities. With respect to governance of our communities, we will need to consider the options we have, and then chart a path to get to where we want to be. Of course, our citizens need to continue to be engaged and be part of this process.

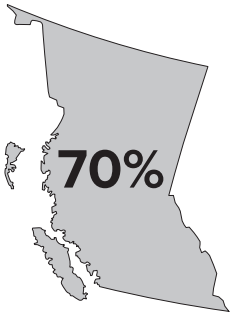
YOUR PROCESS OF GOVERNANCE REFORM HAS PROBABLY ALREADY STARTED…

As most of our Nations in BC (approximately 70%) have undergone, or are undergoing, some form of governance reform already, many of our citizens will by now have an idea about what governance reform is, regardless of whether or not those reforms have been successful.

It is therefore important that, in any renewed discussions in your community about the potential for governance reform, you highlight the reforms you have already successfully or unsuccessfully undertaken or are currently undertaking. In some cases, the degree of community engagement with respect to these reforms may have been, or is, less than is now considered appropriate. Where reforms failed, lack of effective community engagement could be the reason why they failed, were rejected or simply were not implemented. In those cases where there was success, and especially where the reforms were endorsed by the community, either through referendum or otherwise, it is important to highlight this success and community endorsement.

It is also important to demonstrate to citizens how your Nation's previous governance initiatives are incremental steps toward potentially getting rid of the *Indian Act*, and where they fit along the continuum of governance reform from the *Indian Act* to full self-government, as set out in Part 1 of this Toolkit, the *Governance Report*. In addition to highlighting your own reforms, it is useful to look at examples of reform in other Nations, so that people can, from the outset, understand that they are not alone in considering these issues: "If reform can work for them, it can work for us." The *Governance Report* provides dozens of examples that a community could choose from along the full range of the governance continuum.

A RIGHTS-BASED APPROACH



When the question of governance reform is raised in our communities, a considerable amount of discussion often addresses the ongoing legal and political debate between our leaders, lawyers and academics regarding whether the governance reforms that are taking place within our Nations today are truly consistent with our rights as Indigenous peoples. This debate will, of course, continue until politically and legally our Nations are rebuilt, our powers of self-government are fully recognized, and we have truly walked through and well beyond the post-colonial door. What we do know for a fact is that on the colonial side of that door, under the *Indian Act*, what limited powers we do have and can exercise through our band councils are all delegated to us from Canada, and any rights we have as "status Indian" are statutory rights under that act.

It is important to address this issue head-on, as it can manifest itself in our communities with some citizens accusing others of being "sellouts" if they support any form of governance reform that is undertaken within Canadian confederation. While the perspectives of "sovereigntists" (or separatists) are legitimate, it is important to be clear that your governance reform efforts will not prejudice or compromise your community's Aboriginal title and rights, including treaty rights.

Choosing to effect change first from within the existing governance system or demanding a reformed system of governance are both legitimate paths forward in the overall project of Nation building. We need to respect the different paths taken by our communities. Accordingly, this issue may need to be addressed at an early stage of any conversation in a community when considering the options for governance reform. You can contextualize governance reform work as being consistent with implementing self-government within Canada as part of the legal and political struggle for recognition of our rights, culminating to date in the protection of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982* and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). You should also make it clear that there are ongoing struggles for further recognition of our inherent right to self-government. This continued struggle does not and should not

preclude our Nations from undertaking the critically important work of rebuilding our own local institutions of government and undertaking governance reform where there are opportunities to do so.

EXPLORING OUR GOVERNANCE OPTIONS

To help advance First Nations' governance, and in accordance with the BCAFN *Building on OUR Success* action plan, we have developed this Governance Toolkit: A Guide to Nation Building as a practical and relevant guide to support governance reform. Drawing on the experience of First Nations in BC and through their wise practices in governance, the Governance Toolkit has been designed for our Nations to be used by their leaders (policy makers), staff and citizens to assist in the development of a critical path in achieving governance objectives. The toolkit includes a number of parts of which this is Part 3.

Using Part 1 of the BCAFN Governance Toolkit: *The Governance Report*

Part 1 of the Governance Toolkit is the *Governance Report*, which is designed as a guide to navigating the issues of governance in relation to our peoples and our Nations. It is written from the perspective of the Nation as the building block of governance and of the inherent right of our Nations to govern. It looks at how we are moving in this direction along a continuum of governance options and reforms, by providing a comprehensive snapshot of what our Nations in BC are actually doing. The report includes options for developing core institutions of governance, both under the *Indian Act* and outside of the *Indian Act*. Separately, it explores the range of powers (jurisdictions) and authorities available to a First Nation through existing programs, policies and initiatives. The *Governance Report* offers relevant examples of governance both under the *Indian Act* and outside the *Indian Act*, including any requirements for participation in specific initiatives or in the exercise of those powers.

The *Governance Report* is divided into four sections:

Section 1 — Options for Governance Reform provides a concise history of First Nations governance as it existed before Canada and as it has developed within Canada, including the broad options currently available to Nations to reform governance.

Section 2 — Core Institutions of Governance considers the institutions that are central to governance, including the structures of a Nation's government, the governing body, the citizens, and the development of a Nation's constitution.

Section 3 — Powers (Jurisdiction) of the First Nation addresses the range of powers (jurisdictions) by subject matter. This includes cases where our Nations' governments are already exercising law-making authority or may be considering exercising law-making authority. The areas of jurisdiction are arranged alphabetically, indexed and tabbed into 33 chapters for ease of reference.

Section 4 — Financing First Nations' Government considers one of the most challenging aspects of rebuilding our Nations. Namely, how governance will be paid for and the need to expand revenue options for Nations. This section looks at the sources of our revenues and the broader questions concerning our fiscal relationship with Canada and BC.

Using The *Governance Report* and Sorting Through the Options

***Incremental Governance under the* Indian Act**

For many of our Nations, moving away from federal control has started with using the *Indian Act* itself. BC First Nations have been leaders across Canada in developing governance capacity through by-law development. Using the *Indian Act* by-law making powers, 165 of our First Nations in BC have collectively made 2,327 by-laws."

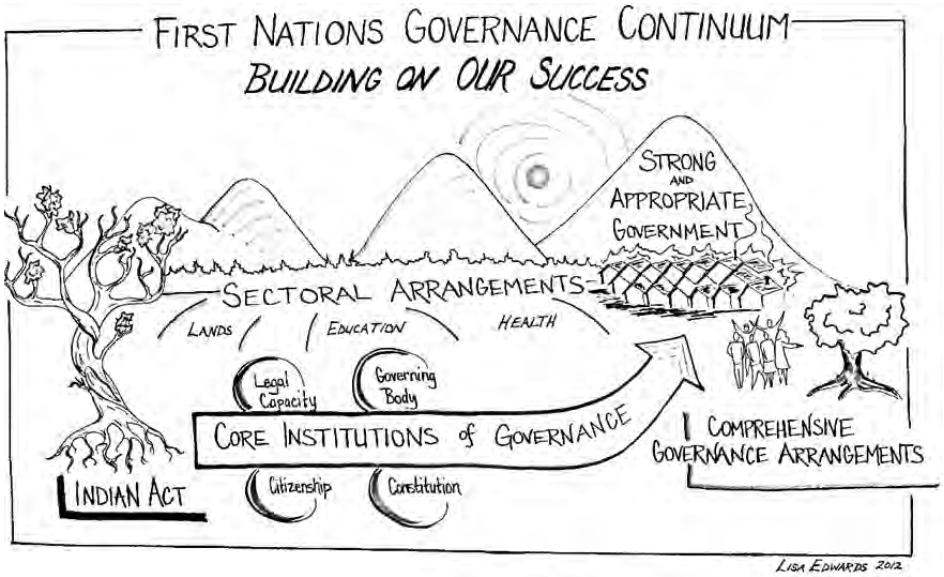
First Nations governance is a massive topic, as reflected in the sheer size of the *Governance Report*. How does one continue and focus the conversation on governance reform when such conversations can very quickly move in many different directions? It will be important for our citizens to know what the options are in order for them to help guide and inform the direction of governance reform based on the needs and priorities identified through community engagement activities.

To assist our Nations in sorting through the options along the governance continuum of governance reform, we have assembled a couple of PowerPoint presentations designed to be used with the *Governance Report*. These can be adapted and used as Nations see fit. They include notes for facilitators and group leaders.

Sectoral Governance Initiatives

Outside the *Indian Act*, but short of comprehensive governance arrangements, there are opportunities for our Nations to exercise jurisdiction through optional sectoral governance arrangements.

The Governance Continuum
The options for governance reform that are available to our Nations in the *Governance Report* are considered along a continuum of incremental change that includes the following:
• governance within the *Indian Act* • sectoral self-government initiatives • development of First Nations' core institutions of governance (the governing body, citizens, and a constitution) • comprehensive self-government arrangements (within and outside of treaty-making)



Comprehensive Governance Arrangements

Our Nations want to exercise broad self-government powers beyond the *Indian Act* or sectoral governance arrangements... building on the governance work already undertaken... Comprehensive governance arrangements set out the basic rights of self-government and establish the core institutions of government along with the power of the government over particular subject matters (lands, resources, health, education, financial management, etc.).

Using Part 2 of the BCAFN Governance Toolkit: The Self-Assessment

Part 2 of the Governance Toolkit is a self-assessment divided into two modules. Each module consists of a survey and guide, drawing upon the experiences of First Nations that have undertaken or are undertaking governance reform. In addition, it draws from similar assessment tools developed by Accreditation Canada, the Aboriginal Financial Officers Association (Alberta chapter) and AANDC developmental tools, among others.

A guide has been developed for each module to be used by your team when completing the survey, providing context for the questions. The guide is intended to be used in conjunction with the *Governance Report*, which provides comprehensive background information on options for moving forward on governance reform.

Module 1: "The Governing Body — Establishing Effective Governance"

Module 1 is designed to assist a First Nation in assessing the effectiveness of its core governance functions, regardless of the source of authority/legal framework for their current governance system (whether governing under the *Indian Act* or otherwise). This includes a long survey to be completed by the governing body as a group and a shorter survey for individual members of the governing body (e.g., the council).

The survey leads the group participants to think about where there can be improvement in governance and where there are governance options for greater control of the institutions, structure and procedures of their government, including elections, management of the governing body and making decisions in areas such as the process and procedures for making laws.

Module 2: "The Administration: Establishing Effective Organization"

Module 2 is designed to assist First Nations in assessing the effectiveness of their administration and to help First Nations meet the growing demands for excellence in administrative and management practices. This includes a survey to be completed by the senior management as a group. Each section of the survey addresses a key area of administration and management, typically in place in a well-run administration that supports the operation of government and the delivery of programs and services under the authority of that government.

The scope of First Nations administrations varies according to the Nation's size and structure and the extent to which it has assumed jurisdiction or program responsibility or program delivery in a particular area. The module accounts for this variation in administrative scope.

COMPLETING THE SELF-ASSESSMENT

Completing the self-assessment is an excellent way to explore, within the current governing body and its administration, how the concept of "safe spaces" and the process of building trust in groups (as described in Section 2 of this guide) actually work as part of community development. In this case, the group engaged is either the chief and council or the administration or a combination of both. The rules for the engagement are set out in the guides to the assessments. The focus is on asking the participants questions and encouraging participants to discuss them openly and without fear in order to come up with answers. The self-assessment processes in these two modules can be led by either an external facilitator or a facilitator/group leader appointed from within the governing body or the administration. The modules have purposely been designed to provide a safe way for your existing governing body and your administration to discuss good governance practices in a way that is not confrontational or accusatory but rather exploratory and self-reflective. The self-assessments can thereby be an important component of your community engagement strategy, in conjunction with other community engagement activities.

Having a governance body complete the self-assessment within a safe space provides an opportunity to explore what constitutes effective governance under any political or legal regime. The process encourages participants to reflect on their current practices and to be open to suggestions for broader governance reform. This openness could include, for example, exploring participation in sectoral and comprehensive governance initiatives that move beyond the *Indian Act* and along the governance continuum. Similarly, having senior staff undertake the self-assessment can help bring attention to what constitutes effective administration, with an eye to supporting not only changes to administrative and management practices, but also to broader governance reform.

PLANNING GOVERNANCE WORK BASED ON COMMUNITY PRIORITIES

Responding to the direction provided through community engagement, including the results of the self-assessments undertaken by the governing body and its administration, the task now becomes developing a "critical path" for governance reform. This path includes confirming a strategy and setting out work plans to build or rebuild institutions of governance and the powers or jurisdictions of your government at your own pace and with the support of the community. The critical path may include moving forward with work plans on initiatives ranging from developing simple policies, by-laws or election codes, and so on under the *Indian Act*, to sectoral governance initiatives such as developing a land code or a financial administration law, to developing a community constitution and engaging in comprehensive governance negotiations with Canada.

The list of jurisdictions ("heads of powers" or "authorities," as they are sometimes referred to) that a First Nation, or groups of First Nations, may wish to have law-making powers over is often broad and involves careful consideration by each First Nation. While the *Governance Report* is comprehensive and considers 33 areas of jurisdiction, First Nations moving beyond the exploration of options will want to conduct further research and analysis and connect with other First Nations or First Nation institutions that are working in the area of a particular jurisdiction.

STARTING WITH CORE INSTITUTIONS OF GOVERNANCE FIRST

It has proven very helpful to distinguish conceptually between determining how your government is structured and how it operates, and the jurisdiction (or powers) of your government. Experience tells us that one of the best places to start with governance reform is to look at the core institutions of governance (Part 1, Section 2 of the *Governance Report*). Essentially, this means focusing on how our communities are actually governed and not what they govern — for example, how the governing body is selected, how decisions and laws are made, how the governing body is accountable to its citizens, and, potentially, developing a community constitution (as discussed below).

Establishing core institutions of governance is critical because all aspects of our governance depend on these institutions. For each power or jurisdiction communities assume authority over, it is the core institutions of governance that will be responsible for making laws, enforcing those laws and ultimately being accountable to citizens. The First Nation government also oversees the First Nation's administration to deliver programs and services in accordance with the Nation's laws and policies, or the laws and policies of another government. Everything stems from this core governance work, including discussions about what jurisdiction (law-making powers) the Nation should have.

"Core institutions of governance are those practices, bodies and structures that together constitute government. They include the governing body or bodies, the rules and conventions that set out how laws are made and the essential structures and procedures through which the government operates and conducts its business."

Interestingly, when Canada and BC consider "self-government," they are for the most part focusing on the jurisdictions or powers our governments will exercise (i.e., which of the 33 jurisdictions set out in Part 1, Section 3 of the *Governance Report*) and the relationship between our governments' law-making powers and theirs. They do not appear as interested in how we actually govern and the structure of our governments, other than having a political sensitivity to whether or not the institutions are considered "democratic" and whether they are accountable to citizens. Federal and provincial government officials may try to focus our attention and energy on resolving the complicated legal issues surrounding the interrelationship of laws and conflict among laws, distracting our attention and energy from more fundamental community development work aimed at rebuilding the core institutions of government in our communities.

"The formal institutions of governance have to have the support of the people. The community has to have a sense of ownership about the institutions themselves. This means those institutions cannot simply be imposed from outside according to someone else's model. They have to fit indigenous conceptions of how authority should be organized and exercised."

Cornell, Stephen, Miriam Jorgensen, 2005

It can be quite easy to get distracted by the powers of your government, particularly as lawyers and consultants debate the division of powers. As stated, some of our leaders, along with federal and provincial government officials, may also be more interested in the powers our governments may exercise than in the actual structure of our governments. Again, experience shows that most of our citizens, when they become engaged, are going to be more concerned about the structure of their government and its perceived lack of accountability to the individual, at least initially.

In addition to the legal and technical issues respecting each jurisdiction, such as questions about conflict of laws and so on, a conversation on each jurisdiction leads to debate about ongoing federal and provincial responsibility, funding and how First Nations may wish to aggregate to exercise jurisdiction (e.g., in education, health, etc.). This can serve to further complicate the discussion on governance reform. It is not that these issues for each jurisdiction will not have to be resolved or are less important, but rather that trying to tackle them too early on could actually stifle community engagement and potentially overshadow the fundamental community development work needed to rebuild core institutions of government so that we can actually govern effectively over whatever jurisdiction our Nations may ultimately exercise.

In organizing community engagement activities (working groups, focus groups, community meetings, drop-in activities, etc.) around rebuilding core institutions of government, there are a number of questions or discussion points that can be raised with citizens or that they will raise themselves. To assist Nations and those facilitating group discussions, we have provided a list of the most commonly asked questions about institutions of core governance. These are questions that have been raised by our citizens and that can be used to guide discussion in your own community.

DEVELOPING A CONSTITUTION

One of the core institutions of governance is a constitution. Many First Nations have found that prioritizing the development of a community constitution is a very powerful way to maintain and propel community engagement. There is no more fundamental conversation a community can have about social change than an exercise in constitution development with the opportunity to make decisions about the content of its own constitution. For most peoples, historically, this has been the purview of elites and out of local control.

"We listened to our Elders and wrote down the core of it. You can get it. There is a reference. We start off with an inspiring Haida Proclamation of who we are as a people. It says, 'The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect; and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond.'"

Miles Richardson on the Haida Constitution

A constitution defines the relationship between citizens and the Nation and sets out the broad rights and freedoms of the citizens. It regulates the relationship between the institutions of the Nation and typically sets out the fundamental principles of how a Nation is governed, including basic rules dealing with how the governing body is chosen, how laws are made and enforced and how accountability to citizens is maintained. It is the most basic and fundamental law of a "peoples with a territory," from which all the other laws and rules are hierarchically derived.

Developing a constitution is a great first step, because very quickly citizens start talking about and answering the most basic and fundamental questions concerning their vision and core values and the need for strong and appropriate governance, including how accountability and transparency will be provided in their own backyard. Self-government is brought home to them and it becomes less abstract and potentially real if they roll up their sleeves and make it so. Our citizens, perhaps now for the first time, see that governance reform can have positive effects on their daily lives.

All First Nations that have self-government agreements with Canada have constitutions. As well, many of the core elements of constitutions are found and developed in sectoral governance initiatives. However, Nations do not have to wait until they have a self-government agreement with Canada or are part of a sectoral governance initiative to develop a constitution. The "just do it" approach has proven a very powerful exercise for some Nations, notwithstanding possible issues of compliance and enforcement in taking this approach, since some citizens and others governed by the constitution may not recognize its authority given the continued application of the *Indian Act*.

To assist Nations in having a discussion about developing a constitution, we have prepared a PowerPoint presentation and notes for use by facilitators and group leaders during community engagement activities. The PowerPoint presentation is based on Part 1, Section 2 of the *Governance Report*.

NEGOTIATIONS, COMPROMISE AND GETTING TO "YES"

The need for negotiations

There are many aspects of governance reform that do not or should not require negotiations with the Crown. This is because either they are matters wholly internal to the Nation (e.g., structures of core institutions of government, mechanisms of accountability, rules about who is a citizen, etc.) or a precedent for self-government has already been established or recognized with another First Nation. Where matters are internal or have already been decided elsewhere, negotiations should not be required or should be extremely simple.

Unfortunately, there is to some degree a "culture of negotiations" involving First Nations' issues, with an industry created around governance reform. It could be argued that this is actually detracting from the fundamental work that needs to be undertaken to support governance reform on the ground and supported through community engagement.

While there are options for governance reform that do not require negotiations with Canada or BC, there are other areas that do, most notably with respect to the exercise of specific jurisdictions and the transition from the *Indian Act* to where Nations desire to be fully self-governing. There is currently no simple mechanism through which Canada will recognize self-government and our communities can comprehensively transition out from under the *Indian Act* that does not involve complex negotiations with Canada and in some cases BC. The needs analysis and priorities identified in a governance reform critical path may lead you to include negotiations with the Crown. Some Nations may already be involved in governance initiatives involving negotiations, perhaps as part of governance initiatives associated with treaty negotiations under the modern BC treaty-making process.

When a negotiating table with Canada and/or BC is established, we need to consider the relationship between those negotiations and the need for community engagement. This can quickly become quite complicated because of the very nature of negotiations, which are often secretive and held behind closed doors, and, in fact, conducted contrary to the spirit and intent of community engagement and the requirement for openness and transparency. Figuring out how to negotiate with the Crown while keeping your community informed and engaged can be quite a challenge. Even basic considerations, such as who is allowed in the negotiating room, can become difficult.

Developing a mandate and the role of the negotiator

Canada and, where applicable, BC have developed specific negotiating mandates with respect to most of the matters over which a First Nation may wish to exercise law-making powers. To the extent that these are known to us and based upon completed self-government agreements, these mandates are covered for each of the 33 jurisdictions set out in Part 1, Section 3 of the *Governance Report*.

Where negotiations are required with the federal government, Nations will need to appoint a negotiator and a negotiating team and provide them with a mandate. The negotiating mandate should be of the outcome of community engagement to ensure that there is support for the positions taken by the negotiating team at the negotiating table and that the scope and extent of any jurisdiction that may be negotiated is understood and accepted by the citizens. When governance work gets to this point, the Nation may have established specific community working groups around particular subject matters (lands, health, education, etc.) to focus discussion and input and to develop its approach on those matters. These groups may continue after arrangements with the Crown have been ratified, for the purposes of implementation (e.g., developing the Nation's policy in the area, laws, etc.).

Those who represent the Nation will need to ensure that they have a mandate (direction) to negotiate that is supported by the community and that has been developed through community engagement. This is very important, because for most negotiations Canada expects the First Nation to appoint a negotiator who represents and can speak for the Nation. It is unlikely that a First Nation's negotiator who does not represent interests that are the outcome of community engagement will be able to negotiate agreements that will ever be ratified. Again, the process is as important as the outcome, and the relationship between the negotiator and the community at large becomes critical to the success or failure of the governance initiative. Who the negotiator is and how he or she acts can make all the difference.

In most cases, negotiators are hired by, paid by and receive direction from the governing body, and therefore technically work for and receive their mandate from the governing body. In some cases, the chief negotiator is the chief or a member of council, while in other cases it is a "hired gun" who may or may not be a citizen. Notwithstanding that the mandate for the negotiator is communicated through the governing body, and even where the negotiator is from the community, the "real" mandate still needs to come from the citizens. To put it another way, the mandate for a self-government negotiator cannot be a mandate of the chief and council but needs to be a mandate of the people themselves.

Dynamics of governance negotiations

As anyone who has been involved knows, negotiations are about compromise and reaching an understanding with the other party that will eventually lead to agreement. So while our citizens may have given their negotiator a specific mandate and have expectations about an outcome of the negotiations, it may not be possible to reach an agreement based on that mandate. While there is a continual process during negotiations of "to and fro" between negotiating teams, the governing body and the community at large, there is also in essence an ongoing negotiation in the community as to the mandate as the negotiations with the Crown proceed. This aspect of managing the mandating process with ongoing communication can be very challenging.

Where negotiations are held behind closed doors, the community at large will not have the benefit of all the information and insights of the negotiator and the context of any compromises made while trying to find solutions at the negotiating table. However, citizens will still want to know what is occurring at the table. And assuming at the outset that a safe space for discussing social change was created, the ongoing challenge will be maintaining the trust in that space between those that represent the governance vision of the community at the negotiating table and the rest of the group. Do you trust the negotiator and the negotiating team?

To address the ongoing issues of trust, and although there are often very good reasons for having closed-door negotiations, when it comes to governance reform in our Nations some communities prefer that their negotiations are open so their citizens can attend. This will, of course, affect the dynamics of a negotiating table and there is risk to this approach. However, on balance, where there is strong community direction in the first place, having the people in the room can be very powerful, acting as confirmation of the group's collective interests and the positions taken at the negotiating table by the negotiator. It also permits others, most crucially, to share in the experience of the negotiation and understand the interests of the other parties to the table. With enhanced understanding, compromise — when necessary — can be acceptable. Even where there is a need to go "in camera" (behind closed doors), this can still be organized with an explanation to and on the acceptance of the group. The rules for the negotiations, including community participation and engagement, should be determined at the outset of the process.

Educating community about the process of negotiations

Many people speak the praises of what has been termed "interest-based negotiations." The book *Getting to Yes: Negotiating Agreement Without Giving In* (Fisher & Ury, 1991) has become a bestseller, and numerous courses and training sessions on the principles of this approach have been developed. While some may question the utility of interest-based negotiations where Aboriginal rights are being given effect, it is nevertheless an approach that is commonly used by the Crown and our Nations to deal with governance matters. This is a good approach to be familiar with, then, as in all likelihood the person sitting opposite from you at the table will be schooled in it. Any person you hire or appoint to negotiate will more than likely be familiar with it as well.

Some Nations may want to have workshops or training on interest-based negotiations available to citizens as part of their community engagement strategy. Negotiating skills are generally good skills for life and will be useful when working though controversial issues in the community — such as internal governance reform and policy informing the drafting of the Nation's laws — helping to resolve conflicts based on the inevitable differences in opinion. At the very least, key individuals (negotiators, political leadership, group leaders, senior staff and so on) should be familiar with approaches to negotiation.

ADVOCACY, LOBBYING AND POLITICAL DIRECT ACTION

One of the biggest challenges of community engagement and Nation building/rebuilding that we still face is reconciling our citizens' expectations and the current legal limitations for governance reform. As will be clear to any reader of Part 1 of the Governance Toolkit, while there are new options and opportunities for governance reform, there remain obstacles to Nations moving forward with governance reform when they are ready, willing and able to do so.

On one hand, expectations are increased through empowerment, which is a good thing. On the other hand, if these expectations are not matched by results, this could lead to a return to apathy, alienation, dependency and powerlessness, which is a bad thing. False starts on governance reform contribute to the skepticism of some citizens when the question of "self-

government" is raised, once again, in communities. Today, there are still federally imposed limitations on, for example, the number of communities that can develop land codes under the *Framework Agreement on First Nations Land Management*, or on the number of Nations with whom Canada will negotiate comprehensive self-government agreements. While dashed hopes can lead to a return to apathy, increased expectations, equally, can lead to increased citizen participation in advocacy and support for the "just do it" approach. The people are engaged and mobilized, and if kept engaged will continue to be mobilized.

The "just do it" approach is often favoured by the activists among us, where, resources permitting, our Nations simply rebuild and develop our institutions of governance and exercise our Indigenous law-making authority, notwithstanding the limitations of the *Indian Act* or the views of Canada, BC or anyone else. This form of direct action can be constructive, is based on our inherent right to self-government, and is politically and legally defensible. It is not the same as protest or demonstration. In fact, it is far more powerful. Of course, this approach has its limitations. What happens when your Nation's laws conflict with federal or provincial laws, or your own people or the leadership under the *Indian Act* themselves argue the application of the *Indian Act* and federal/provincial laws instead of their own Nation's laws?

In the long term, there is need for certainty over which of our governing institutions are legitimate and recognized by both our own people and others and which government's laws apply and when and where, and what happens in the event of a conflict. Nevertheless, your community should undertake the policy work and design institutions of governance regardless of any current federally imposed limitations on governance reform. With respect to asserting jurisdiction, some Nations have been pushed to this point in order to ensure strong and appropriate governance and have consequently taken governance reform measures into their own hands. The more of our Nations that are attempting to reform governance but cannot because of the limitations, or who are simply exercising their inherent right to self-government, the better the chances of getting rid of the current statutory limitations on our communities under the *Indian Act* (either through litigation or by negotiation).

Having our citizens engaged to support the need for governance reform significantly strengthens the arguments being made by our regional and national political representatives — notwithstanding the fact that they are usually selected under the constraints of the existing system — in lobbying for federal legislative reform and recognition. Community provides the link from the "river's edge" to the "mountaintop" that is the national political world in which the overall framework for transition is decided. The stronger the community support at the local level for social change, the greater the opportunity for effecting further legislative change in Ottawa and, where applicable, Victoria. Sometimes there is a significant disconnect between the world of Ottawa and the world in our communities. Yet ultimately they are tied together, and our local futures are dependent upon the actions taken by Parliament to recognize our community development work and our Nation building/rebuilding activities at the community level. When our citizens are ready, the legal mechanisms must be in place nationally to support governance reform locally.

To provide a mechanism to be used at the choosing (option) of a First Nation, the BCAFN, supported by Chiefs-In-Assembly, is proposing a federal First Nations' self-government recognition act. It is proposed that where a First Nation or a group of First Nations develops and adopts a constitution, as ratified by its citizens, those First Nations would be able to remove themselves from a significant portion of the *Indian Act* and be recognized as a self-governing Nation. There would be no need for negotiations with Canada or BC. The First Nation would have recognized rights to make laws over a number of subject matters that extend well beyond the simple by-law making powers of the *Indian Act* and beyond those currently available through sectoral governance initiatives.

RATIFICATION, COMMUNICATIONS, IMPLEMENTATION AND EVALUATION

We now briefly consider the process of ratifying governance initiatives and developing communication plans for that purpose (in addition to and complementary to the community engagement strategy used to get to the point of ratification). As well, we consider the need for ongoing community engagement as part of implementation and continuing evaluation.

RATIFICATION

Ratifying governance proposals

The degree to which the citizens of a First Nation were adequately engaged from the outset in the development of a proposal for governance reform that is to be ratified by a vote of the citizens will inevitably have a bearing on whether or not the proposal is approved. The process of developing the new governance arrangements is as important as, if not more important than, the product.

The rules respecting ratification will vary depending on the type of governance reform you are undertaking and your community's conventions and practices. Specific legal requirements for ratification processes may be set out in federal statute or policy and will need to be understood and followed where applicable. Situations in which there are specific ratification requirements for sectoral or comprehensive governance initiatives, are discussed in the relevant sections of Part 1 of the Governance Toolkit, *The Governance Report*. These include what information needs to be provided to citizens, the specifics of the ratification vote, including approval thresholds, and the officials involved in conducting the vote. Some Nations have developed their own referendum or ratification procedures. If these procedures are not contrary to any rules respecting a specific governance initiative or agreement with Canada, they should be used.

While the requirements for ratification of a particular governance initiative may be dictated external requirements (e.g., agreements, federal legislation etc.), as a general rule, First Nations will want to try to have similar processes for referendums and for ratifying important proposals or decisions. This will help prevent confusion among citizens and also prevent unnecessary administrative complexity. Sorting out how your Nation makes decisions, including those decisions by referendum, is a fundamental aspect of core governance that should be considered as early as possible as part of the process of community engagement. People need to know by what rules and what process governance reform is going to be considered and want assurance that the process will be fair.

Information

Assuming a First Nation is going to have an important vote on a governance proposal, it will be critically important that the information provided to citizens is accurate, complete and understandable. The test is whether or not your citizens can make an informed decision on the matter put before them. Assuming the community was behind the reform in the first place, there will already be a level of understanding prior to any ratification. In this case, communication for the purposes of ratification will be simpler. If the community has not been as involved in developing the governance reform, or the initiative has proceeded very quickly from conception to ratification, there will inevitably be more challenges in communicating information about the proposal to the citizens.

Citizens should have access to all key documents, in their entirety, either provided directly or through information about where they can get full copies. There is always the question of how much information is enough and whether there can be too much information. Some

First Nations prefer to send everything to their citizens. At times this can be overwhelming. Others prefer to send summaries of core documents, with details about how citizens can access the complete documents if they want to review them. Subject to any external rules that must be followed, the community will need to decide what information is provided to citizens.

Role of the governing body and "community champions"

Members of the governing body (e.g., the chief and council) will need to be very familiar with the governance reform proposal (including all the key documents, agreement, codes or laws that are going before the citizens) and be in a position to recommend the proposal to the community. This means the chief and council must have thoroughly read and understood all the documents to be ratified and when approached by citizens be able to answer questions. Depending on the complexity of the proposal, this may require a considerable amount of time and effort, depending on how involved the members of council were in working on the proposal. However, this is, of course, not solely or even the primary responsibility of the governing body within an empowered community. Where community engagement has been effective and the proposal was developed by taking a community development approach, those individuals and groups who were involved in the process of transformation have a role to play in speaking about the proposal with their fellow citizens. These people are now your "community champions," and any communication plan should include them as the strongest advocates for voting in the social change.

Going door-to-door

Because many of our communities have such small populations, practically speaking it should not be over-burdensome to ensure that every citizen is approached during a ratification vote on an important governance reform proposal, even if they did not take an active interest leading up to a ratification vote. It is quite common for our Nations when developing their ratification strategy to ensure that each citizen is personally contacted by someone he or she trusts. In some cases, this means going door-to-door and talking to citizens. While at times this can be confrontational, it is nevertheless the degree of commitment required by those seeking social change to ensure that all citizens are aware of the issues and are encouraged to understand and participate in the vote. On more than one occasion, governance reform that would have resulted in a positive change for the community was initially rejected by one or two votes. Experience has shown that the extra effort does in fact make a difference.

As with community engagement generally, there are lots of different mechanisms that can be used when the time comes to ratify proposals. What works for your community will in part be a function of what you have done in the past, but will also reflect how the citizens of the community expect their government to operate in the future. Given the current high level of mistrust of the *Indian Act* system, you should expect that your citizens will be pressing for more rather than less information and may still be skeptical and potentially critical of information they receive from "the band office." Again, the level of skepticism and trust when it comes to ratifying governance reform will be a reflection of just how engaged the community was leading up to the development of the package to be ratified. We must also remember and accept that there will be differences of opinion in any community and build this into our anticipated timelines for the work. Discussion and debate about important changes is essential and often leads to better decisions.

Ratification thresholds

If your Nation has control over setting the thresholds for approval, this decision should not be taken lightly. There have been occasions where communities have set approval for governance reform at levels they were not able to meet for a number of reasons.

The following are examples of common thresholds for approval:

Absolute majority: A Nation may set an absolute majority requirement, where 50% or more of all electors have to vote in favour of ratification. This means that every person who is eligible to vote but does not vote is in fact a vote for "no." In such a situation you may get a clear majority, or a very high majority, of citizens who actually cast a vote in favour but still do not have a majority of all electors voting in favour. This has become a bigger challenge given the legal requirement to include citizens who live off-reserve. If you cannot locate your citizens or encourage them to participate, they are an automatic "no." (In some ratification votes, deceased persons who at the time of the vote could not "legally" be proven to be deceased have effectively been counted as "no" votes in a referendum using the absolute majority threshold.) Some Nations, preferring more "consensus," may even go beyond an absolute majority and require a "super majority," where, for instance, 60% of all electors have to vote in favour of a proposal. This is difficult to achieve in any political system.

Double majority: Some First Nations prefer to use a double majority, where at least 50% of the electors have to participate in the vote, and then at least 50% of them actually have to vote in favour. Some Nations use a variation of the double majority — for example, where 60% or 70% of those actually voting need to vote in favour. Another variation is where the Nation establishes higher thresholds for those participating — for example, 60% — but keeps the number of those needing to vote in favour at 50%.

Simple majority: The easiest way to get a vote passed, and the test typically applied in Canada, is the "simple majority" — that is, where 50% plus one of those who actually vote can carry the decision and where it does not matter how many people actually participate in the vote. A variation on the simple majority may be setting a higher threshold of those needed to vote in favour — for example, 60% or 70% of those who actually vote.

Ratification and moving beyond the *Indian Act* in Canada

The importance of the way in which a governance proposal is ratified cannot be overstated. Canada, because of its fiduciary responsibility under the *Indian Act*, tends to err on the side of caution when it comes to ratifying governance reform in moving beyond the *Indian Act*. However, it is interesting to note that in some instances, the government of Canada is beginning to relax this cautionary approach. For example, under proposed federal legislation respecting First Nations elections, the current chief and council would be able to decide by resolution to come under an alternative election regime set out in the proposed federal legislation without having its citizens vote. If new legal mechanisms for governance reform moving beyond the *Indian Act* become further developed or established, ratification procedures for governance proposals will need to be determined.

However ratified, at whatever threshold and by whichever group of First Nation's people, what is important is that the process of ratification was seen to be fair. The decisions made need to be durable, with the ability to challenge the decision limited to procedural matters only (e.g., was the election conducted fairly?). This is critically important when there is going to be a significant change in the relationship between the Nation and the Crown and significantly different governance structures and laws applicable to the lands and the peoples who ratified the initiative for governance reform. Citizens and third parties alike are going to rely on the new governance arrangements and systems of good governance and must be able to assure themselves that the old *Indian Act* system is gone before they make important life decisions based on the new arrangements, such as investing in businesses on the reserve, moving to the reserve or perhaps working for the First Nation government or even running for political office.

COMMUNICATIONS PLANNING

As our Nations move beyond the *Indian Act* and ratify and implement governance reform, it will be necessary to communicate information about the transformation that is occurring and the measures that are being implemented. There will need to be communication with citizens on the specifics of proposals, but also wider communication with the outside world that will have an interest, and in some instances a stake, in the outcome of the governance reforms.

For all types of communication the overall objective is to communicate a message or transfer information. In order to communicate a message effectively, in this case about the details of a proposal for governance reform, it is important to have a communication plan. There are various aspects of communications planning to consider, including how to develop a communications plan, and then how to implement and evaluate it. Although there are elements common to all communication plans, each First Nation will want to undertake its own communications planning and to develop a plan to suit their needs and that makes sense to them.

Developing a communications plan

A communications plan is like a road map that helps you to get from where you are now to where you want to be. It does not have to be lengthy or complicated, but it does have to be a living document that will evolve over time.

Different approaches, tactics and activities can be used to convey messages to different audiences. While the plan is generally written by one individual, it is important to ensure that it evolves out of your broader community engagement strategy — that is, the citizens, and in particular those groups that were involved in getting the governance proposal to the point of ratification, are involved in developing it.

As with community engagement generally, communications planning will support and increase the awareness of and trust and participation in any process of Nation building or Nation rebuilding that your community is collectively undertaking.

Elements of a communications plan

While there is no standard model, a communications plan should identify:

- overall strategy
- goals and objectives
- target audiences
- key messages
- tactics (approaches, tools and activities)
- budget
- evaluation

Given that there are many considerations that need to be addressed in any comprehensive and effective communications plan (audience identification, effective message development, communication strategies and tactics, budget, research, and how we evaluate success), we have attached as one of the tools (see Section 3 — Governance Options Tools) a sample “Governance Communications Plan”. This sample plan can be adapted for use by communities to reflect their particular governance reform initiatives.

There are many different communications tools and expertise available that can assist Nations in formulating an effective communications strategy. One such tool is the

First Nations Communication Toolkit, a unique resource jointly developed by AANDC and Tewanee Consulting Group. The toolkit was designed explicitly for First Nations communicators and is based on research on First Nations communications initiatives and input from First Nations communicators and administrators working for First Nations organizations in rural, remote and urban First Nations throughout British Columbia. For more information, see the First Nations Communications Toolkit.

"It is certainly a daunting task that First Nations face in moving away from the *Indian Act* and exercising inherent self-government rights; but, I think that we, and of course the many other First Nations who have blazed the path, can attest — it is not insurmountable. It is important to dialogue about any options to move away from the *Indian Act* and from the Tsawwassen perspective we are pleased to speak about our experience in exercising our jurisdiction under the *Indian Act* through sectorial initiatives and through a comprehensive agreement. It is a daunting task to move away from *Indian Act* but it is necessary and worth the pain of decolonization. Self-governance is integral to that path of decolonization. We have to remember we can do better than Canada has done. I am already seeing the results in Tsawwassen."

Chief Kim Baird — BCAFN SCA June 2011

IMPLEMENTATION AND BEYOND

After a First Nation has gone through a process of successful governance reform, a whole new chapter begins in the life of the community. Change becomes real and there can be a renewed sense of freedom. Rights are given a voice in practice. The experience of those Nations that have gone through this process has shown that it is empowering. However, once the ceremonies and celebrations have concluded, there is a realization that the real work now begins, so that the rewards of making sound policy decisions reflecting both local priorities and available resources can be realized. At this point, the promise of self-government and the right of self-determination becomes the responsibility of the community, and the community must take control and set the course for its own destiny. The energy of the citizens that brought about the governance reform now needs to be refocused and group efforts applied to implementing the reform. The institutions of government that a Nation has developed and voted on are now established and citizens will be eager to see how they work. Theory becomes practice.

Laws, policies and systems will need to be adapted and changed as the Nation implements its governance reform. While many of the core documents and institutions will have been established before the "effective date" of governance reform (the date the agreement or law comes into force), there will be many laws, policies and procedures that a community will need to consider as implementation proceeds. These will be developed on the basis of whether there is an issue that has to be addressed, or in some cases as a condition of an agreement with another government (e.g., developing rules relating to matrimonial real property under a land code). Some issues will require action because the community has directed that action be taken within a certain period of time after governance reform tasks place (e.g., developing a land use plan or a citizenship code). Again, this will depend on what type of governance reform a Nation has undertaken and where that reform occurs along the governance continuum.

The laws, rules and systems that have been developed and the governance system generally will now be tested as to their effectiveness and their durability. There will be a process of ongoing evaluation and critique. It is inevitable that not everything will work as smoothly or as clearly as the citizens may have envisioned. But the government of the community and the Nation will have the ability to change it as need dictates. The fact that there may have been things missed or issues not addressed should not be viewed as a fault of the community in getting to this point, but simply as a reflection of the enormous scale and complexity of the task at hand.

It is important to ensure that community engagement, and the level of engagement that brought the community to its current place, is not forgotten or ignored. The way ongoing community engagement will be undertaken will largely be set out in the Nation's governance arrangements and laws ratified by the community (e.g., financial reporting, creation of committees/boards, regular community meetings, etc.). In practice, many of our Nations have built in considerable requirements for community involvement in the governance of their

Nations (e.g., requirements for votes or full referendums on key issues or laws, the holding of community meetings for a variety of purposes, extensive use of community committees and non-elected interest groups, such as the elders and youth). These legal requirements for participatory democracy go far deeper than do those of other governments in Canada, perhaps a reflection of a general cultural belief in the principles of consensus building, which, although rarely ever achieved in practice, is an ideal we hold in high esteem. In part, perhaps, it is also a reflection of our experiences under colonial rule and a reaction to governance under the *Indian Act*, where accountability was not primary to our citizens.

It will be important that any new legal requirements respecting community engagement or consultation or reporting be competently carried out by those we entrust to lead, run and administer our governments. To be sure, if the governing body and the administration do not act in accordance with the community's laws and, where applicable, its constitution, an empowered and an engaged community will demand that it be so, and the community will apply political and if necessary legal pressure on the governing body. Through community engagement, the community now has the tools and is in control of its own future. This is ultimately what accountability to the people means.

MONITORING PROGRESS, ONGOING EVALUATION AND FUTURE INITIATIVES

Governance reform is ongoing. It never ceases, and our communities, like all communities, are forever in a state of transition and reinvention. Governance and government can be likened to a living tree, which is growing, changing and adapting to the climate around it.

A Nation's positive experience with governance reform in a particular area (e.g., land management, financial management) may provide the impetus or encouragement for additional governance reform, moving along the governance continuum. Ultimately, all our Nations will be self-governing once again. How long this will take is dependent upon many factors, not the least of which is how engaged and empowered our citizens are and how much they want it.

Nations that have moved forward along the governance continuum and developed their own internal governance arrangements are now in far greater control of their own destiny. These Nations are able to confront the future with the satisfaction and knowledge that their governments can adapt more easily to the "climate" of the day. Ongoing community engagement will help to ensure that our governments are able to adapt to and meet citizens' needs over time. Simply put, individuals, families, communities and Nations never stand still. Change is inevitable. Our relationships with Canada will also change and evolve over time.

It is important that our Nations evaluate their governance practices from time to time, regardless of where they may be on the governance continuum. We therefore recommended that Nations undertake the self-assessments in Part 2 of the Governance Toolkit as an ongoing activity. The surveys and guides have been designed to be used by the governing body and administration at any point in time and regardless of where a Nation is along the governance continuum. The self-assessment modules will be updated regularly to reflect changes in "climate." Planning to undertake the self-assessment annually, as a general practice, is a good way to reflect on how your governance reform and implementation activities are going and where your governance priorities remain.

PART 3 /// A GUIDE TO COMMUNITY ENGAGEMENT — REFERENCE LIST

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3.1 TOOLS

COMMUNITY GOVERNANCE PROFILE

Template

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Community Governance Profile

Name of First Nation				
Tribal Affiliation(s)				
Address				
Governing Body	☐ Leadership selection system maintained in accordance with traditional practices (i.e., never been under the *Indian Act* rules) ☐ Chief and Council elected pursuant to the *Indian Act* (ss.74 and 75) ☐ One Councillor for every 100 Band members (s.74.(2)) ☐ Chief elected separately from Council by majority vote of the electors (s.74.(3)(a)(i)) ☐ Chief and council are elected pursuant to a custom election code under the *Indian Act*.			
Other Institutions of Government	☐ Elders Council ☐ Youth Council ☐ Finance and Audit Committee ☐ Lands Committee ☐ Assessment Appeal Board		☐ Economic Development Board/Commission ☐ School Board ☐ Advisory Council ☐ Other: _____ ☐ Other: _____	
Mission/Vision Statement	If the Nation has a vision/mission statement please insert here:			
Chief and Council	Chief	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY
	Councillor	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY
	Councillor	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY
	Councillor	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY
	Councillor	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY
	Councillor	Portfolio (if any)	Term: MM/DD/YYYY	Ends: MM/DD/YYYY

<table>
<tr><td>Citizenship (membership)</td><td colspan="4">Identify how your citizens (members) are determined:
☐ under s.11 Indian Act ☐ s. 10 Custom Membership Code ☐ Self-government</td></tr>
<tr><td rowspan="5">Registry (membership)</td><td colspan="4">☐ # registered members (as of Date)</td></tr>
<tr><td>Residency</td><td>On</td><td>Off</td><td>Total</td></tr>
<tr><td>Registered Males</td><td>#</td><td>#</td><td>#</td></tr>
<tr><td>Registered Females</td><td>#</td><td>#</td><td>#</td></tr>
<tr><td colspan="4"># Voting Citizens:</td></tr>
<tr><td>Non-Citizen residents on-reserve</td><td colspan="4">If there are non-citizens who live on your reserve please indicate the numbers:
# of other First Nations residents_____
non-First Nations residents _____</td></tr>
<tr><td rowspan="9">List of Reserves</td><td colspan="4"># registered Indian Reserves (approx. – # acres)</td></tr>
<tr><td colspan="3">IR Name #</td><td>Acres</td></tr>
<tr><td colspan="3">IR Name #</td><td>Acres</td></tr>
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<tr><td colspan="3">IR Name #</td><td>Acres</td></tr>
<tr><td colspan="3">IR Name #</td><td>Acres</td></tr>
<tr><td colspan="3">Total Acres</td><td>Total Acres</td></tr>
<tr><td>Management of Reserve Lands</td><td colspan="4">Identify your land management authority:
☐ AANDC managed
☐ s.53 of the Indian Act delegated land management authority
☐ s.60 of the Indian Act delegated land management authority
☐ Reserve Land & Environmental Management Program
☐ Land Code - Framework Agreement on Land Management (First Nations Land Management Act)
☐ Comprehensive self-government arrangement</td></tr>
</table>

<table>
<tr><td>Land Registry System</td><td colspan="3">☐ Indian Land Registry System (ILRS) for lands that are governed under the Indian Act.
☐ First Nations Land Registry System (FNLRS) – for lands that are governed by a First Nations with a Land Code pursuant to the Framework Agreement on Land Management and the First Nations Land Management Act.
☐ Self-Governing First Nations Land Register (SGFNLR) for lands governed by a self-governing First Nations without a treaty.
☐ Provincial land title office for lands governed by a First Nation with a treaty.
☐ Other_____</td></tr>
<tr><td rowspan="5">Employees of the First Nation</td><td colspan="3">Total Number:_____
Key Staff Positions (e.g., Administrator, Financial Administration Officer, etc.):</td></tr>
<tr><td colspan="2">Title</td><td>Name</td></tr>
<tr><td colspan="2">Title</td><td>Name</td></tr>
<tr><td colspan="2">Title</td><td>Name</td></tr>
<tr><td colspan="2">Title</td><td>Name</td></tr>
<tr><td rowspan="11">Bylaws/Laws in force</td><td colspan="3">Identify the Jurisdiction (e.g., Indian Act, FSMA, Land Code, SGA, etc.) and Bylaw/law Name #</td></tr>
<tr><td>Jurisdiction</td><td colspan="2">Bylaw/law Name #</td></tr>
<tr><td>Jurisdiction</td><td colspan="2">Bylaw/law Name #</td></tr>
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<tr><td>Jurisdiction</td><td colspan="2">Bylaw/law Name #</td></tr>
<tr><td colspan="3">(e.g., Housing, Community Engagement, Conflict of Interest, Procedures of Council, Employment, Land Referrals, etc.)</td></tr>
<tr><td>Significant Policies of Council</td><td colspan="2">Department</td><td>Policy Name</td></tr>
<tr><td>Department</td><td colspan="2">Policy Name</td></tr>
<tr><td>Law Enforcement</td><td colspan="3">☐ RCMP ☐ Peace Officer
☐ Community Tripartite ☐ First Nation By-law Officer/Enforcement</td></tr>
</table>

	Agreement: Number of dedicated officers _____ ☐ Municipal Police Force	Officer: Number of dedicated officers _____ ☐ First Nation Police Force
Government Departments	☐ Administration ☐ Finance ☐ Lands ☐ Public Works / Utilities ☐ Social development ☐ Communications ☐ Intergovernmental Affairs ☐ Culture and Language	☐ Housing ☐ Human Resources ☐ Bylaw/law Enforcement ☐ Property Taxation ☐ Education ☐ Recreation ☐ Other: _____ ☐ Other: _____
Federal Programs/Services Delivered	Responsible for administering the following AANDC policy on reserve: ☐ Social Assistance ☐ Education ☐ Membership	☐ Housing ☐ Other: _____ ☐ Other: _____
First Nation Programs/ Services Delivered	Responsible for administering the following First Nation policy (under First Nation law or otherwise): ☐ Education ☐ Other: _____	☐ Other: _____ ☐ Other: _____
Provincial Programs/ Services Delivered	Responsible for administering the following provincial programs and services: ☐ _____	☐ _____
Additional Authorities/Agreements	☐ Local Service Agreements: ☐ Water ☐ Fire ☐ Waste Disposal	☐ Other: _____ ☐ Other: _____ ☐ Other: _____
First Nation business enterprises (on-reserve)	☐ Gas Station ☐ Tobacco Sales ☐ General Store ☐ Land Leasing	☐ Land Development: Residential _____ # Units Commercial/Retail _____ # Sq Ft ☐ Other: _____ ☐ Other: _____

First Nation business enterprises (off-reserve)	☐ Forest and Range Agreement ☐ Other: _____	☐ Other: _____ ☐ Other: _____
Other Information		

3.2 TOOLS

EXPLORING GOVERNANCE OPTIONS — IDENTIFYING PRIORITIES, TAKING ACTION AND IMPLEMENTING CHANGE

PowerPoint

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Exploring Our Governance Options:

Identifying Priorities, Taking Action and Implementing Change

The need for strong & appropriate governance

- **"Governance"** means establishing rules to coordinate our actions and achieve our goals
- The institutions we create to make rules and then enforce them, we call **"government"**
- "Governance" and "government" come in many forms but are always needed
- The quality of governance, much more than its specific form, has a huge impact on the fortunes of any given society—ours are no exception
- Societies that govern well simply do better economically, socially and politically than those that do not
- Effective governance increases a society's chances of meeting the needs of its people

Rebuilding First Nations' governance

- Our Nations were historically self-governing
- Since colonization systems of governance have been imposed on our Nations
  - First Nation peoples, lands and economies have been governed separate and apart from non-Aboriginal Canada under federal administrative authority in accordance with the *Indian Act*
- The impoverished notion of governance under the *Indian Act* is neither an appropriate governance framework for our people – nor for any people
  - The status quo is having a negative impact on our societies' ability to meet the needs of our people
- In Canada and in BC, work is underway to rebuild our Nations
  - Our Nations are implementing our inherent right of self-government and are moving away from governance under the *Indian Act* and control by Canada
  - It Is not small task to decolonize

Developing a "critical path" to move beyond the *Indian Act*

- In BC, approximately 70% of our Nations have undergone, or are undergoing, governance reform
- The process of reform starts at the community level
  - Based on each Nation's vision, leadership and culture
  - Governance must be developed from the ground up based on the needs of our community
- After considering the needs in our community and what governance reform may be desired, we need to consider our options for governance reform
  - The options can be viewed along a "continuum of governance" options that incrementally could lead to full self-government
- Considering the options and developing our own governance "critical path" is required to move beyond the *Indian Act*
  - will be done on our own time and based on our own governance priorities

Exploring the options

- To help First Nations consider our governance options and to identify where more political work is needed to create options, the BCAFN has produced *The Governance Report,* "Part 1 of the Governance Toolkit: A Guide to Nation Building" (Available for download on our site, at www.bcafn.ca)
- *The Governance Report* brings together in one place the governance work and experiences of First Nations in BC and sets out the current options along the "governance continuum"
- The Report will assist our Nations in developing our own critical path to implement governance reform and re-establish strong and appropriate governance for our citizens and lands, both our existing lands (i.e., reserves) and our traditional territory
- The following slides set out the structure of *The Governance Report*

Part 1 – *The Governance Report*

Key Assumptions

There are some key assumptions behind the Report—These are:

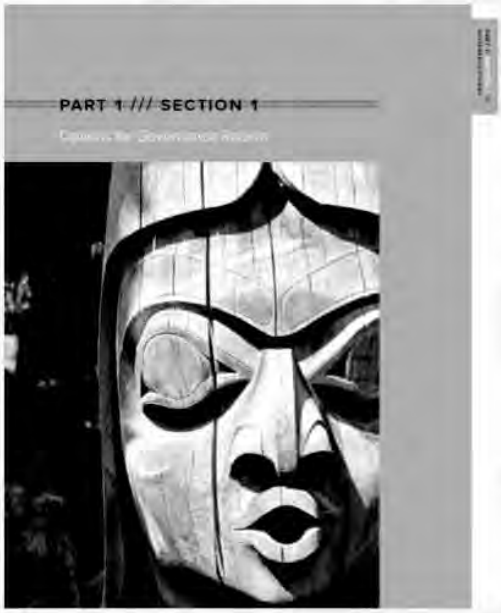
- Our Nations have an "inherent right of self-government"
  - Section 35 of the *Constitution Act*, 1982
  - United Nations Declaration on the Rights of Indigenous Peoples
- The primary building block of governance for our peoples is the "Nation"
- Primary relationship between our Nations and Crown is with the federal government

Part 1 – *The Governance Report Cont'd…*

The Report is divided into four sections:

- **Section One – Options for Governance Reform**
  History of evolving First Nations' governance & the development of options along a governance continuum ranging from under the *Indian Act*, to sectoral and comprehensive governance arrangements
- **Section Two - Core Institutions of Governance**
  Focusses on the structure of First Nations' governance and its core institutions; the Citizens, the governing body, and the constitution
- **Section Three - Powers (Jurisdictions) of the First Nation**
  Explores 33 powers (jurisdictions) and provides background information on the subject area and looks at what our Nations are doing in each area along the governance continuum using comparative charts along with resource guides
- **Section Four - Financing First Nations' Governance**
  Considers the costs of our Nations' governance, sources of First Nations' revenues, public debt financing, transfers from other governments, and the evolving fiscal relationship with Canada including the impact of "own source revenue" on federal transfers

Part 1 - Section 1
Options for Governance Reform



- Section 1 provides a brief history of evolving First Nations' governance within Canada
- It considers the options along the governance continuum:
  - *Indian Act* Governance
  - Sectoral Governance Initiatives
  - Comprehensive Governance Arrangements

Strategic use of the *Indian Act*

Interim Steps to Comprehensive Governance Arrangements

- Developing a membership code – Custom (Section 10)
- Developing your own election rules (section 74(1)/Custom)
- Assumption of delegated land management powers (section 53 & 60)
- Use of by-law making powers (Section 81)
- Implementing property taxation (Section 83)

Sectoral Governance Arrangements

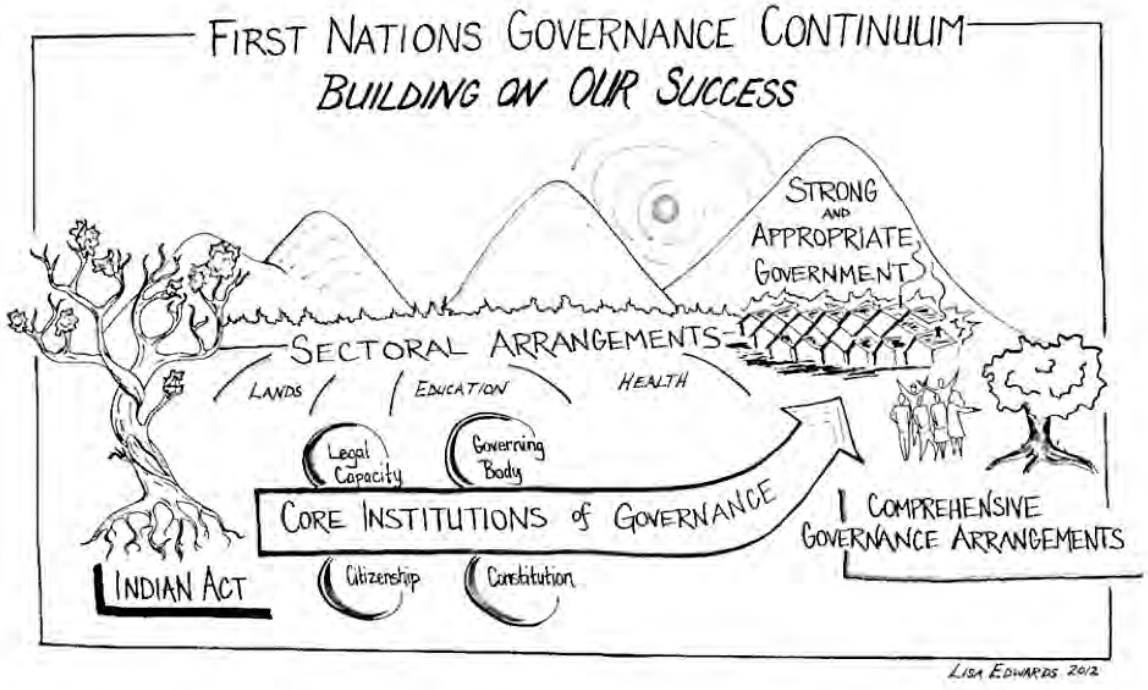
- There are still a limited number of forums for negotiating comprehensive self-government agreements with Canada and, in some cases, provinces
- First Nations have led initiatives to advance governance in specific areas such as lands, education, health, oil and gas and fiscal relations
- These initiatives do not require negotiating all aspects of self-government
- Some sectoral initiatives are national in scope and some are restricted to British Columbia
- Processes and jurisdiction under sectoral initiatives are found in federal and/or provincial legislation dealing with the subject area
- Any terms and conditions for participating in a sectoral governance initiative are set out in the Report

Examples of Sectoral Governance Initiatives

- **On-reserve:**
  - *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*
  - *First Nations Oil and Gas and Moneys Management Act*
  - *First Nations Fiscal and Statistical Management Act*
  - BC Education Jurisdiction Framework Agreement
- **Off-reserve:**
  - Resource based “shared decision-making”, “reconciliation”, and “strategic engagement” agreements with the province

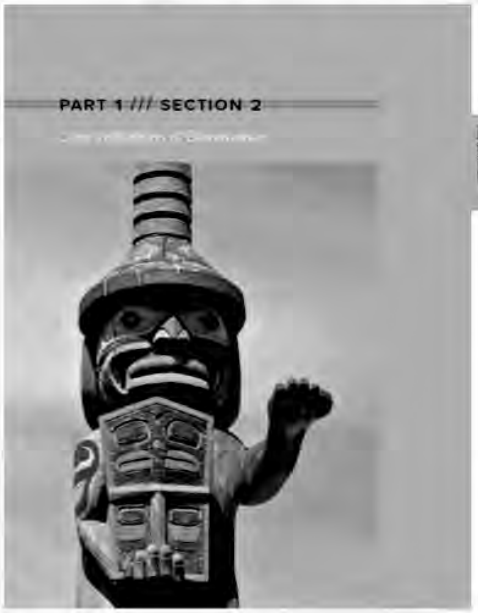
Comprehensive Governance Arrangements

- Some First Nations are no longer governing under the *Indian Act* at all and have comprehensive governance arrangements with Canada, and in most cases with BC
- These First Nations are self-governing within the terms of their arrangements
- For example: As part of modern claims settlements (e.g. Nisga'a, Tsawwassen, and Maa-nulth)
- For example: Stand alone self-government arrangements. (e.g. Sechelt and Westbank)



Where is our Nation along the continuum of governance reform?

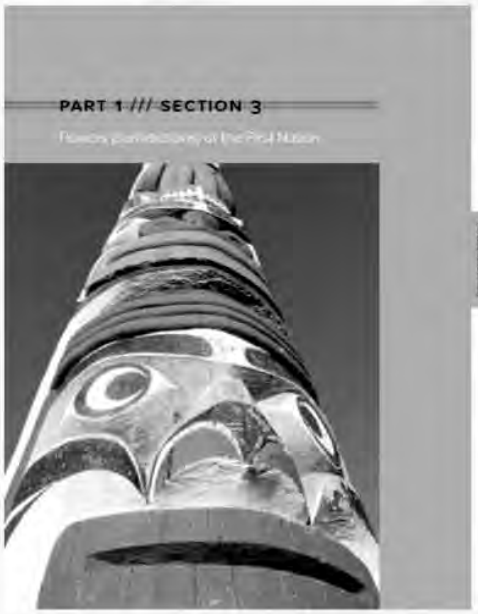
Part 1 - Section 2
Core Institutions of Governance



Section 2 of the Report looks at the core institutions of government. Core institutions are those practices, bodies and structures that together constitute government

- Legal Status and Capacity
  - All governments require basic legal recognition to carry out their duties
- The Citizens
  - Who is entitled to be a "citizen" of a Nation?
- The Governing body
  - The core institution of any government is its governing body (e.g., chief and council)
- The Constitution
  - The fundamental law of any Nation

Part 1 - Section 3
Powers (Jurisdictions) of the First Nation



What powers (jurisdictions) is your Nation considering exercising when looking at its needs today and into the future (e.g., land management, health, education, child and family etc.)?

Part 1 - Section 3
Powers (Jurisdictions) of the First Nation

- **Structure of Part 1: Section 3—**Section 3 of the *Governance Report* looks at 33 different powers (jurisdictions), arranged alphabetically and considered along the "governance continuum"
  - Each Chapter is arranged as follows:
    - Background
    - *Indian Act* Governance
    - Sectoral Governance Initiatives
    - Comprehensive Governance Arrangements (Sechelt, Westbank, Nisga'a, Tsawwassen and Maa-nulth)
      - Comparative Chart
    - BC First Nations' Laws/By-laws in Force and Other Activities
    - Resources
- The following slides provide chapter summaries for Education, Financial Administration, Health and Land Management

Part 1 - Section 3.7
Education

Background

- Identified as the national priority of AFN
- First Nations' jurisdiction over First Nations education on reserve in BC
- Over 129 First Nations-controlled schools in BC

***Indian Act* Governance**

- No jurisdiction only administrative arrangements

Sectoral Governance Initiatives

- 63 First Nations have indicated intent to negotiate jurisdiction agreements under the BC First Education initiative.

Comprehensive Governance Arrangements

- First Nations have jurisdiction over K-12 education

Resources

- First Nations Education Steering Committee (FNESC)
- First Nations Education Authority
- BC First Nations Schools Association (FNSA)

Part 1 - Section 3.11
Financial Administration

Background

- Importance of sound financial management rules
- Significant developments in First Nations' financial management practices and standards

Indian Act Governance

- 14 First Nations have *Indian Act* by-laws

Sectoral Governance Initiatives

- *First Nations Fiscal and Statistical Management Act* and the establishment of the FN Financial Management Board
- *First Nations Oil and Gas and Moneys Management Act*
- Framework Agreement on First Nation Land Management and *First Nations Land Management Act*

Comprehensive Governance Arrangements

- All First Nations have jurisdiction over internal financial management.

Resources

- First Nations Financial Management Board
- Aboriginal Financial Officers Association
- First Nation Finance Authority • First Nations Tax Commission

Part 1 - Section 3.15
Health

Background

- Depending on context, federal, provincial or First Nation authority applies
- Collectively, providing health services is now the single largest budgetary expenditure for all governments

Indian Act Governance

- Section 73, 81(1) A number of First Nations have enacted health related bylaws but none displace federal or provincial authority

Sectoral Governance Initiatives

- Transformative Change Accord: First Nations Health Plan
- BC Tripartite Framework Agreement on First Nation Health Governance
- Moving to establish a BC First Nations Health Authority

Comprehensive Governance Arrangements

- While some self-government agreements include provisions for jurisdiction over health services, no First Nations currently exercise broad jurisdictional powers over these services.

Resources

- First Nations Health Council
- First Nations and Inuit Health Branch – Pacific Region

Part 1 - Section 3.19
Land Management

Background

- Land is fundamental to First Nations. Title to First Nation lands is held in different ways. Reserves are held and governed federally under section 91(24) of the *Constitution Act 1867*. 32 sections (approximately 25%) of the *Indian Act* deals with lands and land management

***Indian Act* Governance**

- Delegated Authority under sections 53 & 60

Sectoral Governance Initiatives

- Framework Agreement on First Nation Land Management Act (FNLMA) and *First Nations Land Management Act*
- *First Nations Commercial and Industrial Development Act (FNCIDA)*

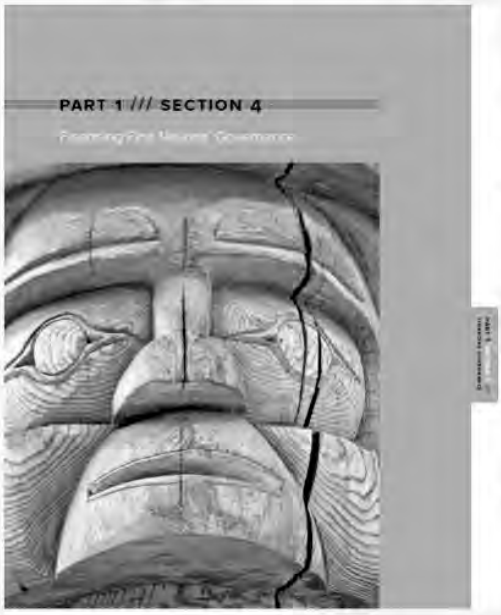
Comprehensive Governance Arrangements

- All provide jurisdiction over lands and land management including establishing the rules for the creation and registration of interests in lands.

Resources

- Lands Advisory Board (LAB)
- National Aboriginal Land Managers Association (NALMA)

Part 1 - Section 4
Financing First Nations' Governance



Section 4 of *The Governance Report* looks at how the cost of running our governments and providing programs and services will be met and our evolving fiscal relationship with Canada. The section is organized as follows:

4.1 Costing our Nations' governance

4.2 First Nations Revenues

- First Nations' Own Source Revenues
  - Fees and Charges for Services
  - Taxes for the provision of Local Services
  - Consumption Taxes
  - Income Tax
  - Royalties/Resource Rents
  - Land Leasing
  - Revenues off First Nation Lands
  - Business Revenues
- Public Debt Financing
- Transfers from other Governments
  - *Indian Act*
  - Sectoral and Comprehensive Governance Arrangements

4.3 Principles of the Fiscal Financing Relationship

4.4 Own Source Revenue Impact on Federal Transfers

Next Steps: matching governance options with our needs

- Based on our community's identified needs and having considered our current options for governance reform, our community may be decide to pursue governance reform in a particular area
- Some of the options for governance reform will require negotiations with Canada and in some cases BC
- Where negotiations are required we will need to organize and get ready for these negotiations
- Any options we choose will require a lot of hard work and need community involvement

Next Steps: lobbying and advocacy

- In some cases the post-colonial door to governance reform is still being kept closed (e.g., due to current legal limitations for governance reform as well as federally-imposed limitations and political unwillingness)
- To open up the door fully we will need to work with other First Nations. Collectively we are stronger.
- In some cases we may choose to simply embark on governance reform with or without support from Canada and/or BC; the "just do it" approach – although there are limitations and risks to doing that we need to appreciate.

Ratification of Governance Reforms

- Where our community decides to undertake governance reform it is likely there will be a requirement for a community vote to "ratify" the governance proposal.
- Some issues we will need to consider when ratifying governance proposals include:
  - Information to be provided to our citizens and how it is provided
  - Role of the governing body (e.g., chief and council) and "community champions"
  - Ratification thresholds (e.g., absolute majority, double majority or simple majority)

Implementation and beyond

Implementation

- If our Nation has gone through a process of successful governance reform, a whole new chapter begins in respect of those reforms
- Rights are given a voice in practice and it is becomes our collective job to implement those reforms
- The promise of self-government and the right of self-determination become the responsibility of the community

Monitoring progress, ongoing evaluation and future initiatives

- Governance is ongoing –growing, changing and adapting to the climate
- Whatever governance reform initiatives we undertake, we will need to continually evaluate their effectiveness
- If we are successful in our governance reform initiatives this could lead to further reforms—Success begets success

3.3 TOOLS

DEVELOPING A COMMUNITY CONSTITUTION

PowerPoint

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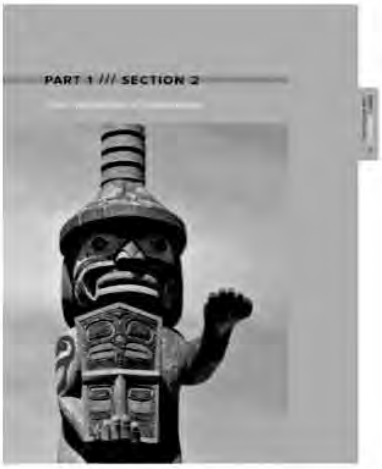
Developing a Community Constitution



What is a community constitution?

- A "core institution" of governance and arguably the most powerful tool to develop in order to move away from governance under the *Indian Act* and through the "post colonial door"
- The fundamental law (rules) of any Nation setting out – who is a citizen of the Nation, its values, the structure of its government and allocating power among its parts

What is the purpose of a community constitution?

The purpose of a constitution is:

- To provide consistency, stability and accountability in the Nation's governance over time
  - For example: Is harder to enact and amend than other laws
  - For example: Reflects deep-rooted consensus
- To reinforce confidence in the Nation's government, both with its citizens and third parties (e.g., other governments, the general public, business community, etc.)
- To assert and confirm the autonomy of the Nation

Developing our constitution

- The Nation will need to consider what is appropriate to include in the constitution and what is not. Constitutions can vary both in content and length.
- The process to develop a constitution is just as important as the contents of the constitution itself.
- The constitution should embody community consensus as much as possible. In designing the process to develop a constitution some questions to keep in mind are:
  - Who should be involved in developing the constitution?
  - What is the role of advisors?
  - How should we ratify the constitution?
  - How do we ensure legitimacy of the process?

Developing our constitution cont'd…

Consider some of the challenges of the present *Indian Act* system that the constitution might address. For example:

- Establishing appropriate institutions of government
- Requiring transparency of government
- Ensuring accountability of leadership
- Supporting an effective administration
- Maintaining community safety
- Providing certainty for economic development
- Delineating the rights and responsibilities of your citizens
- Expressing your cultural and traditional beliefs

Content of the constitution

Some questions to ask when considering the content of the constitution:

1. To what extent do we want to reflect culture and traditions in the constitution?
2. What institutions of governance do we want?
3. To what extent is it important that an external audience understand our ways of doing things?
4. How much participation by citizens do we want?
5. What is an appropriate division of powers between our institutions of government?
6. Will decision-making be vested in one body? Do other decision-making processes need to be considered as well?

Elements to consider in the constitution

1. Founding Provisions
2. Description of Lands
3. Citizenship
4. Rights, Responsibilities and Freedoms of Citizens
5. Institutions of Government
6. Law Enactment
7. Meetings
8. Conflict of Interest
9. Financial Administration
10. Adjudicatory Bodies
11. Referendums
12. Transitional Provisions
13. Amendment

1. Founding provisions

- Sets out the core values of the community (e.g., respect for the natural environment and the land, sustainability, culture, rights and title etc.
- Most important part of the constitution taking into consideration views of elders, youth and all community citizens
- Provides direction to the Nation's leaders in their actions and creation of laws
- Guides all decision-making in the community and interpretation of laws passed by the government

2. Description of lands

- Describes in general terms the geographical extent of the territory it applies
- This description is often in the founding provisions

Questions to consider:

What is the extent of our territory?

Does the constitution apply to our reserve lands or to the broader traditional territory?

What are the considerations for how the constitution might apply to existing First Nations (i.e., reserves) and its traditional territory (i.e., off-reserve)?

3. Citizenship

- Establishes rules to determine who is a citizen of the First Nation
- First Nations' citizenship rules are distinct from who is eligible to be registered as an 'Indian' under the *Indian Act* (status)

Question to consider:

What criteria would you see for becoming a citizen of your Nation? How would this be different, if it is different, from determining membership in your band today?

4. Rights, responsibilities and freedoms of citizens

- Identifies the rights and benefits of citizens such as:
  - participating in government,
  - being able to live in the community and
  - to receive services
- The rights, responsibilities and freedoms we identify can: (1) clarify or expand upon the rights and freedoms all Canadians enjoy under the Canadian Charter of Rights and Freedoms and (2) can speak to the unique nature of our collective rights and their relationship to individual rights
- The constitution can also set out what is expected of the individual as part of the collective (i.e., responsibilities)

Question to consider:

What is your understanding of the rights and responsibilities of citizens?

5. Institutions of government

- Establishes the framework for government, setting out the institutions of the government, what each institution is responsible for and the allocation of power among them. It may provide some detail on how the governing body is selected (e.g., chief and council)
- There are many ways to create government. The key is for the Nation to create a system for choosing its government that meets the Nation's values and needs
- Can also establish community expectations for the governing body and set out principles for how the governing body must act

Question to consider:

What are our current institutions of government and what should they be in the future?

6. Law enactment

- Sets out the authority of particular institutions to make laws or by-laws
- Can set out how laws or by-laws are initiated (e.g., by the governing body or by citizens through a petition etc.) and actually made (e.g., the procedures – how many readings, or if they have to be presented to or voted on by citizens etc.)
- Some laws or by-laws may have special requirements depending on the source of authority for the law or by-law and this may be set out in the Constitution (e.g., laws that deal with fundamental land matters)

Questions to consider:

How are laws enacted today? What procedures do we follow in making them? How do we want to do this in the future?

7. Meetings

- Can set out rules as to when and how the governing body or the citizens meet and a general requirement for holding meetings
- Rules regarding meetings are very important in providing accountability and transparency of government

Questions to consider:

For what purposes are meetings required today and how effective are they?

For what purpose do we need meetings in the future and what, if any, rules should govern those meetings? Does this need to be set out in the constitution?

8. Conflict of interest

- Can provide that the Nation will have rules that ensure the governing body and others with decision-making powers are subject to conflict of interest rules
- The rules could be in the constitution itself or required to be in a law or policy of the Nation

Questions to consider:

What conflict of interest rules do we have today? Do we need different rules? And what, if any, rules should be in the constitution?

9. Financial administration

- Ensures responsibility for protecting financial resources of the First Nation. This is usually the governing body (e.g., chief and council)
- Sets out principles and core provisions
- May require the Nation to have a financial administration law addressing the core provisions (e.g., required annual budget, deficit controls, restrictions on expenditures, and periodic reporting requirements including the annual audit, permitted investments, level of debt, penalties for breech etc.)

Questions to consider:

What financial administration laws/by-laws or polices do we currently have in place? Are they meeting our needs? What should be provided for or actually included in our constitution?

10. Adjudicatory Bodies

- Depending on the type of governance structure being put in place and the powers of the Nation, the constitution might include provisions for adjudicatory bodies
- This is particularly important when the Nation is responsible for aspects of the administration of justice
- Such provisions may establish that the governing body can establish bodies to, for example, hear disputes, or set up the institutions of justice in the constitution itself

Questions to consider:

What type of dispute resolution methods do we use today? What type of disputes will need to be addressed in the future? Who will be responsible for adjudicating disputes? What type of bodies might we need to establish to hear and if necessary adjudicate disputes?

11. Referendums

- Sets out the requirements for holding a community referendum
- Process and procedure may be similar to the process for holding of elections and would typically be set out in a separate law
- May be different thresholds for different types of decisions
- There should normally be an appeal procedure

Questions to consider:

What rules do we follow today when making decisions as a community? If we hold community votes what rules do we follow? Are these rules meeting our needs? What rules, if any, should be in the constitution?

12. Transitional Provisions

- Given that the constitution of a Nation will supersede and replace any structure of governance that preceded it, transitional provisions may be necessary
- Might include rules allowing for the continuance of the previous governing body until the new governing body is selected in accordance with the constitution
- May allow for certain parts of the constitution to be phased into effect

Questions to consider:

How and when would our constitution be implemented (e.g., part of self-government arrangements, treaty, or is it independent of any negotiations with Canada)? What parts of the constitution should come into effect immediately or be delayed?

13. Amendment

- All constitutions have amending provisions
- Usually a constitution will be amended in the same way it was initially adopted
  - For example: by a referendum of the citizens where 50% plus 1 of those electors voting in the referendum vote in favour of the amendments
- The provisions will include how amendments can be initiated
  - For example: by a citizens' petition, by the governing body, etc.

Questions to consider:

What threshold should be used to approve an amendment to the constitution? Who should be permitted to initiate an amendment to the constitution?

Some Lessons Learned from other Nations

Keep it simple

- Do not have overly prescriptive rules in the constitution
- Remember the constitution will be harder to change than most other laws
- Keep the language simple and clear– use people that know how to draft

Be Creative

- No one size constitution fits all circumstances, so avoid 'cookie-cutter' approaches and be wary of borrowing too much from others
- Look to your own conventions, practices and traditions first
- The community will decide the content of the constitution not its advisors

Ensure community involvement

- Ensure there is an open and inclusive process. Look to the best ways to involve all parts of the community and to create safe spaces for resolving any controversial issues

Take your time

- Do not rush the development of the constitution
- It is too important

When can we develop a constitution?

- Constitutions are developed by our Nations as part of a comprehensive self-government initiative (whether inside or outside of the BC treaty-making process)
- Many of the core elements of constitutions are found and developed through *Indian Act* or sectoral governance initiatives:
  - For example: custom election codes, membership codes, section 81 by-laws, etc. under the *Indian Act*
  - For example: institutions of governance and financial management under a land codes under the First Nations Framework Agreement on Land Management or the Fiscal and Statistical Management Act
- Constitutions can be developed outside of a comprehensive self-government initiative

When can we develop a constitution?

The "Just do it" approach:

- A Nation does not have to wait until they have a self-government agreement with Canada or are part of a sectoral governance initiative to develop a constitution
- The "just do it" approach has proven a very powerful exercise for some Nations although there are some risks:
  - For example: some citizens and others governed by the constitution may not recognize its authority given the continued application of the *Indian Act* and other federal laws
- There is a need to develop a mechanism so that when a First Nation, or a group of First Nations, develops and adopts a constitution as ratified by its citizens, those First Nations would be able to remove themselves from a significant portion of the *Indian Act* and be recognized as a 'self-governing' Nation

3.4 TOOLS

COMMUNITY QUESTIONS — CORE INSTITUTIONS OF GOVERNANCE

Handout

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Community Questions
Core Institutions of Governance

The "Community Questions" tool consists of three handouts: "Our Peoples"; "Our Lands & Resources"; and "Our Core Governance". Each sets out a number of important policy questions that are the same fundamental questions that all our Nations will be asking, considering and answering as we rebuild and move away from governance under the *Indian Act*.

These policy questions are best discussed and considered in small groups of citizens (e.g., in focus groups, working groups or a workshop environment). Ultimately how a Nation answers these policy questions will determine what its institutions of government look like and how the vision for the Nation is reflected and translated into its core laws.

To help your Nation consider these important policy questions you may wish to refer to the Part 1 of the BCAFN Governance Toolkit: A Guide to Nation Building – *The Governance Report.* The *Governance Report* provides a discussion around many of these questions as well as provides examples of, or links to, how other First Nations in BC are answering these questions. Please refer back to the BCAFN website (www.bcafn.ca) for any updated lists of questions or additional lists for other subject areas.

Our People

Generally, nothing is more fundamental to a people than the right to determine its citizenship. Today the *Indian Act* represents the worst type of colonial legislation in that it defines for our peoples their identity and internal community rights. The following questions are designed to help our community begin to deconstruct our *Indian Act* reality and develop our own rules for determining citizenship in our Nation.

Citizenship

In considering the issue of citizenship, the following four questions have been posed by the National AFN offices for dialogue among our Nations:

1. What does First Nation citizenship mean to you today? How is this different from your grandparents? Will it be different for your grandchildren?

2. What is your understanding of the roles and responsibilities of citizens and their governments?

3. How would you like to see your Nation move forward?

4. What tools are required to make change a reality?

Some further questions, more personal in nature, you may wish to consider when discussing this issue:

1. What is most important to you 1) being a citizen of your Nation 2) being a member of your band 3) having Indian status? and why?

2. What criteria would you see for becoming a citizen of your Nation? How would this be different, if it is different, from determining membership in your band today?

3. How should we address the issue of dual citizenship and the movement of our citizens between Nations and their respective rights and responsibilities?

4. Can we define our rules for citizenship before we have recognized the need to reconstitute our governing structures beyond the *Indian Act*?

Our Lands & Resources

Moving beyond the *Indian Act,* for those lands over which our Nation governs, we will need to develop a system of land tenure and land management that reflects our vision and priorities. The policy decisions we make in designing our system of land tenure and land management will have a profound impact on our future as they do for any peoples. The following questions are designed to help us continue this conversation amongst ourselves.

Underlying Title to Lands

1. How should the underlying title to our lands be held (e.g., by Canada in trust as "lands reserved for the Indians"; in fee-simple held by our Nation; other)?

Creation of Private Property Interests in Lands

2. Should our citizens be able to acquire private property interests in our lands (e.g., as they can under the *Indian Act* through certificates of possession/occupation, other)? Should there be any terms and conditions on these interests?

3. If we choose to allow private property interests to be created in our lands how should those interests be initially allotted (granted)? What would this process look like?

4. If we choose to allow private property interests in land then what natural resources on, or under, the land (e.g., minerals, timber, water, etc.) would be included in the interest in land and which might be excluded?

5. Should third parties (e.g., non-citizens, corporations and other persons) be able to acquire interests in our lands (e.g., leases, licenses or permits)? If third parties can acquire interests, what should the process be for the granting of third party interests in 1) community held lands and 2) lands held privately by our citizens?

6. Should citizens be able to grant secondary interests in lands to third parties (e.g., leases, permits, licenses) with or without the consent of our governing body (e.g., chief and council)?

Registration and Transfer of Interests in Lands

7. How should interests created in our lands be registered (e.g., in a lands registry established by our own Nation, a registry maintained by Canada, a provincial registry, or some other registry)?

8. Should citizens be able to transfer land interests between themselves (e.g., give, sell or will them, etc.), without requiring the consent of our governing body (e.g., the chief and council)?

Using Interests in Lands as Security

9. Is it important that citizens be able to obtain a mortgage secured against their private interest in land?

10. If interests in land are permitted for third parties (e.g., by lease, license or permit etc.) should there be any maximum length of the interest granted or other terms and conditions?

Management and Administration of Lands

11. What involvement should the governing body (e.g., chief and council) have in the day to day management and administration of our lands?

12. What land management and administration functions should be handled by staff in accordance with the laws and policies of the Nation?

13. Should we have a land use plan and if so how will it be developed, approved and amended?

14. What role, if any, should the citizens have in land use planning and land use decisions for 1) community held lands, and 2) for lands over which private interests may have been established?

15. What role, if any, should third parties with interests in our lands have in land use planning and land use decisions?

Our Core Governance

In designing or developing your core institutions of government, each Nation will need to ask itself and answer some fundamental policy questions. Some of these policy questions include:

1) To what extent do we want our contemporary institutions of government to reflect our culture and traditions? Do we still want a chief and council as that system is generally understood under the *Indian Act* or do we want another type of government? How will our traditional systems of governance be accommodated?

2) What type of institutions do we need to support the type of law-making powers our Nation may desire?

3) How understandable do we want our systems to be to external audiences?

4) How much participation by our citizens in our institutions of government do we want, and what form do we want it to take?

5) Do we want to separate the functions of our government (e.g., legislative / executive / judicial)?

6) What will our decision-making processes, including law-making processes, look like?

7) How will we ratify (approve)any changes to our institutional framework?

The Governing Body

The following questions are provided to assist our Nation in our discussions regarding how to structure our governing body. These are typical of the questions raised by those who for the most part are familiar with governance structures under the *Indian Act*. There are, of course, many ways to structure your governing body, as evidenced by the different examples negotiated and implemented under comprehensive governance arrangements. The questions are not intended to be exhaustive or to prescribe a particular approach for a Nation.

<u>Chief and Council</u>

If we choose to have a chief and council the following are some questions to consider:

1) How many members of council should we have?

2) Do we need an additional level of governance with its own governing body, perhaps a tribal council made up of several First Nations?

3) How long should council terms be?

4) Should there be qualifications set for who can run for chief and council?

5) Should there be a chief?

6) What should chief and council get paid?

7) What type of safeguards can we build into our institutions against abuse of power by chief and council?

8) How do we address conflict of interest within our governing body?

Meetings of the Governing Body

1) How should meetings of the governing body proceed?

2) Who should be able to attend meetings of the governing body?

3) How do we keep records of our government business?

Procedures to make Laws

1) What procedures should we follow in order to make by-laws or laws?

2) Some of the policy considerations involved in designing your law enactment process can include:

    a. What is the process to initiate a law?
    b. Are there different types of laws (laws, by-laws, regulations, orders, etc.)?
    c. Can a law be initiated by a member of the governing body, or by the governing body as a whole?
    d. Can laws be initiated through another process, for instance through a community petition or request?
    e. What is the appropriate balance between "community control" of the law-making process and the need for the governing body to act quickly where it might need to do so?

f. How is the law developed and who is responsible for its development and the policy considerations that go into its development? What significant policy issues should be taken to the community?

g. How is the law enacted?

h. Where are laws kept?

i. How are persons affected by the law consulted before the law is made?

3) How will our laws be enforced?

Establishing other Institutions of Governance

1) In addition to our primary governing body (e.g., chief and council, legislature etc.) should we formally establish other institutions of governance and how would they work together (e.g., executive council, elders council, youth council, school board etc.)?

2) Should we establish committees (e.g. of council, or the community) and for what purposes?

3) What is the role of commissions, boards and tribunals, if any, in our governing system?

Developing a Constitution

In designing the process to develop a constitution some questions we should keep in mind are:

1) Who should be involved in developing the constitution?

2) What is the role of advisors?

3) How should we ratify the constitution?

Content of the constitution:

1) To what extent do you want to reflect culture and traditions in the constitution?

2) What institutions of governance do we want?

3) To what extent is it important that an external audience understand our ways of doing things?

4) How much participation by members do we want?

5) What is an appropriate division of powers between institutions?

6) Will decision-making be vested in one body? Do other decision-making processes need to be considered as well?

If we decide to develop a community constitution we will need to decide what headings to use and in what order and the degree of detail and complexity we will include in our constitution. As a guide the following list is provided:

1. Founding provisions
2. Description of lands
3. Citizenship
4. Rights, responsibilities and freedoms of citizens.
5. Institutions of government
6. Law enactment
7. Meetings
8. Conflict of interest
9. Financial administration
10. Adjudicatory bodies
11. Referendums
12. Transitional provisions
13. Amendment

3.5 TOOLS

COMMUNICATIONS PLAN
Template

All tools in this section are also available on the disc attached to the inside back cover of the binder. For your convenience, some of these tools can be modified to meet your Nation's specific needs. The tools, including any updated versions, will also be made available on our website at www.bcafn.ca

Communications Plan

This tool is under development

Please visit www.bcafn.ca to download updates

BCAFN Governance Toolkit

Part 3: A Guide to Community Engagement

Part 3 – Tools