

NWTT Governance Project: Phase One
“The question is, are we a true governing body?
Or are we a service delivery agent for Indian Affairs?”

EXECUTIVE SUMMARY

In response to the Federal Governments proposed changes to the Indian Act, also known as the First Nations Governance Initiative or Bill C-7, the Northwest Tribal Treaty Nations Steering Committee implemented a four-stage process to ensure that the interests of First Nations in northern British Columbia (BC) were appropriately addressed.

This report is the result of Stage One of that process which was to provide information to NWTT First Nations on the Governance initiative, seek their feedback through community consultations and questionnaires and gather and summarize the findings. This work took place between January and March 2002.

THE NWTT CONSULTATION PROJECT ON GOVERNANCE

A preliminary analysis by the NWTT of INAC's Governance Initiative determined that:

- ← There was limited opportunity for input by our people and our leadership.
- ← The Indian Affairs ‘consultation process’ was not appropriate.
- ← The Indian Affairs process demanded very tight time lines for changes to be implemented.
- ← The areas for proposed change were too limiting and would not provide any real benefit to First Nation's people.
- ← The Federal Government was determined to push this legislation through regardless of the opposition.
- ← We would be the ones having to live with the results of the legislation.

(page 7)

NWTT Nations did not object to the principle of changing the Indian act provided those changes truly reflect the needs and aspirations of First Nations. They didn't object to building capacity as it relates to Governance; or to greater accountability, high standards of financial management or equitable selection of leaders.

What NWTT Nations do object to are changes to the Indian Act that imposes the will of the federal government on them, and removes them from choosing the systems they know are best for themselves.

(page 7)

In response to the FNGI, the NWTT undertook its own process of consultation in 51 First Nation Communities in Northern BC. Over 800 Men, Women, Children, Chiefs and Hereditary Chiefs attended these sessions. As well, 1200 questionnaires were distributed to NWTT Nation citizens of which a statistically significant 32% were returned.

(page 3 paragraph 1, page 13 paragraph 1, page 45 paragraph 1)

The consultation work was the most comprehensive since NWTT Nation participation in the Royal Commission on Aboriginal Peoples. The results collected are worth noting for two reasons:

- ← They differ quite considerably from INAC's findings.

- ← They are very similar to the findings and recommendations set out in Chapter 3 of the RCAP on Governance.

NORTHWEST TRIBAL TREATY COMMUNITY CONSULTATION RESULTS

The FNIGI and the Legacies of Bill C-31 and Corbierre:

- ← NWTT Nations do not believe that sufficient resources will accompany the added governance responsibility. NWTT communities say they were under funded to adjust to the serious changes and community dissension brought about through Bill C-31 and also referenced the Corbiere decision as an example of “off loading”.

(page 26 paragraph 1, page 27 paragraph 2)

- ← INAC's implementation of Corbierre did not provide an appropriate transition and education period, which left many people confused about the rights of on reserve and off reserve members. Our leaders were, once again, left to manage the conflict created by INAC procedures.

(page 29 "f" paragraph 2)

Capacity:

- ← NWTT communities clearly recognize the need to build capacity as it relates to governance. They recognize that the fundamental principle of self-determination must be to exercise the right and ability to make their own decisions. They also believe, however, that they are being set up for failure because they don't expect that the new responsibilities will come with any new money.

(page 26 "b" paragraph 1)

Child Welfare:

- ← There was strong concern about the loss of children to the provincial foster care system. People identified this as a further loss of culture and saw this as assimilation. The majority of people 83% believe that increased decision-making power should be given to their governments on this matter. This illustrates that most everyone believes that the Province is not acting in the best interests of aboriginal children. Some believe that the MCFD has taken over where the residential schools have left off and that INAC is standing by letting this happen.

(page 27 "c" paragraphs 1-4)

Communication:

- ← NWTT communities recognize that the communication breakdown in our communities is in large part a legacy of the residential school systems and requires us to take responsibility for the healing amongst families, communities and ourselves.

(page 28 "d" paragraph 2)

- ← The Federal Government must take greater responsibility for communicating to non-natives that we are here to stay and that we have legally recognized and protected rights and interests that have never been surrendered.

(page 28 "d" paragraph 3)

Consultation:

- ← The NWTT project meetings on Governance were not to be viewed by INAC as consultation. NWTT Citizens clearly expressed that the “INAC consultation” process regarding the proposed changes to the *Indian Act* was unacceptable.

(page 28 "e" paragraph 1)

← NWTT Communities need to develop their own standards of consultation and they felt that the federal government had a fiduciary obligation to assist them in developing consultation standards that would meet their needs and not the needs of those outside their communities and territories.

(page 28 "e" paragraph 3)

← The RCAP report was cited often, as an example of how they were appropriately consulted yet nothing was done. Many people believe that the RCAP recommendations should simply be implemented.

(page 28 "e" paragraph 2)

Culture and Language:

← The protection of language and culture is paramount in the Northwest. Languages contain our laws, our philosophies, our history and governance. The relationship to our land is the means by which we control our culture. Citizens are angry and frustrated that their land relationships continues to be determined by a government not of their own. They recognize the continued outside control of their land relationship as the continued means to perpetuate cultural genocide.

(page 29 and 30 "g")

Dispute Resolution:

← NWTT Communities recognized that there is a need for a formal dispute resolution process at the community level. Experiences with Canada and BC to date have affected NWTT communities, families and individuals. Not surprisingly this has caused considerable distrust. There are power struggles between families who hold office in some communities and there need to be ways to overcome those obstacles.

(page 30 "h" paragraph 1)

Economic Development:

← Along with health and education, economic development is a major concern in a number of communities. Reserve lands are insufficient to develop sustainable economies and NWTT citizens want more control of the resources throughout their territories. Everyone else but NWTT nations benefits from the resources being used throughout the territories of the NWTT. Many NWTT nations are "giving up" on waiting for government to "save them" and are moving ahead to form partnerships with businesses that result in immediate economic benefits to their communities.

(page 30 and 31 "i")

Education:

← The communities were unanimous on the need for more education both in terms of traditional knowledge and culture, and in terms of mainstream knowledge.

(page 31 "j")

Elders:

← The importance of Elders is a given. People expressed concern that not enough was being done to learn history and culture from the Elders and saw that as the role and responsibility of our Elders. There was little mention of Elders as decision-makers. Elders were seen more as advisors and relationship builders or communicators.

(page 32 "k" paragraph 1)

Fiduciary:

← The fiduciary is seen by some in terms of "you can't have it both ways". They say you can't have the government owing you something while also declaring your

independence. To this perception, others respond and understand that the fiduciary obligation owed is not limited to the question of dependence or independence. The fiduciary will always be owed to NWTT Nations because their territories will always be their land. As NWTT Nations sign treaties, for example, they are not extinguishing their aboriginal title and therefore the fiduciary owed to them must remain intact in relation to the land that they let others use through the treaties.

(page 32 "l" paragraphs 5, 6 and 7)

Governance, Law-Making and Taxation:

← NWTT Citizens strongly suspect that the proposed changes to the *Indian Act* are taking them in the direction of municipal type governance, and are strongly opposed. Although the election system is used in communities, many see themselves as distinct or different from the mainstream government and do not see themselves as municipal governments.

(page 33 "m" paragraphs 1 and 2)

← In terms of law-making, many NWTT Nations want to revive traditional laws and reject the whole "by-law" process as ineffective due to the issues of enforcement. People called for a "First Nations Act" that better reflected community base needs.

(page 33 "m" paragraph 3)

← It is unacceptable that another government should be determining the lives of First Nations people. The *Indian Act* is no longer acceptable to NWTT Citizens as it prevents them from determine their own forms of government and how accountability will work within their governments. Traditional laws are the preferred means of governance. While there is a need for re-education, and perhaps codification of traditional law, traditional law is not dead and gone from the hearts and minds of people. Capacity must be built in both traditional and contemporary knowledge and skills. People are tired of being legally forced to do things that they do not want to do and see "self-government" in this light when the plan does not address capacity and nation building needs.

(page 34 "m" paragraphs 7, 9 and 10)

Healing, Addictions & Residential School:

← Participants believe their governments should have more power to make changes in these areas and they recognize the critical relationship between the need for good government and the need for healing in our communities, including leadership.

(page 34 "n" paragraph 3)

Hereditary Systems & Elected Systems:

← A growing majority NWTT citizens want to create governance that blends both systems. The imposed system of representative democracy through the *Indian Act* causes confusion. Although some people admit that they have a lot to learn about their own traditional governing systems, not many people truly understand the system of representative democracy either. They recognize they will have to engage in a period of development to reconcile whether it should be a traditional system, an elected system, a custom system or some combination thereof. It is going to take a while to work through the conflict and damage caused by the imposition of the *Indian Act* elected system of government that has created a lot of in fighting and distrust in NWTT communities.

(page 35 "o" paragraph 2, page 36 paragraph 5)

- ← Some communities are also looking at developing Family Systems of governance to address the question of full and culturally appropriate representation within their communities.

(page 35 "o" paragraph 4)

Housing:

- ← There was a consistent outcry regarding the need for housing in communities. There is a definite shortage of housing, many people said their houses were not built to standard and everyone expressed that there is severe competition for housing in communities.

(page 36 "p" paragraph 1)

- ← There is a growing desire for people to build and own their own homes. Nothing fancy, but their own. In many communities, people remember growing up in homes built and owned by their parents. They remember a time before INAC housing and they spoke of returning to that time of independence and to meet this desire to be self-respecting and self-determining.

(page 36 "p" paragraph 2)

Human Rights:

- ← To deal with the matter of human rights within NWTT communities, several people suggested developing their own human rights legislation. The existing human rights legislation does apply in NWTT communities, except where affirmative action hiring is concerned. They do not access that forum to resolve the sexual and other forms of discrimination that are created and experienced. They need their own system of ensuring "administrative fairness" when it comes to decision-making. People recognize that there is a need to develop policy and procedure in NWTT communities that results in fairness for all.

(page 37 "m" paragraph 4 and 6)

INAC Accountability:

- ← INAC is not, and needs to be, accountable to us and to Canadian citizens. The INAC bureaucracy is inefficient and is inappropriate. There is a deep resentment for a department of bureaucrats who do not know NWTT communities or citizens yet have the power to make decisions that affect everyone's lives. People want to know where all the money goes and were angered by the fancy offices that INAC staff work in while they live in substandard housing; if housing is even available.

(page 38 "r" paragraph 1, 2 and 3)

- ← INAC should be held accountable for not funding First Nation government leadership. INAC has set First Nations governance up like a corporation where the board of directors (our Chief and Council) only meets a maximum of once a month. Typically, INAC provides each First Nation with only enough money to give each person on council a monthly honorarium of about \$200. Conversely, the Premier or Prime Minister and Ministers are well paid and leave their offices with generous pension plans. In order to govern, and earn a living, NWTT leaders are forced to work two jobs; some within their First Nation governments and some outside their communities. Ordinary citizens, in general, do not realize this and turn around and criticize their leadership for having two jobs thinking that they are collecting two salaries. This is inadequate and something for which INAC is accountable. First Nations have been set up to fail.

(page 38 "r" paragraph 4, 5 and 6)

Leadership Accountability:

- ← It is important to understand that the insistence for leaders to be accountable not be distorted and interpreted as a matter of incompetence. There is a relationship between healing and good leadership. People realize that there is a “Cycle of Dependency” which needs to be broken. People also recognize that change is something all humans naturally resist. There is agreement that leaders should live in their communities and everyone wanted to have more involvement in decision-making processes that promote fairness. Leaders need to be accountable and they need to hold INAC accountable for setting up the present system of leadership within First Nations communities that didn't promote fairness and accountability to their people.

(page 39 "s" paragraph 1, 3 and 7)

Reserve Lands:

- ← People feel trapped on their reserves and in many cases the populations have outgrown the reserve. There is the serious psychological effect of feeling trapped. People described themselves as feeling like cattle.

(page 40, paragraph 1)

- ← People indicated that the reserves were not big enough to promote economic development.

(page 40, paragraph 2)

Sustainability:

- ← Economies need to be developed responsibly because what happens today affects both ancestors and future generations. Jobs are a priority, and the concept of sustainability is not seen as being only necessary to promote or sustain profit. Sustainability is related to the relationship with the lands from and to time immemorial.

(page 41 "u" paragraph 3 and 4)

Traditional Territories:

- ← People see themselves as owners of their traditional territories. But there is concern that traditional lands are being alienated to third parties at such a rapid pace that there will be nothing left by the time treaties are signed.

(page 41 paragraph 1 and 3)

- ← The recent *Taku* and *Haida* court cases are cause for hope, however, since the court recognized that aboriginal title does not have to be established before the duty to consult and accommodate is triggered.

(page 41 paragraph 4)

Treaty:

- ← The behavior of the federal and provincial governments within the treaty process is causing conflict within communities. Many people do not believe that the other governments are negotiating in “good faith”, nor do they see the mandates of the other governments as upholding the “honour of the crown”. Ultimately, other governments need to change their positions at the negotiating table. It is unlikely that the treaty process will lead anywhere since there are no NWTT Nations that are interested in surrendering their lands.

(page 42 "w" paragraph 3 and 4)

Trust, Skepticism, Control and Change:

- ← Generally speaking, there is no trust among people. They do not trust the “other government”, they do not trust their own governments. People do not trust each other

and, sometimes, do not even trust themselves. This lack of trust produces a real atmosphere of skepticism.

(page 42 "x" paragraph 1)

- ← Having been legally separated from land, languages and cultures "control issues", both individually and collectively, have become the most important thing in people's lives. People "need" to regain control of their lives and lands both as individuals and as nations.

(page 42 "x" paragraph 2)

- ← We are moving into an era of accountability. Accountability as individuals, communities, nations and governments. We are calling for everyone to be accountable and that is healthy. We do not see anyone, or any government, as exempt from the principle of accountability.

(page 43 "x" paragraph 4)

Women and Youth:

- ← We have some issues that we just don't talk openly about in our communities and how we treat our women may be one. Some women spoke out strongly on issues, but in several communities women did not speak at all. The silence of these women may, however, be due to a cultural norm.

(page 44, "y" paragraph 2)

- ← How women are treated in communities must be questioned. Some people say that traditionally women were not leaders and speakers, but still others point out that all cultures evolve and change. Like the larger Canadian society, women suffer beatings, rape, emotional and other forms of violence and the silence on this matter must be addressed.

(page 44 "x" paragraph 3)

NORTHWEST TRIBAL TREATY QUESTIONNAIRE RESULTS

OVERVIEW:

- ← Of the 1200 questionnaires distributed, 386 were returned giving the project a successful return rate of 32%. The majority of respondents (61% or 236) indicated they lived in their own community. The next largest grouping were those respondents living in a large urban area (24% or 94).

(page 45 paragraph 1)

- ← Women represented 57% of those who responded (191 women) and men represented 43% (143). Thus, the views of women in NWTT communities are well represented through the questionnaire process.

(page 45 paragraph 2)

- ← The most important issue to respondents was Education and Economic Development/Jobs at 22% (61/278). The next significant groupings were, Accountability of Chief and Council, Youth and Children, and Health and Healing, all at 12% (34/278).

(page 45 paragraph 4)

SELF-GOVERNMENT:

- ← Financial Accountability and Communications were identified as being the top two activities out of five required for effective self-government. More money for social programs and Leadership were identified as being the top two issues out of five needing to be addressed if Self Governing.

(page 47 paragraph 1)

LAW-MAKING:

- ← The management of the environment on Traditional Lands was the top issue required of a First Nations Government to make laws on.

(page 48 paragraph 1)

- ← 86% of respondents indicated that First Nation governments should be in control of creating and controlling businesses on-reserve. 80% of respondents believe that First Nations Governments should have the authority to impose fines, penalties and enforce their bylaws.

(page 48 paragraph 2)

GOVERNANCE:

Term of Office:

- ← 60% of the respondents said they wanted 3-5 year terms of office for Chief and Council. However, 41% said they wanted only a two-year term. The reality of the social dynamic within our communities, however, begs caution when 41% of the people don't want to change.

(page 48 paragraph 1)

Eligibility Requirements to hold Office:

- ← 79% of respondents said there should be eligibility requirements with education being the top preferred requirement.

(page 48 paragraph 1 and 2)

Non-Resident Seat on Council:

- ← 69% of respondents agreed that there should be a special seat on Council to represent the interests of non-resident band members. 18% disagreed. This is an area of governance where there is a clear need for education and discussion regarding the concept of inclusion as it relates to governance.

(page 49 paragraph 1)

Non-Member Voting Rights:

- ← 52% feel that non-members shouldn't be allowed to vote even when decisions made by Chief and Council affect them directly. However, a significant number 39% do feel that non-members should be able to vote on decisions affecting them. These results remain useful in terms of guiding a governance educational discussion regarding the issues that needs to take place.

(page 49 paragraph 1)

Non-Members Holding Office:

- ← 79% of the people said "No", while 18% said "Yes" and 3% did not respond. In terms of non-members holding office as Councilors, 71% said "no" and 26% said "yes". While there is a clear majority in favor of excluding non-members from holding office, there is also a clear desire to include them as well.

(page 49 paragraph 1)

- ← In response to whether there should be a “special seat on Council” a majority (52%) said “Yes”, while 31% said “no”.

(page 49 paragraph 2)

Off-Reserve Members Holding Office:

- ← In response to what kind of election system would work best for off reserve members, 27% supported having a special seat for off-reserve members; 20% supported special voting rules that would allow on and off reserve voting; 17% supported an equal number of seats for on and off reserve members and 16% supported two or more “special” interest seats on Council and Seat based on a Per Capita Formula.

(page 50 paragraph 1)

Chief and Council Dismissal or Resignation:

- ← 86% said there should be rules calling for Chief and Council to be dismissed or to resign in certain situations such as Breach of conduct or Code of Ethics, Criminal Prosecution or Lack of Community Support.

(page 50 paragraph 1 and 2)

Conduct of Elections and Appeals:

- ← 71% said they wanted an independent First Nation organization to be responsible for band elections and appeals. 60% wanted ruled to assist switching to custom elections.

(page 51 paragraph 1 and 2)

ACCOUNTABILITY:

- ← 49% of respondents said their government should be responsible to them. 21% said their government should be responsible to their Hereditary Chiefs.

(page 51 paragraph 1)

- ← 83% of respondents agreed that there should be Conflict of Interest Guidelines for each First Nation community.

(page 51 paragraph 2)

- ← 36% said that they as members should develop and enforce conflict of interest guidelines. Thirty-four percent (34%) said their First Nation government should be responsible for the task and 18% said it should be done through Community Constitution.

(page 51 paragraph 2)

LEGAL CAPACITY and AUTHORITY:

- ← 28% felt that their Government should have the legal capacity and authority to set up businesses. 19% supported their Government in being able to borrow money, enter into Contracts; and Invest Community monies and 15% supported their governments being able to sue or be sued.

(page 51 paragraph 1 and 2)

NEXT STEPS:

There is a need for a “Governance Education Process” of some kind for NWTT First Nations. Discussions relating to Economic Development require more attention and facilitation.

Four specific recommendations were provided at many of the NWTT Nations community meetings. These were:

- ← A Corbiere Conference
- ← Orientation on Indian Act
- ← First Nations Governance Act
- ← First Nations Human Rights Act

(page 55 paragraphs 1 and 2)