

**First Nations Governance Pilot Projects:  
Challenge and Innovation**

**FINAL REPORT**

**Volume 2**

**Case Studies of First Nations Governance Projects**

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**Prepared for the First Nations Governance Centre  
By  
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# Volume 2

## Case Studies of First Nations Governance Projects

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# Case Studies of First Nations Governance Projects

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## Introduction

This volume contains the results of an in depth review of twenty-nine (29) First Nation governance projects that were completed with funding support from the Department of Indian Affairs and Northern Development in 2003 and 2004.

The twenty-nine First Nation governance projects are presented in a case study format, with the intent of highlighting First Nation achievements, best practices and innovative approaches to the resolution of contemporary First Nation governance issues. As a companion to the final research report contained in Volume 1, this volume provides readers with an opportunity to explore further the experiences of First Nations that undertook governance projects.

Projects reviewed in Volume 2 were selected for case study, either because of the governance tools which they ultimately produced or because of the effective use of processes of community engagement they employed through the project. The case studies are discussed in several thematic categories corresponding with the different aspects of First Nation governance addressed through funded projects.

### a) Case Study Selection

Through a review of individual reports, First Nations governance projects of general interest and projects demonstrating innovative practices were noted by the research team. These projects were then considered as potential candidates for further investigation through the case study portion of the research project. In all cases, First Nations and organizations were contacted directly and invited to comment on the case study as presented.

A list of potential First Nation governance reference projects was shared and discussed with the First Nations Governance Centre. A final set of First Nation projects was selected for inclusion in this volume of the research report. In general, projects were selected for their general interest and representation of best practices, including practices rooted in traditional governance.

Criteria used to select projects for case study included:

- general relevance and transferability, both in terms of community engagement processes and products (such as codes),
- scope of the project (including larger projects that addressed more than one facet of governance, and smaller, more focused projects),
- project proponents (projects undertaken by aggregations of First Nations and individual First Nations),

- projects demonstrating orientations towards First Nation governance based on contemporary or mainstream approaches, as well as traditional and culturally-based forms, and
- regional representation and contribution to diversity.

In selecting projects to be referenced in the case study report, emphasis was also placed on selecting those that were comprehensive in scope or product, meaning they addressed a range of governance matters (e.g. finance, governance policies and procedures, elections, appeals, conflict of interest). Also, projects that involved a high level of community involvement or engagement, or used innovative processes to complete the work were considered as candidates for inclusion as case studies.

Letters were sent to all First Nation reference project proponents informing them of the research and the possibility of follow up by a member of the research project team in order to obtain additional information. In all cases First Nations and organizations were provided an opportunity to comment on the case studies as presented.

**Appendix E** lists all project reports that are referenced as case studies in this Volume.

## **b) Organization of Case Studies**

The case studies are organized according to nine thematic categories or "clusters" that emerged through the review of the First Nation governance projects. Each addresses an aspect of First Nation governance, or a facet of governance capacity development.

### *1. Planning for the Future*

This thematic cluster encompasses four case studies of First Nations engaged in a diverse set of community-based processes of reflection, development and planning for future governance arrangements, both at community and aggregate levels.

### *2. Traditional and Adapted Forms of Government*

These case studies include proposals for First Nation government structures and procedures based on traditional and cultural forms. In general, the form of government these communities propose extends beyond the *Indian Act* and successor legislation such as the proposed *First Nations Governance Act*.

### *3. First Nation Constitutions*

These case studies provide examples of First Nation constitutions, or constitution-like documents. All of the constitutions contemplated in these projects would take the First Nations involved beyond the legislative scope of the *Indian Act* and the anticipated *First Nations Governance Act*.

#### *4. Code Development: Government Administration and Financial Management*

This set of case studies reports on First Nations governance projects that set out to develop tangible products and codes in the areas of First Nation government administration and financial management.

#### *5. Leadership Selection (Elections) and Community Decision Making*

Examples of a First Nation election code, a community ratification procedure, as well as a proposal for the establishment of a regional institution to provide electoral services to member First Nations are described through these three case studies.

#### *6. Appeal, Redress and Enforcement Mechanisms*

This set of case studies considers two proposals for First Nation appeal and redress mechanisms. A third case study presents the results of a project concerned with identifying impediments to effective enforcement of First Nation bylaws.

#### *7. Indian Act Administration: Making it Work*

These case studies focus on First Nation projects anchored in the *Indian Act* administration context, but exemplifying the efforts of First Nations to "make things work better" on a day to day basis. Most solutions and proposals are aimed at effecting improvements in government policy and procedure, for example by clarifying roles and responsibilities and developing clear administrative policies and procedures.

#### *8. Conflict of Interest and Codes of Conduct*

The results of three separate projects, each of which developed conflict of interest and/or codes of conduct are reported in this set of case studies. In each case the project is cognisant of community traditions and values, but they differ in their tone and content. These codes most likely could be implemented in any legislative or constitutional context for First Nation government.

#### *9. Human Resource Management and Personnel Policies*

Three case studies provide examples of First Nation proposals for effective human resource management in First Nation communities, including through an aggregated First Nation public service commission.

In presenting the case studies, each thematic cluster is introduced through a discussion of:

- the current situation,
- the issues and challenges which First Nations are trying to address, and

- the trends that became evident from a review of *all* First Nation governance pilot project reports that addressed the particular subject matter, or can be associated with the cluster.

Individual projects selected as case studies are then discussed in a narrative form. The intent is to convey the particular experiences of First Nations and First Nation organisations in developing solutions to common governance challenges and issues.

The case studies can be arrayed across the spectrum of possibilities for First Nation government. They deliver solutions that could be implemented in either one or several governance contexts, including the *Indian Act*, the *First Nations Governance Act* and under First Nation self-government arrangements. In this respect they demonstrate both the diversity and commonality of approaches First Nations are taking in the further development of First Nation governance.

# 1. Planning for First Nations Governance

Since the introduction of the *Indian Act*, First Nations in Canada have rarely had the opportunity to respond to new governance systems or proposed changes to legislation and policy affecting First Nation governance in other than a reactionary manner. The First Nations governance projects initiative provided an opportunity for First Nations to think strategically about the future, even though the program's terms of reference encouraged First Nations to focus on developing tangible tools of governance associated with the *First Nations Governance Act*.

Nonetheless, several First Nations took advantage of the opportunity provided by the initiative to approach governance reform and community government development from a strategic direction. As a result, these projects provide evidence of the type of organizational groundwork, internal self-reflection and community building that is occurring either as a result of, or in conjunction with First Nations governance reform.

The plans and strategies that emerge from many cases are innovative, envisioning movement well beyond the current framework of *Indian Act* administration (e.g. Hollow Water First Nation, West Moberly First Nation), looking to tradition for guidance (e.g. Musqueam, Fort Severn First Nation), or building a strategy and vision of governance around a core concept. For example, the Communaute des ancinapek de Kitcisakik used the concept of "savoir etre and savoir faire", roughly translated as "knowing who we are so that we know how to be and to behave", in order to ground their project. For some projects the groundwork was more practically focused on assessing current challenges, needs, capacities and opportunities for First Nations governance (e.g. Mamaweswen, Algonquin Anishnabeg Nation, Kamloops Indian Band).

## Overview of Case Studies

The four First Nation governance projects reviewed as case studies here have in common a concern with the "big picture" of community development and broad considerations of First Nation governance, nation-building and planning for the future. In general, the project reports describe community processes and outcomes that were part of a larger initiative, or an initiative not exclusively tied to the Department of Indian Affairs' First Nation Governance program.

With respect to process, these projects rely exclusively on internal resources. All were carried out either by First Nation or Tribal Council staff, demonstrating the significant capacity that exists now within First Nation administrations to undertake the type of strategic planning and assessment work that has been completed. The projects incorporate strong forms of public and community participation and action research. They also deliver codes and other instruments of governance that could be implemented in an *Indian Act*, *First Nations Governance Act* or self-government context.

These case studies provide examples of First Nations assessing their current circumstances and existing capacities against emerging expectations for First Nation government. They set out plans and strategies, and propose community processes to support the development of First Nation governance systems, looking both to the future and the past for inspiration. Projects selected as case studies are as follows:

**Mamaweswen, the North Shore Tribal Council** represents seven Ontario First Nations located on the North Shore of Lake Huron, within the Robinson-Huron Treaty area. Through its project, the Tribal Council undertook to assess the human, functional and strategic capacity of its member First Nations to effect "good governance".

**Fort Severn First Nation** is the most northerly community in Ontario and has a population of approximately 600 on-reserve residents. Its report considers how community traditions and traditional values can provide a source of guidance in planning and organising for the future.

**Hollow Water First Nation** is a community of approximately 1,200 people located 400 kilometres north east of Winnipeg, Manitoba on the eastern shore of Lake Winnipeg. Its report presents the results of a frank and detailed discussion of community views on moving towards a Hollow Water First Nation defined form of government. A range of issues were discussed, from conflict of interest to traditional governance.

**York Factory Cree Nation**, a remote community of 400 located 120 miles east of Thompson, Manitoba conducted an assessment of current managerial and administrative capacities. This led to the proposal of several interrelated plans that would modify the existing political and administrative structure and organisation of the First Nation, thereby strengthening its capacity for First Nations governance.

#### **a) Mamaweswen, the North Shore Tribal Council**

Mamaweswen, the North Shore Tribal Council views its responsibilities as inclusive of anticipating, preparing for and creating a positive climate for First Nations governance. Through its governance project, the North Shore Tribal Council set out to explore the concept of governance and what it means to member First Nations.

By posing the question "what is governance?" the North Shore Tribal Council was able to confirm that member First Nations aspire to rebuild traditional systems of government that can address contemporary challenges and issues. A key concept that underpins the project report is that good governance is a pre-requisite for human development, and effective capacity is a pre-requisite for good governance. Accordingly, the project proceeded to assess the human, functional and strategic capacity of member First Nations and in particular, their ability to absorb new governance arrangements.

Encountering a level of consultation fatigue within the communities, the project team chose to focus on a review of existing data and information sources, including organisational reviews, human resource evaluations and the results of previous strategic planning exercises.

The review identified and examined capacity issues, constraints and trends in five key areas. These included, for example:

- the *public sector context*, including the legal and regulatory environment for First Nations government, budgetary support and policies, and
- *training and education* and the *human resource* base available to First Nation governments.

In each of the areas assessed, the review identified impediments to effective First Nations governance, all of which pointed towards the need for a comprehensive strategy to support First Nations prepare for First Nation government. Set out in broad strokes, the strategy proposed to address the following major challenges:

- Lack of self-sufficient First Nation economies, which result in a preoccupation on the part of First Nation governments with day to day social and economic challenges.
- Unpredictable financial resources which impair First Nation government capacity to prepare and implement long term plans for governance.
- Lack of effective governance infrastructure including judicial, administrative and financial structures.
- First Nations fractured along residency, gender, youth and registered Indian status lines.
- The federal policy environment.

The strategy encompasses proposed activities in several areas. For example, it is proposed that First Nations build the foundation for First Nation government through the development of First Nation constitutions. Also, it is recommended that First Nation governments establish procedures for community consultation and develop decision-making procedures that foster accountability. Building the nation by re-building relationships among First Nations and pursuing common goals is another component of the strategy.

## **b) Fort Severn First Nation**

As a community, Fort Severn First Nation is grappling with many issues common to other First Nations, including the desire to increase transparency, accountability and responsiveness of government, as well as clarify the roles and responsibilities of Chief, Council and administration. In seeking solutions, the First Nation looked to its governance traditions for guidance.

The Fort Severn First Nation's governance project objectives were to discover traditional values and identify "what used to work". It was recognised early on that the challenge lay in discovering how traditions could be applied in a contemporary setting. To meet this challenge, the project co-ordinator interviewed a large number of Elders and distributed questionnaires to community members.

Land based activities involving Elders formed a staple of this reflective community process. For example, one approach combined the delivery of a Level 1 canoe tripping certification

course with discussions with Elders about principles that traditionally governed individual and social behaviour, and government.

With respect to outcomes, several among many proposed responses to current issues are notable. First, in an effort to increase responsiveness and accountability, the report recommends several mechanisms to improve communication between Council and community. These include, for example, reintroducing traditional practices such as home visits by leaders, and reporting to the community on meetings attended outside the community by members of Council or by other First Nation representatives. With respect to government structures, an Elders Committee is envisioned, fulfilling the combined roles of an appeal court, an auditor general and a senate. Also, a standing committee to report on the financial affairs of First Nation Council and Administration has been recommended. Finally, youth are being encouraged to attend public meetings, to watch, listen and learn, and to offer their views and perspectives.

This report highlights the fact many of its recommendations can be implemented through actions rather than funding. For example, adherence to traditional values, providing Elders with certificates recognizing their participation and contributions to community governance, communications activities such as community meetings and home visits by leaders are all identified as "no cost" or "low cost" solutions.

The Fort Severn experience will be of general interest to other First Nations, in particular for the way it framed a community-based process in order to find solutions to contemporary governance issues. This involved "bringing the past forward" through a close examination of traditional values and governance traditions.

### **c) Hollow Water First Nation**

Hollow Water First Nation took the opportunity presented by the governance project to start thinking anew and in a systematic way about what First Nation government means to the community. This involved a consideration of how traditional forms of government, the clan system, community and family values, as well as traditional principles and philosophies can provide the building blocks for new forms of First Nation government.

Through its report, the community expresses the common view that a governance framework "by the people and of the people" must draw its inspiration from the First Nation, its resources, culture and traditions.

With respect to process, the project encompassed several activities including research, committee meetings, workshops and community surveys on aspects of governance (e.g. conflict of interest and appeals). Workshops were organized with youth, with the community and with the off-reserve membership in Winnipeg. Through these workshops information was provided on the *Indian Act*, the *First Nations Governance Act* and the Hollow Water Governance Project itself. Discussions took place on what Hollow Water First Nation government might look like in the future, and how to proceed. Traditional talking circles were used effectively, and are noted as a method that will be used in future phases of the governance project.

Significant support for a longer term effort to develop a self-governing community was expressed throughout the project. In this regard, the community plans to continue with a governance development process. The next phase of the work is proposed as encompassing:

- establishment of a governance project working group,
- development of governance codes, standards, redress mechanisms, bylaws and regulations,
- gaining the support of Chief and Council for the process,
- community dialogue on issues of self-government, and
- development of a ratification process acceptable to the community.

#### **d) York Factory Cree Nation**

York Factory Cree Nation has been engaged in institutional renewal and development for a number of years. This work is based on *Ininew* values and their knowledge that, politically, they have a right to govern themselves as they have always done. More recently, the community has moved to structure and clarify institutions of government, so that citizens, administrators and external authorities understand how government works at York Factory Cree Nation.

Prior to the introduction of the governance pilot project, a number of governance instruments had been developed to structure and clarify the York Factory government structure. These included:

1. A draft *Council Governance Manual* which clarified roles and responsibilities within First Nation government.
2. A draft *Financial Management Policy* that described how the fiscal resources of the community are to be organised and managed.
3. A draft *Human Resources Manual* that provided a guide for the management and development of human resources.

However, for various reasons, including a lack of financial support for human resource development and training, the First Nation encountered difficulties following through and maintaining operational systems based on these instruments. York Factory Cree Nation took advantage of the pilot project funding made available in 2003 to strengthen and to take the community-based work on governance further.

In the first phase of its First Nation governance project, the York Factory Cree Nation conducted a management assessment. This provided a snapshot of current government organisation, operations and citizen participation in public decisions. The management assessment was concerned with identifying the current situation, issues and solutions in respect of seven management areas:

1. strategic planning
2. mission and plans
3. leadership
4. organisational structure and lines of communication
5. financial management
6. human resource management
7. community participation

With respect to *strategic planning*, it was noted there is nothing in place with respect to community vision, mission and goals for the future. In this regard, the report recommends that York Factory Chief and Council convene workshops with members, staff and community representatives to develop such a plan, and to identify roles and responsibilities for plan implementation. Many of the issues and sub-components of the plan (discussed below) would be the subject of community discussion and further development through these workshops.

The management assessment noted that although there is a *community planning process* in place in association with the flood compensation agreement, the First Nation has no planning framework that allows programs, and service management and delivery to be strategically integrated. Accordingly, the report recommends that an annual planning framework be adopted to guide planning and related activities throughout the calendar year. The framework identifies events and activities occurring at the level of Chief and Council, administration and community.

The co-ordination of political and administrative *leadership* is identified as an area requiring priority attention. Like many other First Nations, York Factory Cree Nation's political and administrative functions are not clearly separated, a situation that blurs accountability and reporting relationships. The report recommends measures to achieve a clear separation of political and administrative roles and responsibilities. For example, the appointment of a Director of Operations is identified as a first step towards strengthening management capacity.

Although the First Nation has a *financial management* plan in place, several areas for the development of financial procedures and administration are identified, including a comprehensive financial administration policy to enhance transparency and accountability.

Current modes of *citizen participation* in government are identified. These include citizen committees, communications and citizen meetings. The management assessment recommends that public records such as budgets, funding agreements, administration policies, audits and other key documents related to programs and services be made publicly available in a designated public place.

Finally, based on the management assessment and review, planning for the future would include the preparation of a *human resource strategy* to train and develop a skilled and competent workforce with the capacity to manage the organisation and deliver programs and services.

It is intended the above recommendations could be taken forward in the next phase of the governance project. This next phase will involve community discussion and further development of governance policies and procedures, including in respect of redress, leader selection, and financial

administration. It also will involve implementation of an annual planning cycle providing opportunities for community participation, and long term, strategic planning to guide the First Nation in the future.

## **Conclusion**

The case studies described above, and specifically First Nation plans and proposals for future action are innovative and visionary. Some appear to anticipate moving beyond the *Indian Act* administration framework, while others outline strategies to effect improvements in current First Nation government management and administrative arrangements. In all cases, First Nation and community traditions and values are recognized as having a place in charting the way forward. Also, for these First Nations, planning for the future involves a practical assessment of the challenges, needs, desires and opportunities for First Nations governance.

## 2. Traditional Governance and Adapted Forms of Government

In the early 19<sup>th</sup> century, British and Canadian governments began interfering directly with the autonomy and sovereignty of Indigenous nations. They forcefully disposed of traditional governments and replaced them with a system of indirect rule effected through newly created offices of Chief and Councilor. Initially viewed as an experiment in ‘civilization’ and ‘assimilation’, this system soon became preferred federal policy and was institutionalized in the *Indian Act* using Band Councils.

Over time Band Councils have taken on a life of their own as community institutions whose authority and responsibilities extend far beyond the legal and political confines of the *Indian Act*. Despite this, Band Councils continue to be viewed as ‘alien’ institutions by many. As a result, many communities are actively pursuing the renewal of traditional governance or the renewal of traditions within a system of governance that combines elements of First Nation and imported Canadian political traditions.

Neither the *First Nations Governance Act*, nor the First Nation governance projects provided for the re-establishment of traditional forms of government, or the ‘traditionalisation’ of the Band Council form of government. The fundamental reform of core First Nation government structures and procedures remains outside the ambit of current federal legislation and policy, as well as initiatives such as the *First Nations Governance Act*. For example, to be compliant with the *First Nations Governance Act*, First Nation leadership selection codes must have provided for elected governments. In contrast, some traditional systems of leader selection are merit-based, or involve a consensual nomination process executed through a public gathering of all members of a community.

Despite these impediments, many First Nations, through their pilot projects, did engage in discussions of traditional governance, or used their traditions as a basis for exploring the foundations for good governance and development of community-appropriate governance tools. In so doing they engaged in a diverse set of projects that ranged from integrating a discussion of traditional practices regarding citizenship to an elaborate modeling of a new political system grounded in the nation’s traditions.

Several reports look to traditional forms of governance to guide them towards solutions to current needs and challenges (e.g. Northwest Tribal Treaty Nations, Ktunaxa Kinbasket Tribal Council). Others resulted in proposals to establish government bodies representative of different constituent groups within the community or nation, such as Elders and youth. These new structures are primarily envisioned as having an advisory function, interfacing with the existing Council structure created by the *Indian Act* (e.g. Shoal Lake First Nation, Pheasant Rump Nakota First Nation, Sliammon First Nation).

Many First Nation governance projects raised and explored a complex array of issues pertaining to the re-establishment of traditional governance and renewal using traditions. Issues that were addressed include:

- What is traditional governance?
- What are traditional political values, philosophies and practices?
- What would a traditionally grounded citizenship code look like?
- What is the role of Elders traditionally?
- What should the role of Elders be today?
- Did the traditional system provide for a separation of judicial, legislative, executive and administrative functions and structures of government?
- Does a traditional political system meet the demands of modern First Nation governance?
- How can a traditional government structure be ‘modernized’ or combined with the Band Council form of government?
- How can a First Nation’s political traditions be used to promote good governance today?

While a significant number of First Nation governance projects addressed the above topics, attention is focused here on those cases that dealt explicitly with re-establishing traditional governance or inspiring contemporary First Nation government through the infusion of traditional values and practices.

## Overview of Case Studies

Three First Nation governance projects were selected as case studies. The forms of governance described in these reports would, in respect of some matters, place the First Nations beyond the legislative and institutional parameters of both the *Indian Act* and the proposed *First Nations Governance Act*. However, the case studies also provide examples of how traditional ideas and practices are being incorporated into the Band Council system of governance, or used to ground the development of new forms of First Nation governance.

**Shoal Lake #40 First Nation** is located in the Lake of the Woods area of Ontario. Its governance project describes a ‘portfolio and decision-making process’ that it developed to facilitate community participation in governance by "fusing teachings and traditions with modern ways of doing business".

The **Ktunaxa/Kinbasket Tribal Council** is located in the southern interior of British Columbia. The Tribal Council consists of five semi-independent bands – ?Akisqnuq (Columbia Lake), Lower Kootenay, ?Aqam (St. Mary’s), Shushwap and Tobacco Plains. Its project entailed the codification of community/tribal governance models and delineation of legislative, executive, judicial and administrative functions at both the community and the Tribal Council/Nation level.

The **Sliammon First Nation** is located near Powell River in British Columbia. The Sliammon pilot project is part of an ongoing project that has its roots in the BC treaty process. Its project involves the use of 'open space technology' to incorporate traditional processes into the *Indian Act* system of administration using *Sijitus* – a community structure involving traditional family representation.

### **a) Shoal Lake #40 First Nation**

To help achieve the community's expressed goal of developing open, accountable and effective government, Shoal Lake First Nation used the opportunity provided by the First Nation governance project to advance their ongoing work on a 'portfolio and decision-making process'. The project fuses tradition with the Band Council system. It does so by opening the decision-making process up to the community using a system of community circles and traditional principles to guide Chief and Council in four key areas of decision making and portfolio responsibility: education, economic development, social development and infrastructure.

The Shoal Lake governance project represents an attempt on the part of the community to "keep with the teachings and traditions, and to fuse tradition with modern ways of conducting business". In so doing, the project remains grounded in Anishnabeg traditions and understandings of the circle and the four directions. The portfolio and decision-making structure that is proposed requires that Band Council decisions involve the entire community (the circle) and input from the four directions.

Four "community councils", one each representing Elders, youth, women and men, would be established to facilitate community participation in the four key portfolio areas of education, economic development, social development and infrastructure. Each of the four councils would engage with these portfolio areas, and would provide a delegate to the "executive councils". Executive councils would be established in association with each of the four portfolio areas. Their membership would comprise delegates from the four community councils as well as a Band Councilor. They would act as community conduits, guiding and supporting both Chief and Council and the four community councils in the portfolio areas.

In fusing tradition and modern political practices, the project goes beyond simply designing a mechanism to facilitate community participation or create a more open, accountable and effective government. The project extends this by stating that the seven natural laws of the Anishinabeg (bravery, honesty, humility, love, respect, truth, wisdom) must be the guiding principles and values of their system of government.

It should be noted that the portfolio and decision-making process that is proposed would be interfaced with the existing Band Council system. As such Chief and Council would retain political and legal authority, and ultimate responsibility.

In terms of implementation, Shoal Lake First Nation had not begun implementing this proposed process at the time of reporting. Implementation planning, however, was well underway and cost

estimates prepared. Costs of implementation include developing a web-site to keep the community informed, hosting and conducting community meetings and circles, and executive council meetings.

## **b) Ktunaxa/Kinbasket Tribal Council**

The Ktunaxa Nation consists of five semi-independent bands. The Ktunaxa/Kinbasket Tribal Council serves both Ktunaxa and Kinbasket communities in the capacity of an *Indian Act* Tribal Council. As part of its ongoing nation-rebuilding and treaty negotiation process, the Ktunaxa have agreed to return to a model of governance based on the principle of individual, family and community accountability to the nation, and a balancing of responsibilities and privileges in four areas – social investment, traditional knowledge and language enrichment, land and resource stewardship and economic investment.

To support this development, the Ktunaxa Nation engaged in two interrelated governance projects. In the first project, an analysis and codification of community/tribal governance models and the delineation of legislative, executive, judicial and administrative functions and authorities held at both the community and the Nation level was completed. The project describes a multi-level political system with both nation and community level institutions. It includes an institutional map identifying traditionally grounded institutions based on family structures and describing their inter-relationships with individuals, family organizations, and the community.

In the second project, the role of Elders in Ktunaxa Nation Government was explored and codified.

The Ktunaxa/Kinbasket Tribal Council proposes a system of government which would replace the *Indian Act* in all five First Nation member communities while re-affirming and re-creating a system of Ktunaxa Nation governance. The Ktunaxa system is based on an elaborate system of family and community groups and structures, all of which have roles in the four areas of community and nation responsibility (social investment, traditional knowledge and language enrichment, land and resource stewardship and economic investment). Ktunaxa groups, government structures and offices include:

- family (primary, extended),
- family heads (primary, extended),
- family sector speakers,
- community sector councils,
- sector chiefs,
- council of community chiefs,
- community elders senate,
- national sector council of chiefs,
- national chiefs assembly,
- sector grand chiefs,
- council of grand chiefs, and
- national elders senate.

Judicial, legislative and administrative authorities would be exercised concurrently at community and nation levels.

The proposed model of Ktunaxa government is not specifically described as representing a return to a traditional form of Ktunaxa governance. Nevertheless, it does represent a renewal of governance grounded in tradition, structurally, functionally and philosophically, and based on traditional principles of individual, family and community accountability to the nation. Though not explicitly stated, it appears to re-create traditional structures that linked individuals, families and communities to the nation, for example, through the use of different family organizations and their associated structures.

Apart from adopting a traditionally-grounded institutional design, Ktunaxa governance is predicated on Ktunaxa ideas and understandings of such matters as responsibility, community, identity, representation, consensus, and good governance. As such, not only the structure of government but also the practice of government is traditionally grounded. To this end, Ktunaxa values, philosophies, and traditions such as consensus, or the idea of “everyone taking a bite of the same thing, at the same time, and chewing long enough to swallow without choking” is operationalised.

The Ktunaxa/Kinbasket Tribal Council’s report makes recommendations for other First Nations considering the development of First Nation governance models. It is noted that, most importantly, the model must "fit" the community, and as such it must be respectful of conditions such as the community's, internal social and political environments, and assets.

### **c) Sliammon First Nation**

The Sliammon First Nation governance project is part of an ongoing project also rooted in the British Columbia treaty process and community aspirations. Following the failed ratification of their Agreement-in-Principle in 2001, and a study concluding that a more inclusive system of governance was required, Sliammon First Nation began to think through how traditional forms of governance might be adapted to fit contemporary needs.

After a period of research and internal reflection, the community developed the concept of ‘*Sijitus*’ - a concept that combines traditional family representation with the process of ‘open space technology’. It is hoped that *Sijitus* will increase family involvement in government, create new accountability practices, and ground current and future structures of Sliammon government in the culture.

In brief, the *Sijitus* is a gathering of family spokespeople who represent the families of all people in the community (not just band members). Each family is responsible for putting forth one spokesperson and an alternate to represent their family at monthly meetings of the *Sijitus*. It is up to each family, working through a consensus-based process, to ensure that their representatives are meeting their needs and to replace them where necessary.

The mandate (*non peh gahn ehm*) of the *Sijitus* is to "develop strategies and action plans that

advocate and support the improvement of service delivery within the Sliammon community in a proactive manner on behalf of their family". To this end, the Sijitus is a bi-directional information conduit between families (the community) and the Chief and Council. Following each meeting, a report is submitted to the chief consisting of recommendations for both Chief and Council and boards. In a complementary fashion, Chief and Council and boards regularly provide all public minutes and, on a quarterly basis, report on what actions have been taken regarding the recommendations put forward by the Sijitus.

The Sijitus provides an opportunity for community members/families to have their concerns addressed in a community forum. It establishes a setting that facilitates community discussion and results in recommendations being forwarded to council based on community discussions. It allows for the dissemination of council plans, strategies and decisions to the families.

Though the Sijitus does not mark a departure from the *Indian Act* system of government, it is an attempt to return to and renew traditional governance. In a report appendix that presents the Sijitus to the community, the message is given that this is not a new concept; family spokespeople and headmen were how the people governed themselves 'pre-contact'. It is suggested that by taking away the traditional system of leadership as a family responsibility and replacing it with an elected leadership that is responsible to the entire community, the *Indian Act* created conflict and rifts within the community. It is anticipated the Sijitus will act as a positive force in resolving the division, mistrust and misguided ideas that are seen as products of the *Indian Act* system of government, by bringing back traditional values in both governance as well as community and personal interactions.

The First Nation views the Sijitus as having transformative potential both in terms of governance and overall community renewal. Aided by consultants and non-community facilitators (chosen for their expertise and knowledge of 'open space technology') and the infusion of First Nation governance pilot project funding, the Sijitus has taken root. People are enthusiastically participating. With each family representing, on average, 40 people, eleven families have been represented and eight additional families are planning participation. Also of note, both men and women ranging in age from their early 20s to their early 70s have been chosen as Sijitus spokespeople, and are attending monthly meetings of four hours in duration.

There is evidence already of tangible results. Successes identified in the Sliammon report include:

- increased involvement of families in a safe and constructive community forum in which dissent can be expressed,
- engagement of people from different 'factions' in the focused development of constructive recommendations for Chief and Council,
- improved accountability,
- development of trust between council and Sijitus, and understanding that this innovative system of governance can be constructive, non-threatening and effective in dealing with issues of substance, and

- creation of capacity building opportunities as a wide range of people become familiar with the issues, find solutions and assume leadership responsibilities.

Other tangible changes have been noted in respect of the responsiveness, transparency and accountability of Council. For example, Council minutes are delivered to each household and excerpts are posted in a newsletter. Council responses to Sijitus recommendations also are posted in the newsletter.

Many First Nations, Aboriginal organizations and academics have shown an interest in knowing more about the Sliammon experience and Sijitus. As a result, the Sliammon First Nation is in the process of creating a guide, based on its experiences, about the incorporation of traditional processes into contemporary band governance. The guide is intended to tell the story of Sijitus and the Sliammon plan for design and implementation. It will contain a number of transferable lessons learned by the Sliammon First Nation.

## **Conclusion**

The cases described above are innovative and visionary in their attempts to incorporate and renew traditional ideas, structures, philosophies and processes into contemporary governance.

In all three case studies, First Nations appear to be moving beyond the *Indian Act* and the proposed *First Nations Governance Act*. This is even the case in the two examples that propose community forums (Sijitus or circles) as a way to incorporate traditional ideas and processes and facilitate community involvement in government. These proposed structures alter the *Indian Act* system by adding new government structures that exist outside the *Indian Act*, to act as a bridge between the community and the elected community leadership structure. They anticipate transformative impacts in governance as culture and tradition filter in from community processes and become the basis of good governance in all institutions.

The Ktunaxa/Kinbasket Tribal Council project steps completely outside the boundaries of the *Indian Act* and the *First Nations Governance Act*, proposing a system of governance fundamentally different from that which now exists. A highly integrated, contemporary system of governance grounded in First Nation traditions is proposed, but is not presented as "traditional governance".

In all cases, there is evidence that community traditions and values are recognized as having a meaningful role in charting the way forward, in challenging or sidestepping the structural confines, and procedural and accountability limitations of the *Indian Act* system of governance. It is both the past (tradition) and contemporary community demands and political challenges that provide all three of these First Nations with the inspiration to create political systems which ultimately enhance good governance.

### 3. First Nation Constitutions

Neither the *Indian Act* nor the proposed *First Nations Governance Act* create a legislative basis for First Nation constitutions. Nonetheless, in an environment of self-government, constitutions provide an instrument through which a First Nation's essential governance structures and procedures may be described.

Conceptually, constitution-based First Nation governments stand in contrast to Band governments under the *Indian Act*. The *Indian Act* describes a Band Council form of government. It establishes parameters for the exercise of a limited set of bylaw making powers by Band Councils, and it leaves discretionary decision making power over a range of critical matters in the hands of the Minister of Indian Affairs rather than with the community itself.

The *First Nations Governance Act* proposed that First Nations establish codes in key areas of governance including leadership selection, appeals, and financial management and administration. But the *First Nations Governance Act* did not propose to develop comprehensive constitutions. Nor did it provide First Nations with tools that could be used to fashion significant alterations to the system of Band government. Moreover, it prescribed a set of standards for First Nations governance.

Constitutions provide a contemporary means of expressing, in codified form, what the inherent right of self-government means to individual First Nation communities and nations. They are instruments reflecting fundamental principles, frameworks and rules by which a First Nation, its government, its lands, resources and people interrelate.

First Nation constitutions may be grounded in the unique culture, values, traditional practices and principles of a First Nation. Alternatively they may reflect contemporary forms of government, or adapted traditional governance practices and ideas. In all cases, it is through a constitution that a First Nation, or an aggregation of First Nations, reflects its identity, the form of government it has chosen, and the way in which power and authority is allocated and exercised.

A First Nation constitution may address subject matters such as:

- First Nation government structures (legislative, executive and administrative, advisory, judicial)
- methods for selecting leaders and officials (by election, appointment, tradition/custom)
- law making procedures
- community decision making, referendum or ratification procedures
- financial management and administration standards and procedures
- codes of conduct and conflict of interest rules
- procedures for the delegation of the First Nation's authority to other governments
- core laws and procedures for First Nation land management and administration
- core laws and procedures for citizenship and membership
- First Nation collective rights and individual rights of members and citizens
- constitutional amendment procedures

At one end of the spectrum, a First Nation constitution may include detailed provisions, resulting in the codification of significant portions of a First Nation's governance system. At the other end of the spectrum, a First Nation may choose to reflect in its constitution only the most essential features and rules of government.

Between these two extremes are constitutions that provide a level of detail in relation to a range of subject matters, but do not fully codify these matters. Instead, these constitutions establish the framework for further development of First Nation core laws and authorities in areas identified in the constitution, by describing minimum standards.

It is important to recognize that not all First Nation constitutions, or all parts of a First Nation constitution, assume the written form. Some First Nations may rely on a combination of custom, tradition and contemporary practice. Some may express constitutions comprising codified and unwritten components.

## Overview of Case Studies

Three First Nation governance projects were selected for case study. These projects produced or supported the development of comprehensive First Nation constitutions and governance frameworks. These constitutions would, in respect of most matters, place the First Nations beyond the legislative parameters of both the *Indian Act* and the proposed *First Nations Governance Act*. However, they do include elements that could be adopted in the context of *Indian Act* successor legislation.

Among the three reference projects, common elements include core structures of government, leadership selection procedures, law making procedures, citizenship/membership rules, and financial management and administration codes. Other elements are unique to the particular project, but nonetheless provide practical examples of how a range of matters may be addressed in First Nation constitutions and comprehensive governance codes.

The projects selected for further investigation encompass two full First Nation constitutions, and one set of constitution-like documents. Two examples are provided of First Nations that through their First Nation governance project either developed a constitution or advanced a constitutional development process already underway.

The **Key First Nation**, located in the Treaty #4 region of Saskatchewan, prepared the Key First Nation Constitution. This establishes the First Nation's basic governance structures and procedures at a high level of generality. However, it is accompanied by core laws and codes for financial administration, elections and citizenship.

The **Mistawasis First Nation** is located in the snake plains region of Saskatchewan. Its constitution covers a wide range of subject matters. Organizationally, it establishes the framework for First Nation core laws in areas such as land, membership and financial management.

A report from the **Kapawe'no First Nation**, located in the Treaty #8 region of northern Alberta describes a seven step process to develop a comprehensive community management plan and governance codes. Although not described as a constitution, the eleven codes that make up the project's products are constitution-like.

All of these projects derive from the First Nations' assertions of their authority to govern, and to determine their own forms of government. The basis for this authority is described in constitutional preambles, declarations and statements of principle.

### **a) Key First Nation**

The constitution of the Key First Nation is a relatively brief document. It is accompanied however, by:

- the *Key First Nation Financial Management Act* (and associated regulations and policies)
- the *Key First Nation First Nation Citizenship Act*, and
- *An Act Respecting the Government Elections of the Key First Nation*

The constitution was developed by a Governance Committee. The Committee consulted with the membership both on and off reserve, organizing meetings in seven major urban centers located in four provinces. The package has not yet been submitted to the membership for ratification.

The Key First Nation Constitution is founded on the autonomy and the treaty making history of the First Nation, which signed an adhesion to Treaty #4 in 1875. The Constitution is recognized as the basis for the First Nation government's authority, its jurisdiction and laws. It provides a framework for implementing the inherent right of self-government and the First Nation's treaty rights.

In the opening provisions of the constitution, the First Nation expresses its view of its inherent right of self-determination and the right to govern itself. It recognizes that certain rights and responsibilities rest with the people, including the responsibility to:

- respect and abide by the constitution, laws and policies,
- exercise ultimate authority in making and amending laws,
- participate in governance through legislative assemblies and membership meetings, and
- participate in leadership selection.

The core government structures and procedures of the First Nation are established. A Legislative Assembly, comprising all First Nation electors, is recognized. The roles of the Legislative Assembly are to review, ratify and amend laws. The Assembly also has a role in the review and monitoring of financial management and accountability, the management and development of land and resources, and providing guidance to Council and other government institutions. It is to meet at least twice a year.

A Council, or executive arm of government, also is established. This comprises a Chief and

Councilors. The Chief is acknowledged as the traditional representative and spokesperson of the First Nation. Chief and Councilors are elected in accordance with *An Act Respecting the Government Elections of the Key First Nation*. Their primary function is to apply and follow the laws and policies of the First Nation, as set by electors. Other roles and responsibilities are defined, including a role in appeals and grievances, intergovernmental relations, establishing policies, and promoting and protecting rights.

Tribunals, boards, commissions and committees may be established by First Nation law and policy, for the purposes of carrying out activities related to the good governance of the Key First Nation. Finally, the civil service of the First Nation government is recognized as part of the government structure. It includes all program and administrative staff and contractors and is governed by the First Nation's finance and personnel laws.

With respect to government procedure, the constitution only specifies a law making process. First Nation laws are developed at the direction of Council by committees. They are then subject to community discussion, review and amendment by the Legislative Assembly. Major First Nation laws must be approved by a majority of electors attending a Legislative Assembly. If the number of electors at the Legislative Assembly is less than 51% of all eligible electors a second or subsequent meeting can be called with thirty days notification. At the second or subsequent meeting, a law can be approved by 51% or more of electors present at a meeting, provided at least 25% of electors are in attendance.

Major laws requiring approval by the Legislative Assembly include, for example, ratification or amendment of the constitution, disposition or designation of First Nation land, and laws in relation to citizenship and elections. Matters of a policy nature require either the approval of Council or a designated portfolio board or committee. Alternatively, a consensus of on-reserve electors may approve policy matters, defined as those related to the operation of programs, portfolio areas, capital works, general operations and administration, and service delivery.

## **b) Mistawasis First Nation**

The Mistawasis First Nation Constitution is comprehensive, encompassing ten chapters that address the following matters:

- First Nation government structures and procedures
- lands and resources
- citizenship
- accountability
- rights
- relationships with other governments
- legal capacity and powers
- application and relationship of laws
- citizen participation in decision making, and
- First Nation public bodies and institutions.

The Constitution is not in final form, as important decisions remain to be made on key matters, such as the number of Councilors, terms of office and threshold levels of support for decisions made by various government bodies.

Government structures include a General Assembly comprising the entire membership, an Executive Council, a Legislative Council, an Elders Advisory Council, a Youth Council, the office of Chief Executive Officer and the First Nation Government Administration.

The General Assembly reviews major plans, decisions and budgets, as well as conflict of interest rules, ethical guidelines for leaders and financial and other reports. Its role in the amendment of the Constitution is contemplated but not fully defined. The Legislative Assembly comprises members of the Executive Council (Chief and Councilors), representatives of the Elders and Youth Councils and others.

In addition to making laws, the Legislative Assembly has responsibilities in respect of financial management, budgeting and the implementation of laws ratified by the community membership. The Executive Council's role is to represent the First Nation externally, and to ensure that First Nation laws are put into practice, and that the administrative functions and operations of the government receive proper direction on a day to day basis. Elders and Youth Councils have an advisory and oversight function. They operate according to consensus decision making rules.

With respect to core procedures, the constitution establishes basic provisions regarding elections, resignations, vacancies, removal from public office and recall through petition. No residency requirements are specified in relation to eligibility for public office, or to vote in elections and community referendums. Procedures to remove public officials from office involve joint resolutions from the Legislative Assembly and Elders Advisory Council. Recall of public officials is effected through a petition signed by a specified percentage of voters who were eligible to vote for the public official in the previous election.

The law making procedure of the First Nation involves law development by the Legislative Assembly, information meetings and opportunities for input from citizens. Laws may be passed by the Legislative Assembly without community approval, except in those areas where the constitution identifies that such approval is required. A First Nation law register must be maintained, and copies of laws must be shared with the Governments of Canada and Saskatchewan. Laws may be challenged if a petition is signed by a certain percentage of electors.

The Mistawasis Constitution includes a chapter on lands and resources. It calls for a Land Management Code to be developed and approved through a community referendum vote. The general framework and content of the Land Management Code is specified. Until the First Nation develops a Citizenship Code that is approved through community referendum, membership provisions under the *Indian Act* remain in effect.

An Accountability chapter establishes a comprehensive framework for political, financial and program accountability of Mistawasis Government to its citizens, and to governments who provide funding for program and service delivery. These provisions, set out in some detail, identify what

internal accountability relationships are sustained, how these are sustained, and what each component part of the governance system is accountable and responsible for. Principles of financial accountability that will be established by the Mistawasis First Nation in a Mistawasis First Nation Financial Management and Administration Code are identified.

The constitution also addresses matters related to the legal capacity and powers of the First Nation. The scope of First Nation powers asserted goes well beyond the *Indian Act* and the *First Nations Governance Act*. The subject matters in relation to which the First Nation can make laws, regulations and authorities is comprehensive of social, economic, and cultural spheres as well as the natural and physical infrastructure environment. These authorities may be delegated to other governments in accordance with procedures specified in the constitution. The relationship of First Nation laws to the laws of Canada and the province is contemplated in another chapter.

The penultimate chapter of the constitution sets out the ways and means by which First Nation citizens can participate directly in governance. These include participation by way of a community referendum vote, consultative referendum and community consultations. The constitution identifies many areas in which community decision making is required before First Nation government action may be taken.

A final chapter of the constitution recognizes that First Nation public bodies and institutions may be established by the Mistawasis First Nation government to carry out governmental responsibilities and exercise powers delegated by the Legislative Assembly. These must be established by First Nation law, but may assume a variety of forms including commissions, committees, circles, tribunals or boards.

### **c) Kapawe'no First Nation**

This First Nation governance project describes the results of a community developmental process that began in 2000 and was aimed at "building a foundation for effective governance". The primary focus of the project was to formalize existing practices and traditions in a codified form and in a manner through which good governance could be delivered and understood. Related objectives of the initiative were to increase the responsiveness of Chief, Council and Band Administration to the needs of the community and to enhance government accountability and transparency.

To achieve its goals, Kapawe'no First Nation reviewed and revised its administrative structures and operations, its decision making procedures, and its communications and management policies. The result is a Community Management Plan and eleven Codes of Governance that address the following matters:

- a Declaration of Inherent and God Given Rights and Freedoms
- Access to Information and Privacy
- Appeals Process
- Ratification of Government Decisions
- Elections
- Enactment and Publication of Laws

- Financial Administration
- Principles of Good Government
- Legal, Political and Administrative Structures
- Membership
- Relationships with Other Governments

Kapawe'no pioneered a community governance development process aimed at strengthening governance, administration and improving community wellness. The process is recognized by the First Nation as providing a model for other First Nations. The seven step process is fully described by the First Nation in its project report, and summarized here.

For the Kapawe'no First Nation, the first step involved preparation and organization of the political and community will needed to sustain the process. This involved an assessment of human and financial capacity, and time frames.

The second step led to the preparation of a Community Management Plan. It entailed a comprehensive review, assessment and revision of administrative tools, systems and procedures under the current organizational structure of the Kapawe'no First Nation. Through step three, eleven codes of governance were developed, reflecting traditional values and contemporary practices.

The fourth step involved an intensive period of communication and consultation on the Codes and Community Management Plan. The codes were modified to take account of community input and presented two weeks after the initial consultation meeting for "approval in principle". At the end of the First Nations governance project, all governance codes had reached the stage of "approval in principle".

The next steps in the process will involve community ratification and formal approval of the codes, followed by a period of transition and implementation. The final stage will encompass review and follow up, and the ongoing provision of support to leaders, staff and community members in working with the new tools of governance.

Although the governance package developed by the Kapawe'no First Nation is not specifically identified as a constitution, the eleven codes of governance establish a foundation for a constitutionally-based form of First Nation government.

## **Conclusion**

These First Nation governance projects provide three different but related examples of how First Nations are choosing to move away from *Indian Act* derived systems of governance. The First Nation constitutions and comprehensive codes that were developed incorporate elements of traditional practice but are contemporary in their outlook, especially in matters related to government administration and management.

## 4. Code Development: Government Administration and Financial Management

Canadian governments typically operate within an accountability framework grounded in legislation, regulation and policy. First Nations look to the *Indian Act* for guidance but find it silent on questions of financial management and accountability.

Although the *Indian Act* contains provisions assigning limited powers to Band Councils, it does not provide procedural or structural tools to guide the effective administration of band governments. Nor does it address rules governing conflict of interest, or the distinct but coordinate roles of elected officials and First Nation program and administrative staff.

Instead, funding agreements between First Nations, federal and provincial government departments and ministries establish the framework of First Nation accountability for program funds expended. However, the accountability regimes these agreements support are primarily First Nation-to-funding-partner: they neglect the important accountability dynamic that exists between First Nation governments and the community membership they serve.

As the administrative responsibilities of First Nations have increased in recent decades, so too have community members' expectations for financial transparency, and political and program accountability. In response to these concerns, many First Nations have begun to develop accountability mechanisms and codify First Nation financial management and administrative policies and procedures.

Measures to increase First Nation administrative and financial accountability and transparency have also been proposed by the federal government itself, in self-government negotiations and agreements, as well as the proposed *First Nations Governance Act*.

The *First Nations Governance Act* would have required First Nations to develop financial management and accountability codes encompassing provisions on financial reporting, internal financial controls, disclosure of financial information, and redress. Under the *First Nations Governance Act*, First Nations also would have been required to develop administration of government codes setting out rules pertaining to:

- the role of the Band Council and its relationship to the First Nation's administrative arm,
- conflict of interest guidelines,
- access to information,
- procedures for Band Council business,
- general band membership meetings,
- the development and registration of band bylaws, and
- code amendment procedures.

A large portion of First Nation governance projects are representative of the efforts being made by First Nations across the country to codify existing and new financial management and government administration systems.

The tangible products of these projects generally include detailed laws, codes and policies that will guide First Nation leaders, managerial, financial and administrative staff towards consistent and transparent financial management and accountability. Most documents encompass provisions respecting:

- the authorities and responsibilities of Chiefs and Councils, administrators and finance committees,
- conflict of interest,
- disclosure of financial information to community members,
- appeal procedures,
- budgeting procedures,
- remuneration, and
- expenditure controls.

Overall, the financial and administrative codes and laws that were developed through the First Nation governance projects are standardized and transferable. In terms of content quality, many are comprehensive and detailed (e.g. Thunderchild First Nation, Miawpukek First Nation). Others are concerned with establishing general guidelines and a clear separation between political and administrative functions, notably in the area of financial management (e.g. Lheidli T'enneh).

## **Overview of Case Studies**

This set of case studies relates the outcomes of three First Nation governance projects that addressed code development in the areas of government administration and First Nation financial management.

**Lheidli T'enneh** is located in British Columbia. Through its pilot project, the First Nation developed a Government Administration Code and a Financial Administration Code.

The **Miawpukek First Nation** of Newfoundland developed the Miawpukek Financial Administration Code.

The **Tallcree Tribal Government** is located in Alberta. The community developed a Governance Administration Code through its governance project.

## **a) Lheidli T'enneh**

The Lheidli T'enneh Government Administration Code establishes and defines the authority and responsibilities of Lheidli T'enneh government administration.

The Code is relatively brief, but is clear in its purpose and easy to comprehend. The purpose of the Code is to:

- ensure effective and efficient administration of First Nation programs and services,
- define the relationship between Council, senior managers, and other First Nation employees,
- establish the roles and responsibilities of the First Nation administration,
- promote accountability of administration to Council, and
- ensure First Nation programs and services are administered in a fair and equitable manner.

The Code identifies the role of Council and provides a clear separation between administrative matters and the political role of Council. The Code specifies that Council's role is to employ and give direction to a senior First Nation administrator through the development of codes, bylaws, and policies.

A "communication protocol" authorizes Council collectively to provide directives to the senior administrator, and requires that Council refrain from directing First Nation staff members in any matter. If Council has concerns related to First Nation staff, they are to be forwarded to the Administrator and dealt with according to applicable First Nation codes and personnel policies.

Amendments to the Code can be proposed by a resolution signed by at least ten Lheidli T'enneh eligible voters and approved either through a general meeting of electors or a community referendum. Threshold levels of support are specified.

A second code, the Financial Administration Code establishes a framework for First Nation financial management. The Code is described as "a code to govern the management of Lheidli T'enneh's finances". Its purposes are to:

- ensure the effective and efficient administration of the community's finances, and
- ensure accountability to Lheidli T'enneh community members.

The role of Council in the administration of the First Nation's finances is to:

- establish annual program budgets,
- ensure policies and procedures are in place for First Nation program delivery,
- ensure an impartial administrative appeal process is in place, and
- negotiate funding agreements on behalf of the First Nation.

The complementary roles and responsibilities of the First Nation Administrator are also described.

The financial code documents key financial management policies and procedures in areas such as annual budgeting, expenditures, reporting, audit and tenders. Transparency is built into the code through provisions allowing community members to access financial and related information and documentation, including for example:

- the annual budget,
- the audit,
- funding agreements, and
- multi-year financial plans that include planned levels of debt.

At general meetings of Lheidli T'enneh membership, held at least once per year, Council presents audited year end financial statements, together with a narrative report describing the services delivered in the past year, and a Council-approved annual budget.

## **b) Miawpukek First Nation**

Through its governance project Miawpukek First Nation undertook to develop a financial management code compliant with *First Nations Governance Act* requirements. Concurrently they documented the code developmental process itself with the intention of providing an organizational and governance learning tool that could be applied in future governance-related endeavors undertaken by Miawpukek and other First Nations.

The development of the Financial Administration Code was led by a working committee comprising the First Nation's General Manager, the Director of Finance, office managers of three departments, a representative of Chief and Council, and a consultant. Community input was garnered through numerous committee meetings, community consultations, meetings with First Nation managers, and a strategy session of Chief and Council. A project brochure was created and distributed to all First Nation members to support communication throughout the code development process.

Miawpukek First Nation's Financial Administration Code delineates the organizational structure of the First Nation and clarifies the responsibilities of elected officials and key financial management staff and bodies. It also codifies policies in the areas of:

- revenues and expenditures;
- awarding of the contracts;
- conflict of interest,
- remuneration of elected officials;
- First Nation corporations;
- financial information disclosure;
- appeal and redress.

The Code includes an appeal mechanism, specifying a three step process of negotiation, mediation and arbitration.

In terms of its financial administration policies, Miawpukek’s Code is comprehensive and detailed. It ensures that policies and guidelines are in place that can address most, or all, of the day-to-day financial matters that arise from contemporary First Nation government business.

### **c) Tallcree Tribal Government**

Tallcree First Nation is striving towards its vision of self-government and initiated its governance project with the goal of codifying governance administration “modules” as an incremental step towards the creation of a Tallcree First Nation Constitution.

The Governance Administration Code was developed by two consultants working with a Tallcree staff task force. A review of current First Nation policies and applicable codes from other organizations provided a foundation for discussions with Council and community Elders. Input received during these discussions provided direction for the drafting of the Code.

With respect to content, the Code addresses the following subject matters:

- Elders Council,
- duties and responsibilities of Chief and Council,
- Council procedure and minutes,
- conflict of interest,
- administrative policies and procedures,
- dispute resolution,
- finance,
- travel, and
- recreation.

The Code begins with a description of the role and function of the Elders Council, providing a clear recognition of the importance of Elders in the Tallcree First Nation government structure. All Elders in the community are members of the Elders Council. The Council may be called upon to review and advise Council on activities and major projects, to ensure that they are consistent with community custom and tradition.

Community members are given opportunities to participate in community governance through general assemblies and special membership meetings. Assemblies are to be held at least once every three months and special membership meetings may be held if a request, signed by at least 50 eligible Tallcree voters, is made.

The personnel policy of Tallcree First Nation distinguishes the rights and responsibilities of employees and the First Nation (as employer) in clear and concise terms. It addresses many of the unique personnel issues that arise in First Nation work settings, helping to ensure that personnel decisions are made in a consistent and fair manner. A three stage grievance mechanism is established for employees, and is clearly aimed at corrective action rather than punishment.

A separate module provides for a three stage dispute resolution process to hear grievances brought forward by community members. The first stage involves collaborative discussion between the two parties under the guidance of a mediator. In the second stage negotiations are facilitated by a Council-appointed committee comprising one Elder, one Councilor and the mediator. A dispute may proceed to arbitration, where the perspectives of the parties are presented to an arbitration committee. Within five business days of the arbitration hearing, the committee renders a final, binding decision.

The financial policies and procedures component of the Code is very detailed but establishes clear guidelines that promote accountability and ensure finances are managed in a consistent manner.

## **Conclusions**

Two of the governance and finance codes described above represent a response to the proposed requirements of the *First Nations Governance Act*. Nonetheless the governance tools that Lheidli T'enneh and Miawpukek First Nations developed can be implemented in the current legislative framework of the *Indian Act*. In each case, the codes contribute to improved transparency, accountability, disclosure and redress in a way that is culturally appropriate to each community.

The Tallcree Tribal Government used the opportunity presented by the governance project to advance its goal of creating a Tallcree Constitution. The project outcomes delivered various government administration and financial management-type modules that will eventually be used in a Tallcree constitutional development process. The community has developed several sound policies that effectively balance the need for clear and consistent decision making with the community's traditional practices.

## 5. Leadership Selection and Community Decision Making

Leadership selection lies at the core of First Nation governance. Presently, most First Nations elect their leaders in accordance with one of two methods set out in the *Indian Act*. Chiefs and Councilors are either elected to office pursuant to Sections 74 of the *Indian Act*, or through Band custom rules and codes that are sanctioned by the *Indian Act* and the Minister of Indian Affairs. Although First Nations with custom codes have greater latitude to shape their selection process, they are required to adopt electoral regimes.

For all First Nations under the *Indian Act*, community referendum and decision making on important matters takes place in accordance with the *Indian Referendum Regulations*.

One of the key features of the *First Nations Governance Act* was the mandatory adoption by First Nations of community-approved leadership selection codes. First Nations formerly under Section 74 of the *Indian Act* would have been required to adopt leadership codes that included prescribed elements, for example the requirement that a majority of members of council be elected by secret ballot. First Nations with custom codes would have been required to formally adopt these codes under the *First Nations Governance Act* within two years. Mandatory provisions also were specified for custom codes.

Common issues of leadership selection which First Nations attempted to address through the First Nation governance projects derive from the *Indian Act* and the Supreme Court's decision in *Corbiere* (1999). They include, for example, the following:

1. *Term of Office*: For some First Nations, the two year term of office prescribed by the *Indian Act* is a deterrent to efficient and effective First Nation governance. Others express a concern that if the term of office exceeds two years the membership has limited opportunity to influence decision making, and to remove elected leaders from office for cause.
2. *Composition of Council*: First Nations struggle with the constraint of being unable to establish Councils that are more broadly representative of the community and different constituencies such as Elders, youth and kinship groups, or that allow First Nations to establish a government structure that departs from the Band Council model.
3. *Qualifications of Candidates*: In recognition of the increased responsibilities of leadership, and the growing complexity of First Nation government management and administration, some First Nations are interested in specifying candidate eligibility requirements.
4. *Eligible Electors*: Similarly, the eligibility of non-resident members to participate in First Nation elections and to nominate candidates has become a subject of discussion and in some cases a source of division within First Nations following the *Corbiere* decision.
5. *Conduct of Elections / Election Procedures*: *Corbiere* expanded the scope of activities associated with the conduct of First Nation elections, stretching the capacity of First Nations to conduct elections efficiently, within existing financial and human resources, and in a manner that secures the integrity of the electoral process.

6. *Appeals*: First Nations are interested in establishing internal electoral appeal mechanisms that would reduce the role of the Minister of Indian Affairs in electoral disputes.
7. *Membership Participation*: A significant issue that many First Nations are facing concerns low rates of participation by the membership in community elections and referendum. High voter threshold levels established by the *Indian Referendum Regulations* combined with low voter participation frustrate community decision making processes. The First Nations governance projects provide significant evidence of difficulties First Nations encounter when trying to engage the off-reserve membership in consultation and approval processes.

Some of the issues identified above were partially addressed in the *First Nations Governance Act*. For example, the *First Nations Governance Act* would have allowed First Nations to determine the composition of Councils, subject to the minimum requirement that a majority of Council members would be elected by secret ballot. The *First Nations Governance Act* also allowed First Nations to build into their codes a procedure for the removal of public officials. In addressing the impacts of *Corbiere*, the *First Nations Governance Act* encouraged First Nations to balance the interests of on and off reserve members in electoral procedures. This would appear to extend to issues of voter eligibility and eligibility to nominate and stand as a candidate for elected office.

Through First Nation governance projects, a large number of First Nations set out to review, modify or update existing custom election codes, adapt *Indian Act* procedures or propose new codes compliant with the *First Nations Governance Act*.

Innovation is most evident in the areas of term of office, eligibility, appeals and removal. A clear trend is a preference for three to four year terms of office. Residency, educational achievement and other requirements are specified, most frequently in the case of candidates for Chief, but in some cases also for Councilor.

Election appeal mechanisms, including boards and tribunals, also are commonly proposed. These are variously comprised of community members and representatives of families. In a few cases persons from outside the community, but with legal experience, are appointed to act as independent arbitrators.

Many projects describe procedures for the removal of elected officials through petitions signed by a specified percentage of electors. Commonly, these also describe reasons for removal from office (e.g. guilty of a corrupt practice).

Several projects demonstrate forward-thinking approaches with respect to community participation in governance through referendum acts and ratification procedures. In most cases these proposals would replace the *Indian Referendum Regulations* of the *Indian Act*.

## Overview of Case Studies

Three First Nation governance projects that addressed some or all of the issues listed above were selected as case studies of leadership selection and community decision making procedures. One example is provided of a First Nation that proceeded to develop an election code through its First Nation governance project. A second case study looks at a First Nation ratification voting procedure that replaces the Indian Referendum Regulations. The third case study encompasses a proposal for an aggregated approach to delivery of election-related support services.

The **Deh Gah Got'ie Dene Council** located in the Deh Cho region of the Northwest Territories developed an Interim Election Code to be applicable until a code reflecting Dene traditions of leader selection can be developed. The Code has not yet been formally approved by the community, but will be subject to ratification in the future.

The **Chippewas of Kettle and Stony Point**, located in southern Ontario prepared First Nation *Ratification Voting Procedures* to replace the *Indian Referendum Regulations*.

The **Confederacy of Mainland Mi'kmaq**, a tribal organization representing six Mi'kmaq First Nations in Nova Scotia, analyzed the potential for developing a First Nation Electoral Institute (Elections Lnu) to provide electoral services to its member First Nations. It also prepared a template election code.

### a) Deh Gah Got'ie Dene Council

Through its First Nation governance project, the Deh Gah Got'ie Dene Council developed an Interim Election Code. Its purpose and intent is to:

- guide elections until a community constitution can be more fully developed to address problems commonly encountered in the election of Chiefs and Councilors,
- deflect challenges under Section 15 of the *Charter of Rights and Freedoms*, and
- include non-resident electors in the electoral process.

Other purposes include establishing an elections appeal mechanism, providing for the removal of public officials from office, and allowing for the ongoing amendment of the Code.

The context in which the Code was developed recognizes that leadership selection procedures more reflective of Dene traditional values and customs will evolve in time through a separate, community constitutional development process taking place in conjunction with the Deh Cho First Nations.

Although the Interim Election Code would meet the minimum standards of the *First Nations Governance Act*, and most aspects of the Code would satisfy the custom election provisions of the *Indian Act*, the Code itself asserts, through its preamble, the inherent authority of the Deh Gah Got'ie Dene, and the authority of the Dene to govern themselves as a Nation.

Development of the Interim Election Code was influenced by the results of a community questionnaire, with community responses determining key features of the applicable interim election rules, such as:

- voting age reduced from 19 to 18,
- Election Committee to be established to oversee aspects of the election, with members of the committee not participating in the election,
- mandatory all candidates' forums organized and chaired by the Election Committee,
- increasing the number of nominators for candidates from two to four persons,
- term of office for chief set at three years,
- term of office for councilor set at two years,
- staggered elections / terms of office,
- representation of Elders through two seats on Council, with Elders elected by all voters,
- representation of youth through one seat on Council, with youth elected by all voters,
- size of Council (9 seats),
- residency requirement to be eligible for office of Chief or Councilor (one to two years),
- mail-in and proxy voting allowed, and
- a pre-established election date.

The Interim Code includes many forms and appendices which could be easily adapted and transferred to other First Nations. These include, for example:

- oaths for electoral staff,
- nomination forms,
- ballot forms,
- elector's declaration forms,
- notices for proxy voting,
- voters' register form,
- proxy application forms,
- form for preliminary reporting of election results, and
- official ballot to remove an elected official from office following a petition of 40% of electors.

The Interim Election Code has features relating to the structure of First Nation Councils, election procedures and electoral forms. All of these may be of interest to other First Nations and are in a readily transferable form.

## **b) Chippewas of Kettle and Stony Point First Nation**

Through its project, the Chippewas of Kettle and Stony Point First Nation reviewed the community referendum requirements of the *Indian Act* with an eye to developing alternative procedures for community decision making. The project resulted in a set of Ratification Guidelines which the First Nation plans to take to the community for further review, discussion and development before being put forward for formal approval through a community vote.

An Elections Code Committee oversaw this governance project as well as the concurrent development of a community election code. Development of the Guidelines was informed by the results of questionnaires and consultations with the community membership, as well as by experience gained in previous discussions about electoral reform. Both the Kettle and Stony Point First Nation Election Code and Ratification Voting Guidelines will take effect in the future following approval by Council, the electorate and the Minister.

As proposed, the Chippewas of Kettle and Stony Point Ratification Guidelines would be used for community decisions concerning a broader set of subject matters than what is now covered by the *Indian Referendum Regulations* and the *Indian Act*. The Minister's authority to determine that a referendum will be held is replaced with the authority of Council to make such determinations. The Guidelines specifically identify that the following matters would be subject to a community ratification vote:

- a land claim,
- the *First Nation Land Management Act*,
- land designations,
- bylaws relating to intoxicants on the First Nation,
- long-term community development plans, and
- other issues deemed to be of significance and importance by the Council.

One of the purposes of the Ratification Guidelines is to address the impediment to effective community decision making that is presented by the *Indian Referendum Regulations* and, in particular, the requirement that 50% of all eligible electors must vote in favor of a proposed decision before it can be implemented. This threshold is recognized by many First Nations as difficult to achieve, especially when a large portion of the membership resides off-reserve, and in many cases, the First Nation simply does not have access to the addresses of all eligible electors.

The Ratification Guidelines address the issue of off-reserve participation by removing the requirement that a majority of all eligible electors vote in favor of a decision. This is replaced with the requirement that a majority of eligible electors who cast a vote in the ratification vote, vote in favor. The Procedures do not specify a minimum threshold of eligible voter participation that must be met, for example the requirement that a defined percentage of eligible voters must actually cast a vote for the result to be valid.

With respect to procedure, under the Kettle and Stony Point First Nation Guidelines the ratification officer would mail a voter registration card to every non-resident elector for whom a last known address has been given by the Council. The elector would then be required to respond to the ratification officer and request a mail-in ballot. The Guidelines include other provisions tailored to the preferences of the community. An Appeal Board would be established with six members comprising a person with a legal background and five members of the First Nation.

If approved by the community, the Ratification Guidelines will provide the First Nation with a comprehensive set of procedures that are responsive to contemporary realities and circumstances. They reflect a strong orientation towards community decision making, and encourage voter participation.

The Ratification Guidelines prepared by Kettle and Stony Point First Nation would be transferable to other First Nation contexts. They will be of interest to First Nations that are considering new approaches to community decision making, plebiscites and referendum processes, and reform of either custom election codes under the *Indian Act*, preparation for *Indian Act* or successor legislation, or self-government.

### **c) Confederacy of Mainland Mi'kmaq**

This project represents the second phase in an elections pilot project conducted by the Confederacy of Mainland Mi'kmaq (CMM). CMM formulated a broad strategy to establish an electoral institution ("Elections Lnu") for the purposes of administering First Nation elections in member communities and providing electoral advisory and support services on an aggregated basis.

The first phase of the pilot project (2002/03) led to the identification of First Nation concerns that were subsequently addressed in the second phase (2003/04). These included the need to:

- address post-*Corbiere* election issues related to administration (e.g. mail in balloting, standardized forms),
- ensure consistency among leadership codes to achieve economies in First Nation election administration,
- concurrently establish community leadership codes and the electoral institution,
- secure a stable funding base for the electoral institution,
- establish accountability framework for the electoral institution, and
- clarify the authorities, roles and liabilities of the electoral institution.

The CMM's proposal to establish Elections Lnu is significantly informed by CMM's experience in administering five community elections in 2000 and 2001. This experience allowed the organization to document planning requirements and areas for policy development, to develop cost structures and educate staff in the hands-on implementation of an election.

As an electoral institution serving several Mi'kmaq First Nations, it is envisioned that Elections Lnu will be independent of political affiliation, but established with the approval and support of founding First Nations. It will have responsibility and authority to oversee elections, train election workers, establish and enforce standards of service, and maintain a centralized data system. The elections institute will administer all aspects of First Nation elections, and will facilitate the conduct of a vote by working with designated election officials in the communities.

Elections Lnu may undertake pre-election activities such as the preparation of voter lists and scheduling of the election process (nominations, notifications etc.). Post-election activities could include announcement and reporting of results and orientation of new Chiefs and Councilors. A permanent appeals structure is contemplated as a component of Elections Lnu.

Other ongoing responsibilities that are identified as potentially being fulfilled by Elections Lnu include:

- policy and code development support,
- code review and amendment,
- referendum review,
- research and development,
- technical services (web site design, database creation),
- election education and communication,
- membership functions (voters lists, confirmation point for membership for purposes of health services, Band grants etc.), and
- language services.

Another role that is contemplated for Elections Lnu would be to prepare for and implement federal, provincial or general elections to First Nation communities on a fee for service basis.

The CMM project estimates a modest budget to support Elections Lnu operations. Variable cost factors are identified including size of community, relative size of the on/off reserve population, community location, human resources and leadership selection rules. A "base plus" method of costing is considered, wherein a base level of funding would be adjusted according to population and community location.

The next steps which the CMM would take to realize Elections Lnu are identified. The preparation of strategic and business plans, further definition of the duties of electoral officers and Elections Lnu staff, policy development and more detailed assessment of the costs associated with administering First Nation elections are highlighted.

As part of its governance project CMM also developed a template leadership selection code based on input from CMM leadership and discussions that had taken place over several years. The code sets out options in relation to key aspects of the leadership selection process. These options allow First Nations to customize the code to meet individual needs and preferences. At the same time, however, a level of consistency would be maintained among the leadership selection codes in respect of key features that affect election administration. This would allow economies and efficiencies to be realized through the administration of First Nation elections by the electoral institution (Elections Lnu).

Optional provisions of the leadership code include, for example:

- designation of a Council seat for off-reserve members,
- confirmation of voters list (i.e. on request by individuals versus by public posting),
- how the vote is conducted off-reserve (i.e. mail in ballot to all eligible electors or only to those who have requested ballots),
- composition of appeal board (i.e. Elders or appointees including non-Band members), and
- appointment of appeal board (i.e. by Council, by Elders, by electoral officer, or by the community).

The template leadership selection code could be adopted either under the *Indian Act* or *First Nations Governance Act*-type legislative context.

The products of the CMM project are subject to approval by the CMM leadership, and ultimately by First Nation communities through the formal mandating of Elections Lnu, and/or the adoption of a leadership selection code based on the CMM template code.

## **Conclusion**

The case studies above provide examples of communities modifying current arrangements under the *Indian Act* in respect of leader selection, elections and community decision making procedures. They also call for First Nation Council structures that are more attuned to community preferences, circumstances and needs. In most cases, the codes developed address the impacts of the Corbiere decision. All proposed codes would be compliant with the *First Nations Governance Act* leadership selection framework and its stated minimum requirements.

The Confederacy of Mainland Mi'kmaq project presents a unique proposal for an electoral institution that could provide a wide range of administrative and advisory services to First Nations in respect of electoral and related processes. The evolution of this institution over time can be easily contemplated. The Elections Lnu model will be of interest to other aggregations of First Nations that are considering ways of achieving economies and efficiencies in electoral processes, and increasing the participation of eligible voters.

## 6. Appeal, Redress and Enforcement Mechanisms

### *Appeal and Redress*

Apart from elections-related appeals made directly to the Department of Indian and Northern Affairs, the *Indian Act* does not establish mechanisms allowing band members to bring forward grievances in relation to administrative decisions or the conduct of First Nation officials or employees. In many cases, Band Councils act as a final appeal mechanism, hearing and making decisions related to member complaints or administrative decisions. If an individual wishes to appeal a decision of the Band Council, and has the resources to do so, they may seek relief in the courts.

Under the proposed *First Nations Governance Act*, First Nations would have been required to create an impartial body or mechanism to consider the complaints and grievances of members and non-member community residents.

A large number of First Nation governance projects proposed mechanisms for the appeal of administrative decisions made by First Nation governments, and the resolution of disputes between governments, employees and community members. The most common outcomes in these projects are codes and proposals for tribunal and appeal structures.

Proposed tribunal and appeal structures vary in terms of their function but consistently are composed of persons either appointed from major family/kinship groups or clans, or representing a cross-section of youth, Elders, men and women.

While the composition of tribunal and appeal boards and committees is attentive to community traditions and practices, generally the appeal structures proposed are designed to reach decisions by way of a simple majority voting system, rather than through a consensus model of decision making.

### *Bylaw and Law Enforcement*

The *Indian Act* recognizes a limited set of Band Council bylaw making powers. Band bylaws are, however, subject to disallowance by the Minister of Indian Affairs, a discretionary authority that has been used frequently and somewhat inflexibly in the past. As a result, First Nations have not been able to address a host of critical community issues such as landlord-tenant relationships and environmental concerns.

However, even where First Nation bylaws are legally in force, their enforcement is stymied by an ineffectual legislative and administrative regime. The courts frequently fail to take judicial notice of First Nation bylaw infractions and, in general, penalties for bylaw infractions set by the *Indian Act* are well below those used by other governments in Canada for similar infractions.

One of the objectives of the *First Nations Governance Act* was to modernize and expand the scope of First Nation bylaw making authority. The *First Nations Governance Act* proposed to group First Nation bylaws into two broad categories: bylaws for local, on-reserve matters, and those related to

the conduct of a First Nation's affairs. In addition, the *First Nations Governance Act* encompassed a proposal to enhance the capacity of First Nations to enforce their bylaws, by increasing allowable fines for contraventions, providing First Nations with the authority to implement ticketing schemes, and giving First Nations the power to create bylaw enforcement officers to help ensure bylaw compliance.

Although the problems of bylaw enforcement were noted in passing in a number of First Nation governance project reports, this issue was not the subject of focused analysis or discussion.

## Overview of Case Studies

Two First Nation governance projects that proposed community level appeal and redress mechanisms are reviewed as case studies. The third case study included in this thematic cluster reports on the results of a governance project that considered current impediments to the effective enforcement of First Nation bylaws.

**Wabigoon Lake Ojibway Nation** is a community located in Northern Ontario's Kenora District and a member of the Bimose Tribal Council. Their governance project entailed the development of an extensive draft bylaw creating an impartial and independent Community Tribunal Board to adjudicate grievances filed by community members against the First Nation.

**Madawaska Maliseet First Nation** is a small community located in New Brunswick. The community is a member of the Saint John River Valley District Tribal Council. Through its governance pilot project, the First Nation developed an Appropriate Dispute Resolution Code to address disputes between the First Nation and band members.

The **Skeetchestn Indian Band** is a community located southwest of Kamloops in British Columbia, and a member of the Shuswap Nation Tribal Council. Its project investigated the possibility of developing a bylaw prosecution mechanism to handle bylaw infractions within the community.

All of these case studies examine a range of appeal and redress issues that First Nations operating under the *Indian Act* now face. They propose solutions that aim to be both effective and efficient, and reflective of each community's unique culture, traditions and circumstances.

### a) Wabigoon Lake Ojibway Nation

The Wabigoon Lake Ojibway Nation's governance project was developed and guided by a philosophy of self-determination and community-based solutions that combine Anishnaabe principles with mainstream Canadian approaches. The community's governance planning process is guided by traditional principles and concepts that ensure governance mechanisms ultimately created will be a "good fit" for the community and its members.

The draft bylaw developed by Wabigoon Lake would create an impartial Community Tribunal Board to hear and decide upon appeals and grievances filed by First Nation members against Wabigoon Lake First Nation. It is proposed that the bylaw be enacted under the *Indian Act*

Guidelines for the Tribunal Board are clearly delineated in the draft bylaw.

The tribunal process involves three consecutive stages:

- In the first stage "conciliation facilitation", the Community Tribunal Board facilitates a process to guide the parties towards a mutually acceptable resolution of their dispute. If no satisfactory resolution is reached, a request for mediation will be accepted and processed.
- In the second stage, the Board acts as a third party mediator, helping to clearly define the issues and assist in reaching a resolution acceptable to both parties.
- The third stage involves arbitration. With authority granted to it under the bylaw, the Community Tribunal Board will arbitrate a fair decision that is supported by factual information. At this level, the Board may also seek legal assistance to ensure that a fair decision is reached.

Persons who wish to put a matter before the Community Tribunal Board can choose to begin the appeal process at any of the three stages of conciliation, mediation or arbitration. The parties contribute to the process by putting forward the names of persons whom they believe would be able to act as a conciliator, mediator or arbitrator. If the person selected is not a board member, both parties share the costs of retaining the selected person's services.

The Community Tribunal Board is to be comprised of between five (5) and ten (10) community members elected to sit as members of the board. At least one representative from the community's youth, female, male and Elder populations must be elected. To ensure there is sufficient capacity and expertise among board members, the bylaw requires that they receive training in conflict resolution and are provided with board-related training upon election.

The decision making process of the Tribunal focuses on facilitating resolution of disputes and disagreements in a manner that maintains harmony within the community and produces decisions mutually acceptable to both parties. Only after conciliation and mediation efforts have been exhausted will the Board arbitrate a decision on behalf of the two parties in dispute. If any of the parties are not satisfied with an arbitrated decision, the Tribunal Board process has a built in appeal procedure.

Attached as appendices to the draft bylaw are pertinent pieces of information regarding dispute resolution and decision making processes. These include a statement of the roles and responsibilities of the Board, confirmation of the independence and impartiality of the Board, a Board Code of Conduct, and conflict of interest. These documents provide further insight into the proposed appeal and redress mechanism, and give life to the Community Tribunal Board dispute resolution process.

Through its governance project, Wabigoon Lake also initiated a process for the election of Tribunal Members. The First Nation sent out nomination and election packages, received nominations, and produced and mailed out a candidate list to eligible voters.

## **b) Madawaska Maliseet First Nation**

The Madawaska Maliseet First Nation governance pilot project developed an Appropriate Dispute Resolution Code, described in the Maliseet language as *Walayawagon* (to heal; to make easier) *yut ku-lo-wut* (this is a good place) *pu-tu-su-a-kun* (a law). The code is recognized as an important governance tool that will empower community members by providing disputing parties with the opportunity to define the dispute in their own terms and to fully participate in the process through an exploration of options for resolution.

Madawaska's dispute resolution process involves three consecutive stages of action. In the first stage the parties attempt to resolve a dispute through negotiation. To initiate this stage, the complainant gives written notice of the grievance to the other party. The receiving party then may provide a written response to the complainant before both parties attempt to resolve the dispute in a civil and respectful manner. If negotiations are unsuccessful, mediation is the second step in the process.

The mediation stage is also initiated through written notices and requires both parties to submit a written statement setting out what they believe are the main issues in the dispute. From there, both parties are given a chance to add three mediators to a potential mediator list and rank the potential mediators. Both parties agree to choose the mediator receiving the highest combined rankings. If the mediation does not yield a resolution, a five day post-mediation "cooling off" period ensues, in which the parties take no further action unless this is directed towards further negotiations.

Once the post mediation period expires, the parties may file a notice to have the dispute heard and arbitrated by an Appeal Committee. In this final stage, the parties may have an agent assist them in presenting their case, but are responsible for costs associated with the appeal. The Committee reviews all documents, conducts interviews if necessary and gives each party a chance to be heard. Decisions of the Committee are made by quorum and are binding upon band members, Band Council, and employees.

In terms of composition, the Appeal Committee is made up of one member from each of the four core community families. An additional member is chosen by the four members from a pre-approved list of candidates, developed unanimously by the four core family members of the Appeal Committee. Each core family member is elected by their respective family.

The final section of the Code sets out an amendment procedure. If a Band Council wishes to amend the Code they meet with the Appeal Committee and propose the amendments. Committee members then vote on the proposed amendments which, to become effective, must receive three-quarters of all eligible votes cast by Appeal Committee members. Community members must be notified of any amendments within ten working days.

In addition to creating the dispute resolution procedure, the Madawaska Maliseet First Nation's governance project also developed various forms to support the administrative aspects of the process, as well as guidelines and procedures for electing core family members to the Appeal Committee.

Along with the draft code, an educational guide for band members was developed to increase understanding of the process. The guide includes an introduction to appropriate (or alternative) dispute resolution, a synopsis of the benefits of using this type of mechanism, an overview of the issues and techniques commonly used in negotiations, information that helps readers understand what happens if various stages in the process are unsuccessful, and a brief guide to the appeal committee hearing stage.

Prior to ratifying the Appropriate Dispute Resolution Code, Madawaska Maliseet First Nation has indicated its intention to consult with community members more extensively, make amendments to the Code as needed, develop a french language version of the code for the community's french speakers, and develop a voting process for Appeal Committee members. It is also anticipated that prior to implementation, Appeal Committee members and others who will be involved in the process will need to receive appropriate training.

### **c) Skeetchestn Indian Band**

The Skeetchestn Indian Band is currently planning to come under the *First Nation Land Management Act*. This will result in the development of a series of new bylaws, adding to the community's current bylaw regime. The *First Nation Land Management Act* provides Band Councils with the power to enact bylaws but, like the *Indian Act*, provides little in the way of mechanisms to enforce First Nation bylaws and prosecute infractions.

The Skeetchestn governance project took note of the fact the First Nation encounters significant difficulties implementing and enforcing its bylaws. Bylaws are disregarded altogether because of the lack of enforcement mechanisms and/or an unwillingness on the part of the First Nation to prosecute members for infractions. There are limited resources to monitor bylaw compliance and then prosecute infractions through a costly, potentially litigious process. In addition, the First Nation takes the position that those being charged with a bylaw infraction should be given access to a fair and impartial hearing if they wish to dispute a matter. But, as the political body responsible for the creation of a bylaw that has been contravened, the Band Council is unable to act in such an adjudicative capacity. While the First Nation relies upon the RCMP to cooperate in bylaw enforcement, their first task is to "keep the peace", for example when persons are charged with contravention of trespassing bylaws.

Skeetchestn's project investigated the potential to develop a Bylaw Prosecution Agreement / Bylaw Quasi-Judicial Forum to assist in dealing with bylaw infractions and disputes within the community. Although the First Nation was not able to fully develop an enforcement model through the governance project, it did propose alternative solutions considered appropriate to a First Nation context. It is suggested these solutions may better fit the circumstances of First Nation communities

than the municipal and summary convictions regimes commonly used in other jurisdictions in Canada.

Research conducted as part of the project indicates that Canadian municipalities also experience difficulties prosecuting bylaws through the courts due to the large commitment of time and financial resources that is needed. As a result, several municipalities are considering alternative mechanisms to address bylaw disputes, including community forums which permit panels consisting of volunteers or paid professionals to adjudicate minor bylaw offenses.

While First Nations do have the option of prosecuting bylaw infractions in the provincial courts, their limited financial resources and the potential for jurisdictional disputes create significant roadblocks. The research conducted as part of the Skeetchestn project suggests that few, if any, First Nations have a bylaw prosecution mechanism of their own in place. The First Nation suggests there is significant potential for exploring how First Nation bylaws can be more effectively enforced through pilot projects that have the backing and cooperation of the province(s).

## **Conclusion**

The projects reviewed and referenced as case studies of appeal, redress and enforcement mechanisms provide three different examples of how First Nations communities are challenging the status quo of the *Indian Act* system of governance. In all cases, there remain significant obstacles to establishing effective governance tools in these areas. These include the lack of an appropriate legislative authority allowing First Nations to create and empower appeal mechanisms.

Wabigoon Lake Ojibway Nation and Madawaska Maliseet First Nation each have chosen an approach that attempts to resolve disputes and conflicts within the First Nation community. The emphasis of the appeal and redress processes that are proposed is clearly to maintain harmony through the reconciliation of interests. These communities are equally concerned with creating win-win, self-determined outcomes, and maintaining long-term, harmonious relations within the community. Both proposals give community members considerable control over the First Nation's appeal and redress mechanism, in addition to offering community members a non-political and non-adversarial forum in which to resolve disputes.

The Skeetchestn Indian Band's governance project provides significant insight into the impediments to effective bylaw enforcement that First Nations face under the governance system that is created by the *Indian Act*. Importantly, the project proposes ways and means for moving forward and highlights First Nation bylaw and law enforcement as an area that needs further research and development.

## 7. Indian Act Administration: Making it Work

First Nations have been living under the *Indian Act* system of government for over one hundred years. As a remnant of Canada's colonial past, the *Indian Act* provides First Nations with limited political and administrative tools for effective governance in the 21<sup>st</sup> century.

This lack of tools forces both First Nations and the federal government to look for alternative solutions in areas such as leadership selection, procedural matters, and law making authorities. The federal government has responded by proposing legislation such as the *First Nations Governance Act* and by negotiating self-government agreements.

Independently, First Nation solutions find expression both within and outside the *Indian Act*. The development of First Nation constitutions, the establishment of traditional government structures, the re-traditionalisation of First Nation governments, and the assertion of jurisdiction in areas not recognized by the *Indian Act* provide tangible examples of First Nation's pushing beyond the legal framework created by the *Indian Act* in respect of core governance matters.

But the *Indian Act* also presents significant challenges to First Nations from the perspective of First Nation government administration. This is most readily demonstrated when considering the administrative capacity of Band Councils. The Act does not address how bands are to manage their financial affairs and is silent on the question of the separation of political and administrative functions.

First Nations are responding to growing administrative responsibilities, increasing complexity in government and heightened expectations for transparency and accountability in Band government operations. First Nations operating under the *Indian Act* have attempted to enhance responsiveness, accountability and transparency through the codification of policies and procedures, the delineation of political and administrative roles and responsibilities, and the re-organization of First Nation administrative organizations and operations.

### Overview of Case Studies

The reports referenced as case studies in this thematic cluster, both in their processes and products, demonstrate how First Nations are attempting to make *Indian Act* administration and First Nation administrative operations work better on a day-to-day basis.

Through its governance project the **Musqueam First Nation** of British Columbia engaged in a wide ranging community based process. This process was aimed at building a shared set of values and identifying how these could be incorporated into a set of practical tools for community governance and administration.

The **Campbell River Indian Band** located on Vancouver Island in British Columbia, developed a clear and concisely stated set of *Policies and Procedures* to govern the activities of Chief and Council.

As part of its project, the **St. Mary's Indian Band**, a Ktunaxa community of approximately 315 members located in the Kootenay region of British Columbia, undertook the development of a comprehensive set of governance policies and procedures. These are encompassed within two handbooks and various policies.

### **a) Musqueam Indian Band**

The Musqueam First Nations governance project, *Bringing Musqueam Values to Musqueam Government* carried forward a prior community process called *Family Gatherings* which had begun in 2002/03. It was inspired by a Coast Salish Big House gathering held two years prior to discuss fishing issues. At the time, the community felt it was important to broaden discussions to include aspects of Coast Salish values and heritage, and to consider how these might be reflected in Musqueam government and community.

The intent of the Musqueam governance project was to identify a shared set of values, and to design priority policies and codes reflecting these (such as a human resources policy, a code of ethics and conflict of interest rules). The process, however, increased in complexity as other factors began to impinge on the discussions, and the interconnections between issues became apparent. These factors included the need to review existing administrative policies, and to address communications issues between Council and Administration.

As a result, the project's terms of reference were expanded to encompass three interrelated initiatives, executed concurrently and in a co-ordinated manner. These included:

*Community Values:* This project component was concerned with building a shared understanding of social and cultural values to provide the building blocks for Musqueam governance policies and codes. It was designed to build on the work of the Family Gathering's process.

*Organizational Review:* The primary purpose of this component was to review the roles, relationships and responsibilities of Council and administration and recommend priority areas for improvement and restructuring. Secondly, the administrative structure was assessed from the perspective of promoting team work and team-based administrative practices.

*Policies and Codes:* This component focused on revising codes and policies, with reference to Musqueam values. Priority was placed on a code of ethics for council and committees, a code of conduct for employees, and a revised harassment policy.

The governance project and community process was facilitated by a technical team, but the project involved direct and significant participation by the Musqueam leadership, including the Musqueam Governance Committee, the Administration Committee of Council and Musqueam staff.

It also involved a high degree of community consultation. For example, two *Open Space Gatherings*, each attended by 40 or more people were organised on the theme of “how can our proposed community values translate into the management of Musqueam affairs?”.

*Open Space Technology* is a process that allows participants to work together in a circle, in a relaxed and natural manner. The agenda is established by participants themselves around a general theme. From the beginning until the agreed upon end time, participants in the Open Space discuss issues and recommend actions to be taken. Open Space is intended to promote co-operation and new ways of working together in a manner that is "similar to old ways that have been neglected".

Several products emerged from Musqueam's governance project. First, the project was able to develop a document outlining Musqueam Values and Value Statements. These statements, which are organised around the Musqueam values of respect, pride, inclusiveness, honour and shared responsibility, are intended to guide behaviour and interaction among people. They also provide the foundation for all governance and administrative policies, procedures and codes of conduct.

The project was also successful in developing codes in identified priority areas. For example, the code of ethics encompasses rules for conduct and decision making, conflict of interest, a "model of excellence" and an oath of office. Its preamble is written in the Musqueam language, and is stated as if being delivered orally by a Big House Speaker.

With respect to administration, a Musqueam Administration Team Charter was developed by the Musqueam management team. It describes the administration's mission, workplace values, operating principles and business lines. A report on responsibilities and relationships was prepared based on interviews with Council members, staff, Elders and members. It outlines issues that are affecting the governance and administration of community affairs, and it recommends measures to address these issues, including a restructuring of the administration to promote streamlined service delivery.

The Musqueam governance project anticipates continued progress towards Musqueam governance based on Musqueam values. It proposes several follow up activities including community ratification of values, codes and policies.

The process and products of the Musqueam governance project are concerned with making *Indian Act* administration work more effectively for the First Nation, in a manner that is attuned to community values and culturally-relevant. Although the project was about effecting positive changes without significantly modifying the basic system of government, the community is looking into the future and considering options that will move it forward towards self-government. The need to consider options and potential models of Musqueam governance for the future is identified.

## **b) Campbell River Indian Band**

The Campbell River Indian Band codified its core governance policies in a very concise document entitled *Chief and Council Policies and Procedures*. The Policies and Procedures note that Chief and Council are elected pursuant to Section 74 of the *Indian Act*, and exercise bylaw making powers as set out in the Act at Sections 81 and 83. They establish the basic rules governing Chief and Council activities as well as community meetings.

The *Policies and Procedures* specify the roles, duties and responsibilities of Council collectively, Chief and Councilors individually, and Portfolio Councilors. For example, the role of Council is stated as overseeing the financial management and administration of the Band, and to act honestly, impartially and in the best interest of the membership. Portfolio Councilors are to chair committees and are required to develop some specialized knowledge in their area of responsibility.

Basic rules to be followed in Band Council meetings and meetings of the membership are set out. Detailed provisions concerning the preparation and maintenance of Band Council meeting minutes are included. Membership meetings take place either in the form of an Annual General Meeting or a Special Membership Meeting. Financial reports on Band government programs and operations are to be provided at membership meetings, and the community has the opportunity to provide input and feedback.

Finally, conflict of interest rules and a code of ethics for Chief and Council are included. Situations where a conflict of interest does or does not exist are defined, and procedures to be followed are set out.

The *Policies and Procedures* amendment provisions allow for annual review and periodic amendment. Amendments can be made by a quorum of Council through motion. An interesting feature of the amendment procedure is that these cannot be moved or voted on by a Councilor or by Council unless they have been in office for at least three months.

The *Campbell River Indian Band Chief and Council Policies and Procedures* may be of general interest to other First Nations because of their straightforward, precise codification of the basic rules for Band Council government.

## **c) St. Mary's Indian Band**

The St. Mary's Indian Band administration was already engaged in a pre-existing codification and good governance/administration project at the time the First Nations Governance initiative was announced by DIAND. The First Nation contributed some of its own funds to the project, allowing it to complete a very comprehensive review, updating and codification exercise. Chief, Council and staff of the First Nation played a substantial role in the project.

The intent of this First Nation's project was to develop comprehensive financial policies, update existing Band policies and procedures, develop a complaints and appeal process, create an employee

handbook for all current and future employees, develop comprehensive job descriptions and a handbook outlining the roles and responsibilities of Council, board and committee members. All of these objectives were achieved. Some of the products of the project have been approved and adopted by Chief and Council. Others are approved-in-principle but remain in a draft form.

The *Employee Handbook* begins with the Nation's vision statement, and provides historical background on the Ktunaxa and Kinbasket people. It includes a section on questions frequently asked by new employees and proceeds to set out employment policies of the Band.

The *Councilors, Committee Member, Board Members Handbook* is a comprehensive reference manual intended not to replace other rules, procedures and codes but to provide guidance. It provides an overview of the general functions of committees and boards, and establishes guidelines to facilitate effective working relationships among Chief, Council, committee and board members. In a section entitled "Board Basics" it defines terms commonly used in business meetings and board and committee operations, and it clarifies roles and responsibilities. For those who are new to formal business meeting procedure, a section on "Meeting Essentials" provides direction on meeting preparations, chairing, motions and other procedures.

A set of *Complaint and Appeal Processes* also were established through the project. These provide direction on procedures to be followed whenever there are complaints or grievances in relation to administrative decisions of council or staff, or the actions of members of council, boards and committees. It establishes separate procedures for complaints related to program and service delivery and education funding, and specifies different appeal processes to be followed by Band Staff, Senior Managers, Band members.

Although First Nation policies and procedures do not always appear to give expression to the particular cultural or community context, components of the St. Mary's Indian Band's policies and procedures clearly are attuned to community values and customs. For example, the bereavement policy calls for the Band Office to close during the services of a community member, an essential social and cultural norm: that the community *is* family.

The results of the St. Mary's Indian Band's governance project are very comprehensive, and attuned to making improvements to an *Indian Act* administrative and political environment.

## 8. Human Resource Management and Personnel Policies

Increasingly, First Nations are demonstrating their interest in establishing effective systems of human resource management, as well as personnel policies that are legally compliant with applicable employment law.

In part this is a response to the growth in both scale and complexity of First Nation public administrations. Today, many First Nation communities manage multi-million dollar administrative operations that deliver services in the areas of economic development, health, housing, public works, recreation, education and social services. This growth, combined with the self-governing aspirations of many communities, has magnified the need for First Nations to build an effective, professional and highly skilled public service.

While the number of trained First Nation people has increased in recent years, there remains a shortage of skilled First Nation people to effectively fill some positions in First Nation administrations. As a result of these shortages, human resource planning and management of the existing pool of First Nation staff resources have become high priorities for many First Nation communities and organizations.

A significant number of First Nation governance projects were either specifically dedicated to analyzing and developing First Nation capacity in this area, or addressed human resource issues and personnel policies as part of a larger effort to develop new administrative codes, or modify existing policies.

The human resource and personnel issues that First Nation governance projects addressed include the following:

- *best practices in human resource management*: identifying the main elements of comprehensive human resource manuals and their application in First Nation contexts.
- *capacity*: probing the match between educational and professional qualifications and training and the demands of self-government, and assessing the capacity of First Nations to manage complex public service organizations.
- *legal compliance*: addressing jurisdictional issues, especially the application of provincial employment law and the Canada Labor Code.
- *sensitivity to community and First Nation values*: exploring the extent to which federal and provincial programs, institutions and public service models can work in a First Nation context.
- *recruitment and retention of essential skills*: planning for the recruitment, training and retention of First Nation staff with needed skills and professional qualifications, and addressing issues of funding that place First Nations at a disadvantage in competing with other employers for trained, qualified First Nations people.

Broadly speaking, two types of reports concerned with human resource and personnel issues emerged from the First Nations governance projects. The first type includes human resource policy documents or manuals setting out terms and conditions of employment and related personnel policies and practices (e.g. Matsqui First Nation, Whispering Pines/Clinton Indian Band). The second set of reports has a process orientation, and describes the results of discussions from meetings, symposia and conferences in which HR issues are identified and discussed (Treaty Four Governance Institute, Southern First Nations Secretariat).

The majority of human resource-related governance projects contain detailed documentation on human resource policies, often accompanied by forms, manuals, and job descriptions. Many of these reflect mainstream approaches. Other reports provide a candid and clear assessment of the size and complexity of human resource management challenges in First Nation communities.

Because many of the human resource policies and manuals produced are similar with respect to content, they are highly transferable to other First Nation contexts. The way in which issues are addressed is also transferable, as the challenges are commonly shared by First Nations across Canada (e.g. legal issues and application of federal and provincial laws; approaches to training and professional development). These reports provide strong evidence that much can be gained by sharing knowledge and experience in respect of First Nation human resource management, development and policy.

## **Overview of Case Studies**

The primary focus of the three case studies included in this thematic category of governance projects is on building human resource capacity and developing effective human resource management and personnel policies.

**Matsqui First Nation** is a small First Nation located in British Columbia. Their governance project entailed the development of a Human Resources Policy Manual.

**The Treaty #4 Governance Institute** has been given the mandate to assist Treaty #4 First Nations develop governance tools and the necessary capacity to become self-governing. Treaty #4 is comprised of 36 First Nation member communities in Saskatchewan and Manitoba, with a population of approximately 35,000 people. The organization reports on the results of a staff survey that probed the human resource capacity and requirements of seven member First Nations. It also presents a draft First Nation Public Service Act.

**Le Conseil Tribal de la Nation Algonquine Anishinabeg/Algonquin Nation Tribal Council** represents seven First Nation communities within the Abitibi-Temiscamingue and Outaouais regions of Quebec, and nearby regions of Ontario. The Tribal Council conducted a needs assessment consultation that indicated that capacity building within First Nation institutions was a priority, and in response they developed a plan for management and other forms of staff training, to be delivered in modules.

## **a) Matsqui First Nation**

The Matsqui First Nation's governance project goal was to:

- design an improved personnel policy manual to respond to changing roles and responsibilities of staff,
- create a more effective approach to managing human resources, and
- build greater capacity in preparation for self-government.

Matsqui First Nation utilized the expertise of a consultant to assist two community members with the facilitation and development of the project. The project engaged community members through numerous community meetings, helping the project to identify human resource needs in all functional areas of the First Nation's administration. Once needs were identified, the First Nation created policy statements, followed by further policy review and development.

The second phase of the process involved a presentation of draft policies to community members at a general meeting, with an opportunity for comment and feedback to be provided. In the final stage of development, the Matsqui Governing Body and project team proceeded to make changes based on input from the community.

The process also provided mentoring and job paralleling opportunities designed to help First Nation members learn about First Nation administration.

The human resource policy produced by Matsqui is a concise and clearly presented document. It is sensitized to the cultural responsibilities and practices of staff, allowing up to six weeks of cultural leave without pay so employees can participate in cultural activities.

The policies developed provide sound guidelines for improving the human resource management capacity of the First Nation, supported by interesting and helpful documentation in the appendices, such as a code of conduct and employee appraisal form.

The Code of Conduct or 'ethics contract' provides Matsqui First Nation employees with an incentive to familiarize themselves with First Nation policies and procedures, and to act in accordance with ethical standards. The guidelines include provisions respecting confidentiality, drug and alcohol abuse, respect for authority and in serving First Nation members, loyalty, self-improvement, integrity, and workplace harmony.

The employee appraisal and self-appraisal forms are original, asking staff and supervisors to rate performance in terms of effectiveness, attitude, quality of work, attendance, work habits, communication skills, organization, and leadership ability.

To provide community members with incentives to complete high school, the Matsqui Policy Manual includes guidelines for the provision of rewards to successful graduates.

## **b) Treaty #4 Governance Institute**

The Treaty #4 Governance Institute's project describes how an aggregated organization of 36 First Nations approached the identification and analysis of human resource issues, including the ongoing development of a First Nation public service. The project had a strong research orientation and includes the results of a survey of seven member First Nations. The survey provides insights into the preparedness of these First Nations for self-government and the establishment of a First Nation public service commission.

With the results of the survey in hand, the project created a database of human resource skills and capacities. This database provides valuable information concerning the strengths, weaknesses and gaps in human resources that are required to manage First Nation self-government regimes.

One of the key findings is that less than 50% of the seven First Nations' staff have formal education in their area of employment. This result leads the Treaty #4 Governance Institute to the conclusion that salary and benefit levels as well as housing issues need to be addressed to help First Nations retain educated employees. More positively, approximately 53% of all staff surveyed indicated that they had attended a post-secondary institution and several First Nations have a large number of university graduates.

After reviewing and analyzing the survey data, the Treaty #4 Governance Institute concluded there is a need to:

- develop a strategic framework for human resource planning,
- develop job descriptions for member communities, and
- examine best practices and develop policies for hiring, employee retention, performance appraisals, and grievances.

A central component of this project involved the development of a draft First Nation Public Service Act. This Act, which has not been formally presented to Treaty 4 First Nation leaders, would be applicable to those First Nations that chose to adopt it. The Act proposes to establish a Treaty 4 Public Service Commission. The Commission would have several functions related to human resource policy and management across the First Nation public service. These functions would include, for example:

- developing and implementing classification systems,
- assisting First Nations in human resource management practices such as recruitment compensation systems, and employment conditions, and
- acting as an appeal body.

The draft First Nation Public Service Act begins to structurally define a First Nation public service, proposing that this comprise two divisions, one classified and one unclassified. The unclassified division would encompass members of boards and commissions, the clerk of the Treaty 4 Executive Council and Treaty 4 Chief and Council, and other designated positions.

The Treaty #4 Governance Institute's report indicates that the organization is planning an additional phase of research. This additional phase would deal with identified human resource needs through the development of other tools related to human resource management and development.

### **c) Le Conseil Tribal de la Nation Algonquine Anishinabeg/Algonquin Nation Tribal Council**

The Algonquin Anishinabeg Nation Tribal Council (AANTC) represents a very diverse aggregation of seven First Nation communities. In recognition of this, and the fact that a needs assessment had not been undertaken in the last decade, the Tribal Council undertook a needs assessment in each First Nation. Leaders and staff were consulted about their priorities for capacity building and technical services.

A technical committee formed by the Tribal Council developed interview questions, and arranged research visits to each of the member First Nations. Community needs and priorities were identified, and the results subsequently validated by each First Nation. The detailed results of these meetings appear in the project report, along with a snapshot description of each First Nation.

There is a great deal of convergence in priorities and needs across the seven First Nation communities, despite their diversity. On the basis of this convergence, the Tribal Council staff worked with a consultant to revise existing training modules, and to develop a plan for an initial response that would offer training modules in management planning, organization, leadership and control. This training will be delivered in both French and English.

### **Conclusions**

The human resource policy document created by Matsqui First Nation provides an excellent model that other First Nations in Canada could adopt and implement, including under almost any legislative framework. Matsqui First Nation's policy manual reflects attention to detail and First Nation culture.

The Treaty #4 report provides a snapshot of human resource issues that First Nation communities are dealing with on a day-to-day basis and outlines a plan for moving forward. The creation of a human resource needs data base could be useful in assisting First Nations to share “best practices” in their human resource capacity building efforts. The proposal to create a First Nation Public Service Commission is a unique contribution to the movement towards an increasingly professionalized First Nation public service.

The Algonquin Nation Tribal Council conducted an efficient and focused needs assessment resulting in a grounded staff development and training plan that might be of general interest to other groups. The description of the project illustrates the challenges facing geographically dispersed First Nation members of a Tribal Council, working in their own language as well as French and English.

Overall, the projects demonstrate that First Nations are trying to come to grips with many of the same human resource issues, including recruitment and retention of skilled employees, legal

compliance, education and professional development, funding constraints, policy and procedure gaps, and the ability to produce policy products that are both professional and sensitive to community values and traditions.

## 9. Conflict of Interest and Codes of Conduct

Conflict of interest guidelines and codes of ethics are widely used by governments in Canada as procedural documents that set out the values and ethics of public service and political leadership. They are intended to guide elected and non-elected officials in the execution of their professional duties.

The familial closeness of many First Nation communities creates the need for procedures to minimize potential conflict of interest situations. Despite this need, the *Indian Act* does not prescribe or require First Nations to establish any rules or guidelines for conflict of interest or ethical matters.

To address issues of conflict and conduct, First Nations have responded by trying to ensure they operate consistent with an unwritten set of conflict of interest rules. But increasingly, First Nation members are demanding that their leaders and administrations fulfill their duties and responsibilities consistent with written codes of ethics and conflict of interest rules.

The federal government offered its own solution to address the absence of rules, by proposing in the *First Nations Governance Act* a requirement that First Nations develop conflict of interest guidelines as part of an administration of government code.

The collection of First Nation governance projects includes many examples of conflict of interest rules and codes of conduct. In some cases these are grounded in traditional values, while others have a more contemporary orientation. A theme evident in these policies and codes is the emphasis placed on the responsibility of elected and appointed leaders to act on behalf of the community, including in a trust-like and fiduciary manner.

### Overview of Case Studies

Each of the project reports selected as case studies of First Nation conflict of interest and/or codes of conduct illustrate the capacity of First Nations to develop codes that reflect community traditions and values.

The **Kabapikotawangag Anishinaabeg Youth Council** is comprised of two representatives from each of the six Anishinaabeg of Kabapikotawangag First Nations. The Youth Council's governance project was funded to help the Council develop a Conflict of Interest and Redress Mechanism.

**Sakimay First Nation** is located in Saskatchewan. The community developed a Code of Conduct for Chief and Council as one component of its governance project.

The **Lower Kootenay Indian Band** is located in British Columbia. Its governance project entailed the development of a Conflict of Interest Code.

**T'it'q'et First Nation** is located in British Columbia. Its pilot project developed a Code of Ethics and Conduct.

## **a) Kabapikotawangag Anishinaabeg Youth Council**

As part of their governance project, the Kabapikotawangag Anishnaabeg Youth Council held nine governance forums in member communities and in near-by urban centers. Instead of using outside expertise to facilitate the project's governance forums, the Youth Council ensured that First Nation youth were trained in facilitation techniques and other important historical and traditional matters to allow them to effectively lead the governance forums.

During the forums, the Youth Council and forum participants determined that no direct Ojibway translation exists for the contemporary concept of conflict of interest. Nonetheless, forum participants developed a usable definition of the concept and proceeded to deliberate mock conflict of interest scenarios and possible means of redress.

Using this method, the Youth Council developed a Conflict of Interest Guideline "to protect, promote and enhance the integrity, accountability, and credibility of the KAYC, by ensuring that the interests of all individuals, groups, organizations and entities of our member First Nation communities are central in all of our decision making".

The project also recommended an appeals/redress mechanism. It was proposed that a Redress Committee be established based on a family kinship or clan system. Each family or clan would select one of their members to sit on the committee. The hearing process that is proposed is infused with the customary practices of the Anishnaabeg, including the use of an eagle feather during oral hearings.

To implement Conflict of Interest and Redress Committee mechanisms, the Youth Council identifies some very specific actions including:

- further community and Elder consultations,
- further document development,
- hiring an expert to assist with the development of an implementation plan,
- hiring youth facilitators to generate awareness of the mechanism among member communities, and
- hiring a youth project coordinator to execute the implementation plan.

The Youth Council created a draft document that provides a basis for further developing and implementing an effective and useful governance tool for member communities of the Kabapikotawangag Anishinaabeg.

## **b) Sakimay First Nation**

Sakimay First Nation's governance project was expansive, delivering several governance products, including a Code of Conduct for Chief and Council.

The Code establishes provisions that speak to Council's general and specific responsibilities, non-performance and breach of duties, and administrative relationships.

A description of the Sakimay Chief and Council vision statement provides us with an indication of the numerous obligations that are associated with being a leader in the community. These are reflected in an oath of office, a belief statement and a code of ethics. In each instance, Chief and Council must agree to act in accordance with and uphold the guidelines for leadership. Penalties for breach of duty are specified, including suspended remuneration or reimbursement of expenses for Chief and Council meetings.

Provisions for motions of non-confidence also are specified. Motions to proceed with a vote of non-confidence must be presented at a general membership meeting and must clearly cite reasons for consideration of the motion. A motion to proceed with an expression of non-confidence must be voted upon by the membership. It must receive the support of a majority of those present at the general meeting. If passed, a community referendum would be held to make a final decision.

The relationship between Council and the First Nation's administration also is clarified. More specifically, the code makes it clear that Council's role is to provide direction to the First Nation's Director of Operations through policy, and that all administrative and staffing concerns are to be forwarded to the Director of Operations.

The Code would come into effect upon the approval of a majority of Sakimay First Nation electors in attendance at a general membership meeting.

## **c) Lower Kootenay Band**

The Lower Kootenay Band's Conflict of Interest Code was written by a community member trained in the law, and with community leadership experience. The stated purpose of the code is to address the need for First Nation communities to disentangle financial and familial issues and allow First Nations to "govern in accordance with generally accepted legal principles".

Immediately following an introduction to the Code, its ten primary rules are presented. Each rule is succinctly stated and is followed by a brief description of what is entailed in the meaning or practical application of the rule.

While the community's approach provides a typical example of a compliance-based ethical code, the content and guiding principles of these rules are supplemented by value-based concepts and terminology such as honesty and respect. It is these terms and values that express the uniqueness and diversity of First Nation culture within the Code.

The terminology used throughout the Code is also infused with public law terminology such as fiduciary, effective representation, fairness and justice.

#### **d) T'it'q'et Administration**

The T'it'q'et administration secured funds to develop a Code of Ethics and Conduct as a guide for staff, Council, Committee and community member interactions with one another.

The consultant responsible for developing the document met with the Elders Council, the Traditional Council, Chief and Council, Committees and administration staff.

The project outcome is attuned to the traditional values of the T'it'q'et community. The Code itself is based on a dream statement, a statement of excellence, and the constitution and traditional values and teachings of the T'it'q'et and P'eg'ig'lha Clan.

The Seven Sacred Laws of health, happiness, generations, generosity, pity/compassion, power and quietness form the basis of T'it'q'et's Code of Ethics. These laws and the principles, outlined in the vision statement, provide a foundation for policies and actions that help maintain balance and harmony in all relationships.

The word usage of the Code of Ethics and Conduct is similar in tone to the written teachings of many First Nation communities. Words such as respect, compassion, understanding, patience, wellness and balance are present throughout the Code and are used to develop effective guidelines for how the T'it'q'et community and its members relate to one another in a culturally appropriate manner.

The differences in apparent, potential and real conflict of interest situations are defined to help ensure that confusion in conflict situations is minimized.

An Oath of Office and Confidentiality was created as part of the project. The Code has yet to be approved by community members. Once it is approved by the community, the Oath of Office will take effect.

#### **Conclusions**

The codes of conduct and codes of ethics developed by each community provide strong examples of how shared values and agreed-upon standards can be incorporated into effective ethical guides that reflect First Nation culture and traditions.

All of the procedures and codes developed could be implemented within the current legislative framework of the *Indian Act* or the *First Nations Governance Act*.

## **Volume 2 Conclusion**

A key finding of the research project completed by the Carleton Centre for Community Innovation for the First Nations Governance Centre is one of considerable diversity and innovation in how First Nations are responding to contemporary issues of governance, as well as the challenge of building First Nation governance systems that can meet community and external expectations for increased transparency, accountability and efficiency. The diversity of First Nation response is evident in the twenty-nine case studies that were selected and reviewed in this Volume of the research report.

The projects presented as case studies in this volume were selected for their quality, transferability and their representation of the ways and means by which First Nations are coping with the issues they face in the every day administration of their affairs. They also provide a glimpse of the dreams and practical plans First Nations are hoping to bring to fruition in order secure a future of hope, dignity and self-determination. The case studies exemplify the richness and depth, the quality, capacity and inventiveness that is evident in the complete collection of First Nation governance projects. They demonstrate the diversity of First Nation responses to contemporary legislative and policy challenges in the area of First Nations governance. This diverse response further underlines the notion that a 'one-size-fits-all' approach to developing First Nation governments and governance tools is neither appropriate nor ultimately effective.

Other First Nations in Canada can draw inspiration and practical guidance from the products and processes of the First Nations governance projects reviewed case studies in this volume. Ultimately these projects also point to future directions for research, as well as policy and capacity development that can be supported by First Nation, federal and provincial governments, as well as organizations and institutions serving First Nations.

# **Appendix A**

**First Nations Governance Project Reports**

**Available for Review**

**First Nations Governance Project Reports  
Available for Review**

**British Columbia (40)**

Lheidli T'enneh  
Campbell River Indian Band  
Lower Kootenay Band  
Chamainus First Nation  
Katzie First Nation  
Lower Similkameen Indian Band  
Musqueam Indian Band  
Whispering Pines / Clinton Indian Band  
Xaxli'p (Fountain) First Nation  
West Moberly First Nation  
?Akisq'nuk First Nation  
Iskut First Nation  
Muskamagw Tsawataineuk Tribal Council  
Samahquam Ucwalmicw, Skatin Nations and Douglas First Nation (Lower Stl'atl'imx Tribal Council)  
Tsawataineuk Band  
Doig River First Nation  
Hul'qumi'num Treaty Group  
Hupacasath First Nation  
Kitamaat Village Council  
Leq'a:mel First Nation  
Lyackson First Nation  
Lytton First Nation  
Skeetchestn Indian Band  
Tl'etinqox-t'in Government  
Matsqui First Nation  
North Thompson Indian Band  
Pacheedaht First Nation  
Skin Tyee Nation  
St. Mary's Indian Band  
Kamloops Indian Band  
Kwakiutl Band  
McLeod Lake Indian Band  
Klahoose First Nation  
Skidegate First Nation  
Sumas First Nation  
Uchucklesaht Tribe  
Ktunaxa / Kinbasket Tribal Council  
Sliammon First Nation  
T'it'q'et Administration  
Northwest Tribal Treaty Nations

## **Alberta (12)**

Aboriginal Financial Officers Association of Alberta  
Tallcree First Nation  
Smith's Landing First Nation  
Blood Tribe  
Siksika First Nation  
Kapawe'no First Nation  
Tsuu T'ina Nation Youth Council  
Beaver First Nation  
Wesley First Nation  
Bears paw First Nation  
Chiniki First Nation  
Stoney Nakoda Tribe

## **Saskatchewan (18)**

Treaty Four First Nations  
Canoe Lake First Nation  
Sakimay First Nation  
Peter Ballantyne Cree Nation  
Pheasant Rump Nakota First Nation  
Prince Alberta Grand Council  
Battlefords Tribal Council  
Carry the Kettle First Nation  
Poundmaker Cree Nation  
Mistawasis First Nation  
Key First Nation  
Little Pine First Nation  
Ocean Man First Nation  
Pasqua First Nation  
Cote First Nation  
Muskeg Lake Cree Nation  
Thunderchild First Nation  
White Bear and Ochapowace First Nations

## **Manitoba (10)**

Opaskwayak Cree Nation  
Berens River First Nation  
Hollow Water First Nation  
York Factory Cree Nation  
First Nations Accountability Coalition  
Long Plain First Nation  
Fox Lake Cree Nation  
Interlake Reserves Tribal Council  
War Lake First Nation  
Dakota Tipi

## **Ontario (19)**

Southern First Nations Secretariat Tribal Council  
Fort Albany First Nation  
Mushkegowuk Tribal Council  
Kettle and Stony Point First Nation  
Kettle and Stony Point First Nation  
Sagamok Anishnawbek First Nation  
Wikwemikong Unceded Indian Reserve  
Anishnaabeg of Naongashiing  
Wauzhushk Onigum Nation  
Northwest Angle #37 First Nation  
Shoal Lake #40 First Nation  
Kabapikotawangag Anishnaabeg Youth Council  
Fort Severn First Nation  
Mamaweswen (North Shore Tribal Council)  
Iskatewizaagegan No 39 Independent First Nation (Shoal Lake)  
Stanjikoming First Nation  
Keewaytinook Okimakanak  
Waabigoniw Saaga'iganiw Anishnaabeg (Wabigoon Lake Ojibway Nation)  
Sandy Lake First Nation

## **Quebec (7)**

Conseil de la Premier Nation des Montagnais Essipit  
Conseil de la Nation Innue de Natashquan  
Conseil des Ancinepek de Kitcisakik  
Innu Takuaikan Uashat mak Mani-Utenam  
Conseil Tribal Mamuitum  
Algonquin Anishnabeg Nation Tribal Council / Conseil tribal Algonquin Anishnabeg  
Timiskaming First Nation

## **Atlantic (4)**

Confederacy of Mainland Mi'kmaq  
Miawpukek First Nation  
Bear River First Nation  
Madawaska Maliseet First Nation

## **Northwest Territories (3)**

Tetlit Gwich'in Band  
De Gah Got'ie First Nation  
Dogrib Rae Band

## **Yukon (2)**

Liard First Nation  
Taku River Tlingit First Nation

# **Appendix B**

## **Research Method and Project Organization**

# Research Method and Project Organization

Research for this project was completed in three phases:

## ***Phase One: Project Launch and Trends Analysis*** (June-July 2004)

Work on the project began in late June 2004. Major activities in Phase One included:

1. Assembly of copies of project files; organization and preliminary analysis.
2. Letter drafted to advise project proponents of the commencement of the project.
3. Consultations with First Nations Governance Centre staff concerning project objectives and organization.
4. Review of published program objectives and subsidiary documents.
5. Preparation of *Trends Analysis* based upon available project files.
6. Development of criteria for case study selection.
7. Selection of case studies.
8. Completion of a “cluster analysis” by each team member, involving the review of each project report as part of a cluster of projects addressed to what seemed on the surface to be common themes.
9. Workshop of team members to review cluster analysis and consider main analytical themes and approaches to case studies.

## ***Phase Two: Analysis of Projects of General Interest*** (August 2004)

In consultation with First Nations Governance Centre staff and leadership, the research team decided to alter the planned approach to case studies. Because of the very high quality of many project reports, and the intrinsic interest of a very large number of projects, it was decided that the study team would not choose five case studies which would be the site of community visits for further investigation. We believed that the resources originally allocated to this purpose would be better spent in more sustained analysis of project reports, and so we developed selection criteria that led to the identification of 29 case study projects. These were analyzed thoroughly, and categorized according to their main focus. Since the team had an exploratory and explanatory purpose, rather than an audit function, the change of approach to the case studies seemed a useful and acceptable change of plan, and the only viable way to take advantage of the unexpected richness of the collection of project reports.

The product of Phase Two was a draft *Case Studies Report*, which together with the Trends Report, formed the basis for a workshop on the final report held by the entire team at the end of August, 2004.

## ***Phase Three: Final Report - A Comparative and Contextual Analysis*** (Sept-Oct 2004)

The *Final Report* was drafted based upon the written products of Phases One and Two (*Trends* and *Case Study Reports*), supplemented by subsequent study team observations and findings.

The final report was organized in two volumes. Volume 1 provides a high level presentation of research findings in the context of current and historical policy on First Nation government, and theories of community and organizational development.

Volume 2 presents in greater detail the findings of the research through a narrative description of the results of

29 First Nation governance projects. Projects were selected as case studies on the basis of their general interest and transferable experience. They are organized in nine thematic categories that address different aspects of First Nation governance.

Research results were validated in a mailing to all of the First Nations projects chosen as case studies. First Nations and organizations were then contacted directly and invited to comment on the case study report.

### **The Research Team**

The project was completed by a independent team of researchers associated with the Carleton University Centre for Community Innovation (3ci).

Dr. Frances Abele, Carleton University (Project Lead)

Alexandra Ker, Compass Consulting (Research Lead)

Craig Brown, Management Consultant

Dr. Kiera Ladner, University of Western Ontario

Dean Katherine Graham, Carleton University

Dr. Chris Stoney, Carleton University

# **Appendix C**

## **First Nations Governance Projects**

### **Management Regime Specific to Projects**

(Department of Indian Affairs  
and Northern Development )

# **Appendix D**

## **Inventory of First Nations Governance Projects**

# **Appendix E**

## **Projects Referenced as Case Studies**

## **First Nations Governance Projects**

### **Referenced as Case Studies**

Lheidli T'enneh (British Columbia)  
Campbell River Indian Band (British Columbia)  
Lower Kootenay Band (British Columbia)  
Musqueam Indian Band (British Columbia)  
Skeetchestn Indian Band (British Columbia)  
Matsqui First Nation (British Columbia)  
St. Mary's Indian Band (British Columbia)  
Ktunaxa / Kinbasket Tribal Council (British Columbia)  
Sliammon First Nation (British Columbia)  
T'it'q'et Administration (British Columbia)  
Tallcree Tribal Government (Alberta)  
Kapawe'no First Nation (Alberta)  
Treaty Four Governance Institute (Saskatchewan)  
Sakimay First Nation (Saskatchewan)  
Mistawasis First Nation (Saskatchewan)  
Key First Nation (Saskatchewan)  
Hollow Water First Nation (Manitoba)  
York Factory Cree Nation (Manitoba)  
Kettle and Stony Point First Nation (Ontario)  
Shoal Lake #40 First Nation (Ontario)  
Kabapikotawangag Anishnaabeg Youth Council (Ontario)  
Fort Severn First Nation (Ontario)  
Mamaweswen (North Shore Tribal Council) (Ontario)  
Waabigoniw Saaga'iganiw Anishnaabeg (Wabigoon Lake Ojibway Nation) (Ontario)  
Algonquin Anishnabeg Nation Tribal Council / Conseil tribal Algonquin Anishnabeg (Quebec)  
Confederacy of Mainland Mi'kmaq (Nova Scotia)  
Miawpukek First Nation (Newfoundland and Labrador)  
Madawaska Maliseet First Nation (New Brunswick)  
De Gah Got'ie First Nation (Northwest Territories)