



Northwest Tribal Treaty Nations

Presentation to

Federal Standing Committee on Aboriginal Affairs

RESPECTING BILL C-7

THE FIRST NATIONS GOVERNANCE ACT

**Presented at Prince Rupert BC
February 20, 2003**

Thank you for the opportunity to appear before you today. I am one of two Co-chairs with the Northwest Tribal Treaty Nations (NWTT) and have been authorized to present on behalf of the NWTT.

Our objective, and that of most First Nations is to ensure our Inherent Right to govern ourselves is not diminished, and that provision for the full and uncontested recognition and implementation of that right is available to First Nations.

The Northwest Tribal Treaty Nations (NWTT)

The NWTT Nations is an association of First Nations and Tribal Groups in Northern British Columbia. Founding members crafted and formally endorsed the Northwest “Tribal Treaty” on February 11, 1991. The traditional territory of our participant members extends from Haida Gwaii to beyond Prince George and into the lower area of the Yukon. (attach copy of the mail/fax list)

The NWTT is incorporated under the BC Societies Act.

Our primary purpose is to work on common issues together as well as working to improve the current treaty making process in BC

NWTT Direction and Objectives

To address major issues or topics of concern to First Nations including:

- To influence or gain access to policy forums and how do we get them to our table to address our issues.
- To promote a readiness for potential change of government (provincial or federal) due to elections.
- To address government legislation impacts such as the 1985 federal Bill C-31 on membership or the 1999 Corbiere Supreme Court of Canada decision.
- To address gun control legislation impact.
- To assess and plan for impacts of external structures eg. INAC.
- To develop a responsive and consistent youth strategy.
- To assist in the protection of traditional structures of Governance eg. the role of the Hereditary Chiefs and strengthening of First Nations culture and language
- To assist in the review and attention to family and social service issues (health, education, child welfare, unemployment etc.).

NWTT Involvement with The First Nations Governance Act

Late in the year 2000 and into the first quarter of 2001, the Minister of Indian and Northern Affairs began speaking of problems associated with poor financial management, tainted political representation and deficient legal capacity of First Nations in Canada. The Minister publicly committed to a process that would see changes to the systems provided for within the Indian Act or in some cases, as not provided for within the Indian Act or related federal jurisdictions. In statements of the Minister, the solution to the issues identified would be done through a *First Nations Governance Act* (the FNGA) as introduced on June 14, 2002 as Bill C-61 and reintroduced as Bill C-7 on October 9, 2002.

Process Flaws

We felt that there was indeed merit in addressing constraints to First Nations Self-Government. However, the NWTT feel that the process to make changes related to the Indian Act has been flawed from the onset and have urged the Minister and the Department of Indian and Northern Affairs to change its approach.

The NWTT was amongst the first of a number of First Nation groups across Canada to engage in a willing, proactive and cooperative process to address the FNGA. Our recommended approach was simple:

- To relax the time-frame,
- To conduct a four stage process,
- To make provisions for our First Nation structure to be the lead component of community interaction and to be a principal in drafting and presenting proposed legislative change.

We began discussions for a formal level of involvement with the Department in the first quarter of 2001. We were not able to reach a common level of participation through an operating agreement until late in the fourth quarter of that calendar year. The lack of attention and support from the Department was time consuming, it was not consistent with the Minister's original message 'to receive First Nations input' and it was most discouraging to those who wanted to craft a cooperative approach to change. We feel it was only the direct intervention of the Minister's office following a NWTT letter of October 2001 that we became involved.

On another procedural issue the Minister advised that one of the reasons for introducing the FNGA was to ensure a process so that Canada would not be exposed to anymore than the 200 plus legal cases it currently faced surrounding the Indian Act. The NWTT made several requests for detail on these cases with no response from Indian and Northern Affairs. Is it possible that enabling Bill C-7 will override legitimate legal challenges of First Nations within the NWTT territory? If so, who and under what circumstances?

We acknowledge support to some of our recommendation for a process and a limited degree of involvement. But, the areas we have not been involved with are so fundamentally important they have rendered our participation as insignificant.

As stated, we proposed a Four-Stage Process:

- **Stage 1** NWTT direct community and membership discussion process, and a report to the NWTT and INAC.
- **Stage 2** was to involve bringing the report back to the communities while ensuring that the report and the recommendations from the report are in keeping with the information received from the community discussion process.
- **Stage 3** was to involve the development of a joint proposal between the NWTT and INAC.
- **Stage 4** was to involve direct NWTT participation in the legislative process.

In addition to the four-stage process, the NWTT had developed guiding principles to support NWTT community participation.¹ Community members were advised and very much aware of the NWTT four stage process and the guiding principles. Included in the guiding principles were requirements that: the legislation be optional; our hereditary system be guarded; and, the fiduciary relationship be further addressed.

¹

Guiding Principles of Governance

1. Principles of Governance must developed and led by First Nations
 - Reflect traditional components including the historic hereditary system(s)
 - Provide for preservation and enhancement of language and culture
 - Provide stability
2. The approach must be optional
3. No extinguishment (of Rights/Title)
4. Application over traditional territory
 - include provision for sharing of or within territory
5. Must address management and accountability
 - Involvement and accountability to our own people
 - Accountability of Indian Affairs to our Governments
 - Involvement and rights of all people, on and off First Nation Lands
6. Must address greater powers and jurisdiction
7. Must address fiscal realities and ability to create a better economic climate (opportunities for business, economic development and local revenue generation)
 - Maintaining and fostering the section 87 tax exemption
 - Provide for improved and secure Fiscal Transfers
8. Recognize, respect and honor differences amongst Nations
 - Enhance our autonomy
9. Address government Fiduciary Obligation (especially in relation to Health Services and Education)
10. Constitutional protection for our governments
(Under federal Constitution and First Nation Constitution)
11. Incorporate an accurate records system (Genealogy, names, population and other important statistics)

Unfortunately our recommendations were not fully accepted. Shortcomings resulted in a NWTT message to the Minister's office on April 10, 2002:

- *First, as the NWTT Stage I report has not been finalized, the JMAC recommendations were made without any NWTT input;*
- *Second, the NWTT agreed to be associated with the FNG initiative on the condition that our larger concerns related to self-government, treaty issues and social and economic conditions will be addressed at a later stage. This has also been documented in the JMAC report. We seek commitment for a process and time-frames for addressing these concerns;*
- *Third, there appears to be two underlying assumptions of the JMAC report: the "amendments will not infringe aboriginal or treaty rights" and the "amendments will not affect the fiduciary relationship between the Crown and bands". We have not been provided with any analysis that supports these assumptions and are concerned that there may well be infringement and fiduciary implications;*
- *Fourth, we are concerned that your Department is too rapidly developing legislative changes without providing any First Nation's review or input.*

With the federal government nearing final acceptance of Bill C-7, we feel it even more important that the Standing Committee address the issue of process requirements that will accommodate First Nation interests.

Prescriptive vs. Optional Nature of Legislation:

First Nations should be given the option of developing their own rules that adhere to the objectives of transparency and accountability. Again, the freedom to choose must be protected. Choice is a Canadian Value and a value revered by First Nations. Canadian values appear to be an important component in the Preamble to this legislation. This must be a value that we as First Nations have the same right to exercise.

Recommendation to Committee

That the results of Bill C-7 should not be imposed on First Nations. An option can be provisions for ongoing development and 'opting in' by First Nations in a similar fashion as the federal First Nations Lands legislation.

Ongoing development should be a joint government and First Nations process.

Inherent Right to Self-Government

We do not offer a definitive or exhaustive description of what Self Governance is however we offer the following observations:

- Historically, First Nations were self-governing. We developed our own laws and related authorities. There was no 'delegation' from any other source.
- First Nations continue to re-build their nations to capture key historical values of sound functioning government for their members and the traditional territories.
- A 'one size fits all' approach as framed within the *First Nations Governance Act* will not work. Cultural, geographic and social characteristics are too diverse across the North and even more so across Canada.

- Any federal changes must be interim and bridging in nature to the Inherent Right to Self-Government.
- Provisions must be for all members, on and off Reserve and treaty lands.
- Any federal changes must not infringe the Inherent Right to Self-Government.

There will be other issues surrounding the Inherent Right to Self-Government, the NWTT feels any or all of the above points are significant enough to seek greater commitment to protect that right.

Recommendation to Committee

That any federal legislation impacting First Nations contains explicit provision to protect the Inherent Right to Self-Government. If Bill C-7 proceeds, the NWTT proposes the insertion of the following text:

“Notwithstanding any other provision, this Act shall not abrogate or derogate from the Aboriginal and Treaty rights of the Aboriginal peoples of Canada, including the right to self-government.”

Impact on Fiduciary Relationship

As long as the Minister retains ultimate control over our governments and our lives, the Crown has an obligation to conduct itself in a manner that is in our best interests. In the proposed *First Nations Governance Act*, the Minister is removed from exercising his discretion with respect to the subject matters that make up certain law making powers of First Nations. Band Councils will exercise discretion currently exercised by the Minister. While this is not necessarily wrong, there is certainly a relationship between the nature and the scope of the fiduciary duty and the reduction of the Minister’s discretion along with increased authority exercised by Band Councils. First Nations should not be forced to accept an off-loading of responsibilities in the name of gaining control without the necessary research, resources and protection to support such transfers.

Recommendation to Committee

That a joint analysis involving First Nations be undertaken to assess the fiduciary relationship and the proposed *First Nations Governance Act* as a precursor to legislative enactment.

Codes and Regulations

The *First Nations Governance Act* makes provision for a time restricted period for custom rules of government to be developed that may impede the Inherent Right of Self-

Government. It prescribes a two-year development and implementation period or unknown 'default regulations' will be imposed.

Recommendation to Committee

- i. That any federal legislation impacting First Nations Custom Rules for leadership selection should allow for custom codes into the future, beyond the two-year level.
- ii. That any legislation imposing 'default regulations' provide clear indication of what those regulations contain and the degree of flexibility First Nations will have to build on or change those default regulations.

Nation Building

We re-iterate our opening comments that our objective, and that of most First Nations is to ensure the Inherent Right of Self-Government is protected, and that provision for the full and uncontested recognition and implementation of that right is available to First Nations

The Northwest Tribal Treaty Nations are keenly interested in developing a bridge to true Self-Government and a positive Nation Building model. Some of the characteristics that are called for, or are generally acceptable by NWT First Nations include:

- exercising sovereignty – to be truly Self-Governing and self-determining. Realizing and accepting there will be mistakes, that we will learn from them, that is a part of what self-rule means,
- creating effective governing institutions, to address financial matters, to manage, to enforce regulations and to adjudicate legal requirements or disputes. Investing in institutional capacity building is required to support this.
- provisions that reflect individual First Nation values in our governing institutions will provide for an appropriate cultural match – 'one size will not fit all',
- instituting positive change ... the ability to determine and focus on our own priorities, building our nations in a way that is relevant to us,
- moving from a dependent economy (reliance on government grants and jobs in government) to a productive economy (jobs in productive activities, income largely from profits from enterprises),
- a productive, functioning economy requires access and jurisdiction over lands and resources,
- working with First Nations to develop evaluation criteria that reflect our needs and concerns,
- having Canada as a partner but relinquishing its power so that the community can make its own decisions...

This proposed **legislation as presented, will not effectively address the needs of First Nations**. In the broadest sense, the Minister of Indian and Northern Affairs will continue to have discretion over the Band Council and while we do not totally dismiss the effort nor the work, we feel more must be done.

Recommendation to Committee

- i. Postpone further advancement of Bill C-7 pending defined and clear involvement of First Nations such as is recommended by the NWTT 4 Stage approach.
- ii. Undertake long term case studies and pilot projects on implementing Self-Government across each of the INAC Regions similar in scope to the *Harvard Project on American Indian Economic Development*.
- iii. Review and re-present the recommendations of the Royal Commission on Aboriginal Peoples Report, particularly as presented within Chapter 3 dealing with Governance.

Examples of a few key issues within the RCAP report supporting the NWTT options include:

- *Putting in place a neutral process to exercise the right of self-determination as nations,*
- *Recognizing that the Inherent Right of self-government has a substantial degree of immunity from federal and provincial legislative acts,*
- *The Canadian Charter of Rights and Freedoms applies, however under S. 25, the Charter must be given a flexible interpretation that takes into account distinctive philosophies, traditions and cultural practices,*

There are many other issues that can be addressed such as: cost factors, service delivery responsibilities, realities of the Indian Act etc. However, we have given a fair indication of significant issues that concerns NWTT First Nations. More importantly, it is our hope that we also leave you with a sense that many First Nations are prepared to work with government to address the common well being of our people.

On this date, and consistent with our vision, we wish to leave a reference to words of yesterday, words conveying a birth of freedom and nation building:

“...that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.”

(Excerpt from Abraham Lincoln’s Gettysburg Address – November 19, 1863)

We the First Nations people within Canada seek a level of freedom with our own government; a government built of our own values, developed by our people, and for the benefit of all.

The creation and imposition of the Indian Act on First Nations virtually eliminated or greatly diminished our ability to govern ourselves. This new Act does not move us to an arena where we can say our right is restored.

When we are again strong, truly self-governing nations able to be active participants in the overall economy, the benefits will be felt by all, First Nations, Canada and the provinces. This can only happen if we are allowed to exercise our inherent powers within a government that has access to appropriate resources; a government that is based on who we are as a people.

You are now in a position to help the First Nations of Canada in a way that few others are. To make this current initiative more meaningful and relevant to First Nation needs, we urge this Committee to recognize and support the recommendations and presentation we have made to allow that work to be carried out. Our message is now with you, and our thoughts will be with you during your deliberations.

Thank you for this opportunity.

Northwest Tribal Treaty Nations