

Effective First Nations Governance: Navigating the Legacy of Colonization

by

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Bachelor of Arts, First Nations Studies (Distinction), Vancouver Island University, 1998

Master of Public Administration, University of Victoria, 2001

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## Abstract

The barrage of negative media reports coupled with reactionary federal legislation have led many Canadians to believe that most First Nation governments are corrupt. Although systematic evidence of widespread corruption has yet to materialize, governance problems in some First Nations communities do exist. With the majority of First Nations operating under the band governance system imposed by the *Indian Act*, political troubles are often attributed to this law. Despite the fact the Indian Act creates conditions for governance problems to occur, other First Nations have resisted its enticement and operate sound administrations. Nations like these influenced this study.

To understand and explain how First Nations achieve and maintain effective governance, conversations took place with First Nations leaders, administrators, Elders and community members in Alberta and BC. The study was conducted using an Indigenous-Qualitative approach where the qualitative aspect involved a grounded theory methodology. Findings show that effective First Nations governance involves an inter-related journey consisting of four phases: motivators of change, visions of effective governance, actions to support effective governance and the maintenance of governance improvements. Every phase in the journey is profoundly shaped by the legacy of colonization. Political problems caused by the legacy motivate change, the journey is guided by visions to recover from the legacy and actions are taken to improve legacy-related governance problems. The power of colonization is particularly evident at the maintenance stage of the journey where legacy-related influences stifle political change and help keep the status quo in place. This observation led to the following hypothesis: *First Nations that wish to achieve and maintain effective governance must navigate the legacy of colonization.* Colonization creates obstacles that must be carefully navigated if effective First Nations

governance is to be achieved. It is amazing that many First Nations leaders have been able to stickhandle their way through these obstacles and achieve some measure of effective governance. These leaders are to be commended for their skills, strength and determination. However, in the absence of decolonization, strong economies, self-government and the restoration of certain traditions, the efforts of these leaders will be lost.

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## Acknowledgements

My lifelong dream has been to get a PhD. As a First Nation woman, I wanted to prove to myself that I was good enough to earn a doctorate. I also wanted to do a PhD for First Nations as a way of saying, “We are just as intelligent, worthy and capable.” My mission to get a PhD was not easy and was filled with personal trials. I am grateful to the following people for their support and helping me achieve my dream:

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## **Dedication**

This dissertation is dedicated to my precious son, Thomas (1983 – 2016). The hardest day of my life was the day you left me. That you were my only child made your loss profound. Even though I was overcome by grief, I did not quit and kept on going. I know you are looking down from the Spirit World, proud that your mother finally got her PhD. My love for you is eternal.

## Introduction

Media stories routinely report the vices of First Nations governance with alarming headlines that give the impression of widespread financial mismanagement and corruption in First Nations communities.<sup>1</sup> Some stories about political immorality have traces of historic paternalism, suggesting problems were the result of First Nations' incompetence. This was apparent in the remarks made by journalists that First Nations "need training wheels to manage their own affairs" (Akin, 2013) and "the failure of First Nation governments to manage the most basic of public service, is, unfortunately, not uncommon" (Libin, 2008). Given the volume and frequency of negative press, it was not surprising that in a poll conducted for Postmedia News, results showed the majority of Canadians believed that First Nations mismanaged funds. Consequently, those surveyed did not want money sent to reserves unless First Nations were independently audited. More unsettling was the complete disregard of historical factors and ongoing legacies of colonialism as the same poll found that 60% of Canadians believed that "most of the problems First Nations people face are brought on by themselves" (Woods, 2013).

The popular belief of prevalent political wrongdoing in First Nation communities appeared to be shared by the federal government that took several legislative steps to curb such problems. The first was the *First Nations Governance Act* of 2002, proposed by the Liberal government of Jean Chretien. Had it become law, the 600+ First Nations in Canada would have been required to strengthen governance codes on leadership selection, administration of

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<sup>1</sup> Levitz, S. (2013, January 9) First Nation financial management: 1 in 4 bands under scrutiny by feds. *The Canadian Press*. Retrieved from <http://www.ctvnews.ca/canada/one-quarter-of-canada-s-first-nations-under-financial-scrutiny-by-feds-1.1107517>.

Sanberg, D. (2009, February 2). Corruption infects the councils of many First Nation reserves. *The Gazette*. Retrieved from <http://www2.canada.com/montrealgazette/features/viewpoints/story.html?id=21a75f49-065b-42fd-ba89-221c3a75f458>.

governance and financial accountability (Hurley, 2002). Shortly thereafter, the Conservative government of Stephen Harper included First Nations in the 2006 *Federal Accountability Act* where the intent was to increase transparency and better track expenses of band governments. Other laws have included the *First Nations Financial Transparency Act (2013)* which required band governments to make financial statements public, and the *First Nations Fair Elections Act (2014)* which was intended improve elections and result in “strong, accountable and transparent” band governments.

Despite the persistence of negative news reports and the initiation of federal laws, systematic evidence that most First Nations governments in Canada mismanaged funds and were corrupt has not been forthcoming. Critics, for example, often cited reports by the Auditor General of Canada and Indian Affairs as verification of extensive financial misconduct and political malfeasance. The Auditor General, however, stated it was not the auditor of First Nations and only had the authority to audit federal departments and agencies. When their cooperation was needed, First Nations participated in audits on a voluntary basis (Auditor General of Canada [OAG], 2002, p. 4). Further to this, Indian Affairs reported that in 2015, 153 of the 617 First Nations in Canada were in various types of default management (Indigenous and Northern Affairs Canada [INAC], 2016b). Though 24.8% of First Nations in default management may be less than ideal, that figure did not support a conclusion that the majority of First Nations in Canada were politically corrupt.

Even though hard evidence of widespread financial mismanagement and corruption had yet to materialize, the default management figure of 24.8% indicated that governance problems in some First Nations communities existed. Moreover, though mainstream media reports could be considered predisposed and excessive, native news outlets and Indigenous authors also

addressed political difficulties in a number of First Nations communities.<sup>2</sup> Most notable was Calvin Helin, a lawyer from Lax Kw'alaams First Nation in British Columbia who, among other things, wrote about nepotism, lack of accountability and band member complaints against their band councils (2006).

### **The Problem.**

Why do some First Nations struggle with governance? Contrary to the popular opinion that First Nations had no one but themselves to blame, a more reasonable explanation is that band governance, and the ineffectiveness that can result from governing under that structure, was the root of the problem. Band governance originated from the *Indian Act* and partly set out the manner in which First Nations would operate their local governments. Because band governance was a prodigy of the *Indian Act*, the political troubles experienced by some First Nations have often been attributed to this law. Undoubtedly, the *Indian Act* forced First Nations to abandon their traditional governance structures and adopt the foreign system of band governance. A number of First Nations and writers of Indigenous issues believe the dramatic political changes brought about by *Indian Act* band governance have contributed to the political problems experienced by several First Nations. These changes include the replacement of accountability to nation members with upward ministerial accountability, disbursement of power with concentration, consensus decision making with majority rule, and collectivism with individualism. Ken Coates, an academic and researcher of Indigenous rights, articulated this belief:

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<sup>2</sup> Derrick. (2013, December 7). Seabird First Nation: nepotism, corruption and mismanagement of funds. Westcoast Native News. Retrieved from <http://westcoastnativenews.com/video-seabird-first-nation-nepotism-corruption-and-mismanagement-of-funds/>.

Critics of *Indian Act* governments, and there are many across the country, suggest that the corruption and political difficulties encountered on some reserves is a direct consequence of the *Indian Act*. Only the removal of the Act, and the establishment of truly Indigenous governments, they suggest, will result in proper management and governance in Aboriginal communities. (2008, p. 10).

John Borrows, an Indigenous professor of law, also attributed political problems to the *Indian Act*: “there are many exceptionally good leaders working under the *Indian Act*. Nevertheless, there are too many in our own communities who have also learned how to dominate others by mastering its intricate rules” (2008, p. 5). Taking into consideration the perspectives of First Nations citizens and the work of academics and researchers, it can be concluded that *Indian Act* band governance has been a major reason for political problems in First Nation communities. With the problem identified, I will now move onto the purpose of this research.

## **Purpose**

Despite being inundated by negative press, it is important not to lose sight of those First Nations that were not in default and managing their administrations appropriately. Such nations have resisted the enticement of *Indian Act* and have worked hard to be accountable, manage funds properly and operate sound administrations. Nations like these influenced this dissertation. I was interested in learning how such First Nations, despite operating under a law that did not support good democratic governance (Abele, 2007), traversed the pitfalls of *Indian Act* band

governance and attained effective governance. The purpose of this research, therefore, is to *understand and explain how First Nations achieve and maintain effective governance.*<sup>3</sup>

### **General Research Questions**

Prior to the presentation of the primary research questions, it is necessary to briefly mention the methodology because it dictated the development of research questions. The methodology used to guide this study will be discussed more fully in a forthcoming chapter.

This research used a combined qualitative research methodology that included Straussian grounded theory.<sup>4</sup> The objective of grounded theory research is not to test hypotheses, but to develop theory (Fendt and Sachs, 2008; Strauss and Corbin, 1998). To do this, research questions must be open enough to allow the researcher to investigate fully the phenomenon under study (Strauss and Corbin, 1998, p. 40). In grounded theory, the initial research question(s) specify what is to be studied. The questions then become more refined as the research progresses and the concepts are discovered (Strauss and Corbin, 1998, p. 41).

Following the counsel of Strauss and Corbin, three general questions guided this research:

1. What factors motivate First Nations to move from the status quo to effective governance?
2. How do First Nations achieve effective governance?
3. How do First Nations maintain effective governance?

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<sup>3</sup> In line with grounded theory, I decided not to apply a pre-determined definition of effective governance. Instead, I allowed the participants to define effective governance. This was done through the interview question: What do you think are some of the characteristics of effective governance? Participant definitions are articulated in the Visions chapter of the study.

<sup>4</sup> Straussian-grounded theory was developed by Anselm Straus and Juliet Corbin and described in their book, *Basics of Qualitative Research: Techniques and procedures for developing grounded theory* (1998).

During the course of interviews, each general research question generated a number of sub-questions. These questions are discussed more fully in the methodology chapter.

### **Significance of Study**

This study can be considered significant for a number of reasons. First, as noted earlier, there has been a great deal of negative press about governance problems in some First Nations communities. The volume of adverse media has given many Canadians the impression that most native governments are incapable, mismanage funds and are wrought with corruption. This study will help readers see the efforts that First Nations are making to navigate colonization, including the *Indian Act*, and move towards effective governance. Second, the federal government has been receptive to the negative dialogue about First Nations governance. A study like this can offer an alternative perspective to the negative wholesale image of First Nations and help government understand the importance of investing in good First Nations governance.<sup>5</sup> Finally, for those First Nations thinking about improving their governance situations, a study like this provides insight into the measures taken and the challenges that fellow First Nations have faced in their journeys toward effective governance.

### **My Location as the Researcher**

This research combined a qualitative methodology that consisted of Indigenous research methodologies and Straussian grounded theory.<sup>6</sup> Indigenous researchers have stressed the necessity for a researcher utilizing Indigenous research methodologies to locate herself. Indigenous researchers have provided a number of reasons why self-location was important.

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<sup>5</sup> The National Centre for First Nations Governance (NCFNG) was established in 2005 with annual funding from the federal government. The goal of the NCFNG was to help First Nations rebuild their nations and assist in the development of effective governance. The Harper Government discontinued funding and the NCFNG was closed in March 2013. Retrieved from <http://fngovernance.org/about>.

<sup>6</sup> Indigenous research methodologies will be defined in the methodology chapter of this report.

First, it qualified the researcher to speak about Indigenous issues because of her relationship to Indigenous people and tribes. Second, research in Indigenous communities had to be based on trust, most likely for the reason that some research has been historically exploitive. A researcher's self-location would help build that trust. Third, the researcher's connection to Indigenous communities allowed Indigenous people to understand that the researcher cared about the outcome and hoped the research would be helpful to them in some way (Absolon and Willett, 2005).

As a First Nation researcher who conducted research in First Nation communities using, in part, Indigenous research methodologies, I must present my self-location. I am from the Stoney-Nakoda Tribe. Living on three reserves situated along the Rocky Mountains in southern Alberta, my tribe has a combined population of 5000+.<sup>7</sup> Along with the other First Nations in southern Alberta, the Stoney-Nakoda is a party of Treaty 7.<sup>8</sup>

Having been raised on the Stoney reserve, I have witnessed the long-term intergenerational effects of colonization. In fact, my parents were students at the Indian Residential School on our reserve. As a child, I went to the same residential school for approximately two years. To this day, the legacy of colonization continues to affect my community in that we suffer from an assortment of socio-economic and political problems. Since this research is about governance, I will focus on some of the political challenges that my First Nation has faced.

The most publicized political challenge for the Stoney-Nakoda was the corruption scandal of 1997. The scandal began when a provincial court judge ordered the Crown to

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<sup>7</sup> The Stoney Tribe consists of three Nakoda Nations; Bearspaw, Chiniki and Wesley.

<sup>8</sup> In 1877, the Bloods, Peigan, Siksika, Stoney Nakoda and Tsuu Tina entered into Treaty Seven with the Crown. Additional information about Treaty Seven will be provided in Chapter Two.

investigate allegations made by nation members against the Stoney Tribal Council for corruption, mismanagement and the misappropriation of funds (Lunman, 1997a). The Stoney Tribal Council denied the accusations, condemned the provincial judge for over-stepping his jurisdiction and announced that it had unanimously passed a motion to file a complaint against the judge to the Judicial Council of Canada (Lunman, 1997a). A few days after this proclamation, my mother, who was a band councillor at the time, publicly countered that the tribal council's decision to file a complaint was not unanimous, the judge had shown he was concerned, and that she supported his call for an investigation because "the whole political structure has to change" (Lunman, 1997b, p. A.2).

Indian Affairs reacted to the crises by placing the Stoney Tribe under third party management. To explain, when a First Nation under the Indian Act defaults on its government funding agreement, Indian Affairs attempts to remedy the situation in one of three ways; a remedial management plan, co-management or third party management. In third party management, Indian Affairs appoints a third party manager to manage the nation's funding agreement. To get out of third party management, a nation must enter into a management action plan that addresses the default (INAC, 2013c). The Stoney Tribe remained under third party management for three years until it agreed to implement policies proposed by the third party manager. A federal investigation looked into the accusations of corruption, mismanagement and misappropriation of funds, but concluded there was not enough evidence to support charges against Stoney leadership. Though temporary improvements were made, talk on the Stoney reserve was that the socio-economic and political conditions that sparked the controversy have remained to present day. Despite considerable expense to resolve these issues, nation members were convinced that little had changed for the Stoney Tribe.

My Nakoda heritage, reserve upbringing and the political experiences of my community qualify me to speak about reserve life and First Nations governance issues. The fact I am First Nation from the Stoney Tribe and a member of Treaty 7 went a long way in establishing trust and developing relationships with the First Nations people I interviewed because they had similar backgrounds. Given the socio-economic and political tribulation my community has endured, I obviously cared about the outcome and usefulness of my research. I want a better future for the Stoney Tribe and other First Nations with similar challenges. A better future would not be possible without effective First Nations governance.

### **Layout of Chapters**

My study of how First Nations achieve and maintain effective governance revealed a journey. The journey was not a smooth and straightforward one as the road had many twists and turns marked with an assortment of obstacles. Nor was the start of the journey recent as First Nations have been dealing with governance challenges since colonial times. To illustrate how history contributed to present-day political struggles, Chapter Two will focus on the background of First Nations governance. Chapter Three will discuss the methodology and methods used for this study. It will explain the Indigenous-Grounded Theory methodology used and provide details on data collection and analysis. Following will be the chapters on the research results. Chapter Four through Chapter Seven concentrate on the major categories that depicted the journey towards effective First Nations governance. While not necessarily linear, results portrayed a journey that included these major categories:

- Motivators. The factors that motivated First Nations to want effective governance.
- Visions. The changes that First Nations wanted to see to get to effective governance.
- Actions. The steps First Nations leadership took towards effective governance.

- Maintenance. What First Nations did (and continue to do) to maintain improvements to community governance.

In grounded theory, the central category leads to the theory. Thus, Chapter Eight will present the central category and theory that emerged from it. As implied by the title of this dissertation, the data revealed that the central category was in fact the legacy of colonization. Chapter Eight will show the connections between the four major categories and the central category and how the legacy of colonization influenced the entire journey of effective governance. Chapter Nine concludes the dissertation. It summarizes the findings of this study, outlines the validation and evaluation strategies used and presents limitations to the study. Please join me now on the journey of effective First Nations governance.

## CHAPTER ONE

### **From Traditional First Nations Governance to Indian Act Band Governance**

Most research methodologies call for a literature review prior to the collection and analysis of data. Within grounded theory methodology, the timing of a literature review has been a source of disagreement amongst practitioners. The original founders of grounded theory methodology, Barney Glaser and Anselm Strauss, were clear that the main purpose of grounded theory was not to test or apply an existing theory but to let the theory emerge from the data (Glaser & Strauss, 1967). Glaser and Strauss were initially against the review of literature early in the research process for fear that it might taint the collection and analysis of data and influence the development of theory (Dunne, 2011). Strauss eventually parted ways with Glaser and reformed his position on the matter. He and his colleague Juliet Corbin began to advocate the review of literature earlier in the research process so as “to stimulate theoretical sensitivity, provide a secondary source of data, stimulate questions, direct theoretical sampling, and provide supplementary validity” (McGhee, Marland & Atkinson, 2007, p. 336).

I gave considerable thought to debates about whether a literature review should be conducted early in a grounded theory project. While I chose to use the Straussian version of grounded theory for this study, I was inclined to agree that a literature review at the onset might unduly influence data collection and analysis and the development of theory. Rather, I wanted the emerging concepts and categories to come directly from the First Nation people that participated in my study. By doing so, I anticipated that the resulting theory would be genuinely First Nation. Instead of an initial literature review that would inform the research, I decided to do a background on First Nations governance for the purpose of context. That said, I did not ignore the literature all together. It was reviewed after the data were gathered and analyzed and

incorporated into the findings to support the perspectives and experiences participants or to provide alternative explanations.

### **Purpose of the Background**

Some Canadians become impatient and annoyed when First Nations speak about their history. The general viewpoint behind this annoyance has been that First Nations should get over the past and move forward. They do not realize that history had made First Nations who they are today. In order to understand the present-day challenges that First Nations face, it was necessary to learn about their past. If history is ignored, it would aid the conclusion that First Nations were flawed and had brought their problems unto themselves. As Canadians learned about the history of First Nations, they would see that prior to and during early European contact, First Nations had their own governance systems complete with divisions of power, checks and balances and impartial decision-making. They would also discover that band governance was imposed on First Nations through the *Indian Act* and believed, by many, to be the root of their political difficulties.

With that in mind, this chapter examines the changing landscape of First Nations governance from pre-contact traditional governance through to *Indian Act* band governance. The intent of this historical review is to provide the context needed to appreciate fully the governance challenges that numerous First Nation communities confront. Discussion will begin with an examination of traditional First Nations governance. It will then move onto the *Indian Act* period and conclude with the impact of this legislation on First Nations governance.

### **Traditional First Nations Governance**

Prior to European settlement, North America was inhabited by “independent self-governing Indigenous nations, with their own distinct cultures, languages, and systems of law and government” (Murphy, 2001, p. 113). The basic political unit of self-governing traditional First Nations was extended families most often organized by clans (Alfred, 1995; Beatty, Berndahl & Poelzer, 2012; Boissoneau, 2007; Borrows 2010; Helin 2006; Long, 1990; Snow, 2005). The extended family as the focal point of governance was true for the majority of the First Nations in Canada. In the words of the Royal Commission on Aboriginal Peoples [RCAP], “In most Indigenous nations, political life has always been closely connected with family.” (1996, Volume 2, Chapter 3, Section 1.2.). The Gitksan and Wet’suwet’en of BC, for example, had a House system made up of matrilineal kin to which hereditary Chiefs were accountable (Elias, 1991). Extended families were also pivotal in the governance systems of prairie First Nations (Long 1990; Snow 2005). In central Canada, the main political unit for the Iroquois was also the family (Alfred, 1995, p. 73).

Some traditional First Nations governance systems were firmly structured while others were more loosely structured. Whether the political structure was fixed or fluid, family was an important aspect to the manner in which First Nations historically organized their institutions of governance. According to First Nation writer Calvin Helin, anthropological research suggested there were two main styles of political organization amongst First Nations in historical times. One was very structured and based on rank, status and hierarchy. Structured systems were usually found among the more stationary tribes that lived in territories where natural resources were abundant and close at hand. The other style of political organization was “less structured and much more egalitarian” and usually found amongst the nomadic tribes that had to travel long distances for food and other natural resources (2006, p. 70).

A structured traditional First Nations political organization frequently mentioned in the literature was the Longhouse system of government of the Iroquois Confederacy in central Canada (Alfred, 1995; Borrows 2010, Helin 2006). This system, based on the Great Law, came into being when the independent Iroquoian Nations that had previously been at war with one another came together and formed a confederacy. The Great Law was an agreed to set of laws that regulated political and social life for all the nations within the confederacy (Helin, 2006, p. 73). A council of Chiefs was appointed by the clan mothers and governed the confederacy (Borrows, 2010). The longhouse system of government was characterized by the “proportional representation of nations, veto powers, rules of order and precedence in debate” and democratically organized so that “Chiefs directly represented the will of their people” (Alfred, 1995, p. 78). Traditional First Nations federations were said to differ from western federations in that representation was based on clans rather than geography (Alcantara & Whitfield, 2010). The Iroquois Confederacy and Longhouse system of government was so well-organized and sophisticated that it was considered the first federal system in North America (Alfred, 1995, p. 77).

The prairie First Nations were examples of loosely structured traditional political organizations. They were more unregimented and did not have centralized governments, at least not permanently. Within the Stoney – Nakoda Nation of southern Alberta, for instance, extended families spent part of the year on their own with leadership informally provided by a senior family member (Snow, 2005). In the wintertime, or during hunting season, the need for survival made it necessary for several extended families to congregate. The assembly of extended families was said to form a band. Since the congregation of numerous families called for order, the people selected a Chief to provide direction. The Chief, in turn, selected other leaders to aid

him. This political body was responsible to ensure that each extended family was represented at the decision making level. On other occasions, a larger group was required where all of the Stoney bands would come together forming a tribe. To govern the tribe, a tribal council was formed that consisted of the leaders from each band. Even though the congregating bands became part of the tribe, they were not dictated to by the tribe in that “each band would remain under its own Chief” (Snow, 2005, p. xxi-xxiii).

Loosely structured political organizations were true for other prairie First Nations like the Bloods and the Peigan whose “tribal councils were loosely formed groups of clan Chiefs, assembling occasionally to deal with matters affecting more than one band or family grouping” (Long, 1990, p. 759). Unlike structured First Nations traditional governance systems, leadership appointments in loosely structured governance systems, such as those in Alberta, were usually temporary because “Historically, plains Indians did not accept that anyone had the right to govern others, except for very short periods of time” (Long, 1990, p. 764). While no governance structure was trouble-free, clan-based hierarchal and egalitarian governance structures worked for First Nations and sustained their communities for centuries.

### **First Nations governance during early European contact**

#### **The fur trade.**

Though contact had occurred much earlier, relations between First Nations and European newcomers expanded with the fur trade. The fur trade began in the 16<sup>th</sup> century and continued until the 19<sup>th</sup> century. During that period, fur was the main economic commodity on the North American continent. First Nations first traded furs with the French in the 16<sup>th</sup> century and then with the English from the 17<sup>th</sup> century onwards. The role of First Nations in the fur trade was to acquire, prepare and deliver furs to European outposts. Their participation in the fur trade was

crucial as the natural resource-based economy of colonial North America could not function successfully without their involvement. First Nations were considered equals in this economic partnership with the Europeans and as such, had a meaningful level of decision-making power in the fur trade (Kardulias, 1990). Throughout the fur trade, Europeans respected the nationhood of First Nations and they remained self-governing (Holmes, 2002). The fur trade ended in the mid-19<sup>th</sup> century when the supply of fur-bearing animals became scarce and the European demand for furs decreased significantly (Kardulias, 1990).

### **Wartime.**

The 18<sup>th</sup> and 19<sup>th</sup> centuries also saw a substantial amount of war as European states rallied to take possession of the vast resource-rich lands in North America. First Nations were also interested in land as they wanted to protect their remaining territories from further European encroachment. Motivated by the desire to protect their remaining territories, First Nations participated in the wars between European nations as allies to either the British or the French.

Three wars were most significant during that period. The first was the Seven Years War of 1754 that began when the French occupied land held by Britain. Although the British colonies fought alongside their First Nation allies in this war, the Seven Years War was known as the French – Indian War because the primary ally of the French were the Iroquois (Allen, 1993; McLeod, 2012).

The second major North American conflict of the 18<sup>th</sup> and 19<sup>th</sup> centuries was the American Independence War, 1774. This war began when most American colonies no longer wanted to be ruled by the British monarch and parliament. In their quest to be independent, these colonies worked to expand their land-holdings into British-held Canada. During this battle, both the Americans and British colonies endeavoured to have First Nations fight for their side. It was

the decision of First Nations to come to the aid of the British colonies (Allen, 1993, p. 45). The British colonies were able to protect Canada from the Americans because of the “effective assistance of the Iroquois (mainly Mohawk) and other Indian allies” (Allen, 1993, p. 48). Following the American Independence War of 1774, the Indian policy of the British colonial government was about safeguarding Canada from the Americans through “the use and assistance of His Majesty’s allies” (as cited in Allen, 1993, p. 13). These allies, of course, were the First Nations.

The third significant confrontation was the War of 1812 between the British and Americans. The Americans had never lost interest in taking possession of First Nations territories in Canada and believed that the British colonies were behind the Indian resistance against them. This fight began when the Americans attacked British colonies and its First Nations allies (Bowes, 2012, p. 1130). Even though it had to make some concessions, the British colonies were once again able to successfully defend Canada from the Americans, largely because of the help received from its First Nations allies. First Nations had a significant role in the formation and protection of Canada through their military support of the British colonies. Throughout this period of war, First Nations were equals in the military partnership with the British colonies and their nationhood was recognized and respected. Accordingly, First Nations governed their communities without interference from colonial authorities (Holmes, 2002)

### **The Royal Proclamation and treaties.**

Not long after the Seven Years War of 1754, the British Crown officially acknowledged that First Nations in Canada were self-governing nations with “Possessions, Rights and Privileges to be respected” (as cited in Milloy, 2008, p. 3). After the British colonies defeated France in the Seven Years War, King George III decreed the Royal Proclamation in 1763 to

claim British ownership of North American lands and to provide guidelines for European settlement in what was now Canada (University of British Columbia [UBC], 2009c). The Royal Proclamation emphasized the importance of the relationship between First Nations and the Crown and established a fiduciary responsibility by stating the Crown had an obligation to protect Indians and Indian lands from “unscrupulous settlers and traders.” Furthermore, tribal “nations” were not to be “molested or disturbed” on their territories (as cited in Holmes, 2002, p. 8; Leslie, 2002, p. 23; Milloy, 2008, p. 3). The proclamation recognized that First Nations had title to their traditional territories. Accordingly, only the Crown was permitted to attain Indian lands and had to do so through treaties (Holmes, 2002; Leslie, 2002; Milloy, 2008).

Around the time of the Royal Proclamation, First Nations and the British Crown entered into several treaties. The first of these, known as peace and friendship treaties, were aimed at defusing military alliances between First Nations and the enemies of British colonies. The intention of peace and friendship treaties was to ensure an amicable relationship between First Nations and the British Crown (INAC, 2010a).

Once the War of 1812 concluded, Canada was free from external threats of military conflict. It did not require further military assistance and no longer had any use for First Nations. As a result, the colonial government’s Indian policy changed substantially following the War of 1812 from procuring the friendship and military alliance of First Nations to “removing them to reserves and freeing up their land for settlement” (Holmes, 2002, p. 11). The goal of treaties transitioned from peace and friendship to land cessation and saw the conclusion of the Robinson and Douglas treaties of the mid-1850s. Following these developments, eleven numbered treaties were negotiated between 1871 and 1921 (INAC, 2010a). It was during this period that Treaty Seven, the treaty that my nation is party to, came into existence. The intention of the Canadian

government was to build a railway through the prairie territories of First Nations. In order to acquire the land needed to build the railway, the Royal Proclamation of 1763 made it necessary for Canada to extinguish First Nations' rights to those lands. Thus, in 1877, the Canadian government entered into Treaty Seven with the Bloods, Peigan, Siksika, Stoney Nakoda and Tsuu Tina whose territories were located in what is now southern Alberta. According to Canada, the signatory First Nations would receive small perpetuity payments, ammunition, education, clothing, agricultural implements and livestock in exchange for the absolute surrender of their traditional territories (Dempsey, 1987). In contrast, the signatory First Nations contend that Treaty Seven was a peace treaty, not a land surrender treaty. They argue that Treaty Seven nations agreed to share their lands with white settlers in exchange for economic development resources, education, health and annuity payments (Hildebrandt, Carter and First Rider, 1996). Differences between the parties about the meaning of Treaty Seven have continued to present day.

To some degree, the principles of the Royal Proclamation of 1763 were honored during the making of treaties. The self-governance of First Nations, for example, was respected in that a number of these historical treaties were conducted on a nation-to-nation basis (Holmes, 2002). Autonomous traditional First Nations governance, however, would soon be dismantled through federal legislation.

### **The End of Autonomous Traditional First Nations Governance**

Although the Royal Proclamation established a fiduciary relationship between the Crown and First Nations and moulded initial government policy into one of the protection of Indians, the civilization of First Nations had been on the mind of colonial authorities early on. The first indication of this was the colonial government's implementation of the Indian Civilization Program in 1830 (Leslie, 2002). After Indian policy reviews showed that First Nations were only

partially civilized, the colonial government legislated its civilization agenda through the *Gradual Civilization Act* of 1857 (Leslie, 2002; Milloy, 2008). Civilization was soon coupled with assimilation through the *Civilization and Enfranchisement Act* of 1859, a law meant to encourage First Nations to enfranchise on a voluntary basis. By 1863, the colonial government was informed that First Nations leaders were resisting and not a single First Nation person had agreed to be enfranchised. Government officials concluded that autonomous traditional governance was blocking the civilization of First Nations. If the advancement of First Nations was to be realized, self-government had to be terminated (Milloy, 2008, p. 6). As a way to dissolve First Nations self-government, what was now the Dominion or Canadian government focused its attention exclusively on assimilation and passed the *Gradual Enfranchisement Act* in 1869.

From 1869 onward, the federal government completely disregarded the principles of the Royal Proclamation. Canada's first Prime Minister, Sir. John A. Macdonald took issue with the proclamation's assertion that Indian tribes were self-governing nations. To him, Indian tribes were not nations. Indians were like children "incapable of the management of their own affairs." As such, Canada had "the onerous duty of...guardianship" (as cited in Milloy, 2008, p. 6). Prime Minister Macdonald defended his government's assimilation policy by arguing that Canada had a responsibility to "do away with the tribal system and assimilate the Indian people in all respects to the inhabitants of the Dominion" (as cited in Milloy, 2008, p. 2). Hence, the 1869 *Gradual Enfranchisement Act* ruled out autonomous traditional First Nations governance. Instead, the federal law favoured "a male-only elective system largely under the control of the local Indian agent" (Milloy, 2008, p. 6). In the word of Indian Affairs, the election provision was necessary because it replaced the "irresponsible" system of traditional First Nations governance and laid the groundwork for First Nations governments to become municipal governments (Holmes,

2002, p. 21). With the act's abolishment of traditional self-government and imposition of a band council system of government, Canada's mission to assimilate First Nations into Canadian society was in full swing.

The original *Indian Act*, passed in 1876, was a consolidation of all the earlier acts pertaining to First Nations (Holmes, 2002). True to form, the government's policy to assimilate First Nations was advanced to this act (Milloy, 2008). In fact, Minister David Laird, who oversaw the development of the *Indian Act*, reinforced the government's position on assimilation through enfranchisement. In introducing the bill, Minister Laird stated, "Indians must either be treated as minors or as white men." (as cited in Holmes, 2002, p. 23). The *Indian Act* of 1876 aggressively pursued assimilation by removing what authority remained for First Nations and providing the federal government with absolute control over every area of First Nations life (Milloy, 2008, p. 7). "It contained a hundred sections; it touched on all aspects of Indian reserve life, and it directed government administration" (Leslie, 2002, p. 25). The law spelled out the powers of band council and the manner in which elections were held. Notably, the federal government claimed final approval of every band council decision, procedure and expenditure (Holmes, 2002; Leslie, 2002, Moss, 1990).

Since 1876, the *Indian Act* has been amended several times. There were two amendments to the statute mentioned frequently in the literature. The first was the revised *Indian Act* of 1951. Some of the revisions included giving band councils more authority over certain areas. For example, band councils would be allowed to tax reserve property; provided they had achieved "an advanced stage of development" (Makarenko, 2008, p. 4). Provisions for voluntary and mandatory enfranchisement remained. In many respects, "The revised *Indian Act* of 1951 was not a radical departure from earlier versions" (Leslie, 2002, p. 26).

The second frequently mentioned revision was the *Indian Act* of 1985. Due to the *Canadian Charter of Rights and Freedoms* which prohibited discrimination based on such things as sex, Canada was forced to remove the mandatory enfranchisement of First Nations women who had married non-native men and reinstated First Nations people who had previously been forced by law to relinquish their Indian status (Chabot, 2007).<sup>9</sup> In addition to the removal of discrimination against First Nations women, the revised *Indian Act* of 1985 also allowed band councils to determine membership over their own nations (Clatworthy, 2007).

Regardless of past attempts to make improvements through amendments, many consider the *Indian Act* to be a hindrance to effective First Nations governance. Professor Frances Abele, for example, reviewed the act and concluded: “The provisions of the *Indian Act* do not constitute a design for a system of governance or management on reserves” (2007, p. 18). One finding that led to this conclusion was how the federal government had ultimate authority over areas that band councils were presumably responsible for, such as decisions, bylaws and elections. Abele concluded that ultimate federal authority weakened the legitimacy of band government. She also noted that the *Indian Act* made little mention of financial management by band council, did not mention band administration or administrative staff, and did not contain functions common to most governments such as “internal communication, internal accountability, policy research and analysis, community relations, leadership, staff recruitment and development and organizational design, among others” (2007, p. 18). In her words, “The form of Band government itself is minimally described” (Abele, 2007, p. 27).

The assimilative mission of the *Indian Act* forced First Nations to abandon their traditional governance systems and adopt the foreign system of band governance. Inevitably,

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<sup>9</sup> First Nations men that had married non-native women were allowed to maintain their Indian status. Their non-native wives gained Indian status and retained Indian status in the event of divorce (Chabot, 2007).

many of the western political principles and practices that came with the *Indian Act* were contradictory to traditional First Nations political values and principles (Long, 1990). As a result, governance in many First Nation communities changed dramatically. The discussion below will illustrate some impacts the *Indian Act* had on traditional First Nations governance.

### **Impact of the *Indian Act* on Traditional First Nations Governance.**

There were countless ways in which the Indian Act negatively impacted traditional First Nations governance, all of which immobilized First Nations governments and made it extremely difficult for them to govern effectively. As the ways in which the Indian Act impaired traditional governance practices are too numerous to mention, the discussion below will focus on three impacts. These will be the replacement of direct democracy with representative democracy, the separation of powers with concentration, and finally, the alienation of traditional forms of accountability in favour of ministerial accountability.

#### **Direct democracy was replaced with representative democracy.**

A key operating principle of western democratic governance has been the political participation of the community members through representative democracy (Dickerson & Flanagan, 1994). The idea behind representative democracy was for the people (the enfranchised public, however defined by eligibility rules at the time) to elect leaders for a short time or limited term of office in anticipation that brevity would encourage leaders to act in the public's interest. Through frequent elections, people could provide direction to their leaders and keep them accountable (Dickerson & Flanagan, 1994; Mulgan, 2003).

Democracy was not a western invention. First Nations had practiced it long before the arrival of Europeans to the North American continent (Russell, 2000). The difference was that in traditional First Nations governance, democracy was direct rather than representative. Within

structured clan-based First Nations governance systems like the Iroquois, for example, all clan mothers and clan members were involved in the political process. They brought issues to leadership and influenced the outcome of decisions (Borrows, 2010). Democracy was also present in hereditary systems where leadership selection was unlikely because leaders normally ruled for life. As explained by Ovide Mercredi, the former national Chief of the Assembly of First Nations, “Democracy means more than just voting. Hereditary systems, with direct consultation and involvement with the people, are also democratic” (Mercredi and Turpel, 1993, p. 99). In hereditary political systems, leaders received direct input from house members, which consisted of extended families, and then represented house interests at the larger political table.

In the more unstructured and egalitarian systems of traditional governance, such as those of prairie First Nations, direct democracy also existed because “rule was by consensus. Every member of every clan had a right to be involved in the making of decisions that affected them, both individually and collectively” (Long, 1990, p. 765). Consensus provided the opportunity for all nation members to express their views because decisions did not pass until everyone agreed. In this way, consensus decision-making assured that traditional First Nations governance systems were truly democratic (Russell, 2000, p. 101).

As noted earlier, colonists considered traditional First Nations governance systems to be “irresponsible” and an obstacle to civilization. They believed that representative democracy was a more responsible system of governance and subsequently instituted the elective system in the *Gradual Enfranchisement Act* of 1869 (Holmes, 2002, p. 21). Elected band councils with short terms were established. Election provisions made their way into the consolidated *Indian Act* of 1876 and have been there since. Every second year, band members were given the opportunity to hold their leadership accountable through elections (Alexander, 2003).

The enforcement of representative democracy effectively did away with direct democracy because decision-making became the responsibility of band council.<sup>10</sup> By giving band council decision-making responsibility, the *Indian Act* removed the power and participation that nation members once enjoyed because they could no longer contribute or consent to political decisions. Nations members were also unable to hold their leaders accountable year-round as they had done through direct democracy. As a result of *Indian Act* election provisions, nation members were reduced to only have a say and being able to hold their leaders accountable once every two years at election time. In the words of the former national Chief of the Assembly of First Nations: “The *Indian Act* has dictated a style of government that has forced our people to adopt what I call a ten-second model of democracy, since it gives us input at the ballot box for a total of about ten seconds every few years. We have gotten used to a style of government that does not reflect our tradition of fully involving the people” (Mercredi and Turpel, 1993, p. 90).

The loss of nation members’ political power through the *Indian Act* was a reflection of western representative democracies where very little power remains with the people (Mulgan, 2003).

**The separation of political power was replaced with concentration.**

The location and distribution of public power or authority in western parliamentary systems separates into the legislative, executive and judicial branches of government. The separation of power aimed to function as a check that minimized the ability of politicians to use political power for their own interests (Mulgan, 2003). Put another way, the purpose of separating power in western democratic government systems was to “lessen the temptation to use power arbitrarily” (Dickerson & Flanagan, 1994, p. 234).

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<sup>10</sup> The authority of band council was said to be “superficial” in that all its decisions were subject to the final approval of the Minister of Indian Affairs (Mathias and Yabstey, 1991, p. 38).

Power was also separated in traditional First Nations governance systems. As imparted by one writer, “Many tribes traditionally exercised checks and balances against the concentration of power in any single function” (Russell, 2000, p. 100). The First Nations of the prairies were a good example of how power was divided in traditional governance. What was unique about the prairie First Nations of yesteryear was that leadership was temporary. This was because “Historically, plains Indians did not accept that anyone had the right to govern others, except for very short periods of time.” (Long, 1990, p. 759). There was not a single leader or group of leaders that governed prairie First Nation communities year round or for extended periods. Instead, different leaders were selected for different events based on skill (Long, 1990; Snow, 2005). A War Chief, for example, would be appointed during times of conflict and a Hunting Chief would be appointed during hunting season. The authority of these leaders was restricted to the condition at hand and “...lasted only during the specific limited situation.” (Snow, 2005, p. xxii). The Mohawks in eastern Canada practiced a similar dispersion of power by separating leadership into such roles as War Chief and Peace Chief. Moreover, any decisions made by these leaders had to be sanctioned by the clans, council and senate. In addition to separation, requiring consent from all members and groups of the nation was an effective check on power because it prevented any one person or group from becoming too powerful (Russell, 2000, p. 100). By managing power in this way, “Indigenous communities were inherently democratic and wisely balanced” (Russell, 2000, p. 100).

When it came to band governance, the *Indian Act* did not replicate the separation of powers in traditional First Nations governance, or for that matter, the Canadian federal political system. Instead, the *Indian Act* ignored the traditional separation of powers and concentrated authority to band councils. While all decisions were subject to approval of the Minister, and

nation members given authority over some decisions, local decision-making was entrenched in band councils (Abele, 2007). Remarkably, power was concentrated to band councils without the safeguards common to westerns democratic governments. The concentration of power without safeguards was a concern remarked upon by an Indigenous governance analyst who said, “First Nations governments do not have the usual array of checks and balances that are found with other governments. The executive and legislature are fused in Chief and Council and there is no official opposition to hold the government accountable” (Graham, 2010, p. 2).

The provision of decision-making authority to band council extended to government programming and funding (Abele, 2007; Coates, 2008). Initially, government policies and programming for First Nations had been the responsibility of Indian Affairs. By the 1960s, Indian Affairs began transferring policy, program and service responsibility to band councils. The transfer of government policy, program and service responsibilities to First Nations contributed to the expansion and increased authority of band bureaucracies. This resulted in band administrations becoming “the dominant political institution” on most reserves (Long, 1990, p. 767). Though the federal government retained ultimate decision-making power, the level of authority that band administrations gained through the transfer of government responsibility had become significant. Such that it prompted an academic researcher to assert that “With its function of implementing Department of Indian Affairs’ policies and programs, tribal bureaucracy has acquired a decision-making capability that has no other parallel in other governments in Canada” (Long, 1990, p. 767). Even though government programs and funding were meant to benefit them, nation members had minimal participation in decision-making and no financial oversight (Abele, 2007). With most of the local authority lodged in band council,

Community members contend that it is no surprise that what gets advanced on these political agendas are those issues that serve the dictates and interests of Chiefs rather than the will of the people. Impoverished community members grumble further that since the Chiefs also control transfer payment monies, it is virtually impossible for their political voice to be heard. They ask in what sense this system can be a democracy? (Helin, 2006, p. 146).

Indeed, *Indian Act* band governance was drastically different from traditional systems of First Nations governance where the separation of leadership roles ensured the no one individual or group became too powerful and where community members had authority to see that community interests preceded political interests and that their leaders were held accountable.

**Traditional accountability was replaced with Ministerial accountability.**

Accountability is a key element in western democratic governments including Canada (Brown, 2013). Within democratic political systems, the ultimate source of authority rests with the citizens who elect government. Thus, elections serve as the primary tool of accountability within democracies. Because citizens elect government officials in positions of power, they have the right to hold government accountable and to vote officials out of office if perceived to be unaccountable (Mulgan, 2000, 2003). In addition to elections, other tools of accountability within western democratic systems include political opposition, an independent judiciary and independent media (Mulgan, 2003, p. 3). In Westminster parliamentary systems, such as that in Canada, accountability is hierarchal and proceeds upward: government bureaucracy is accountable to the ministers and cabinet, the cabinet is accountable to the legislature and the legislature, in turn, is accountable to the public (Kernaghan and Langford, 1991). No matter the style of government, the purposes of accountability within western democratic systems are

multiple. Canadian scholars of public administration identify the following purposes: to keep the public informed and the powerful in check; to ensure that public funds are spent efficiently and effectively and conform to community values; to make government answer for their policies and performance; and, to have government follow up on the needs and demands of citizens (Aucoin and Heintzman, 2000, Kernaghan and Langford, 1991; Mulgan, 2000, 2003)

The Auditor General of Canada studied accountability from the perspective of First Nations. The Office conducted nationwide interviews with willing First Nations citizens and learned that the federal government “did not invent accountability and that it was practiced by First Nations in their own way prior to contact” (OAG, 1996, para 13:73).

In the traditional era, First Nation leaders were accountable on two fronts. The first was accountability to the spirit. First Nations people perceived governance holistically where political life linked not only to family and the land, but also to spirituality (RCAP, 1996, Volume 2, Chapter 3, Section 1.2.). Governance and spirituality were viewed in unison and there was no separation between the two (Helin, 2006; Mercredi and Turpel, 1993). First Nations believed leaders had the responsibility to govern according to the customs and traditions of the nation. They interpreted customs and traditions as laws introduced by the Creator. The Creator’s laws dictated how the people should behave towards each other and to nature and how the nation should be governed (Long, 1990, p. 764; RCAP, 1996, Volume 2, Chapter 3). In addition, the relational worldview of First Nations shaped their belief that the nation’s well-being was dependent on reciprocity. Because of this, leaders were mindful to act in the best interest of community because doing so would result in blessings for the people and nation as a whole. Leaders understood that if they did not adhere to high moral standards like reciprocity, they

could cause their nation to “go out of tune with the cosmos and this might bring spiritual and potential material ruin to the tribe” (Helin, 2006, p. 77, 82).

Spiritual accountability and divine retribution for unethical behaviour remained in the memory of the First Nations participants who I interviewed. To illustrate, a Chief spoke about how man-made laws, such as the *Indian Act*, could be misinterpreted for the purpose of deceit. He reminisced about the natural law of Indigenous people and how leaders in traditional times were careful not to stray from it because, “For First Nations, the teaching was the Creator knows and you can’t fool him, you can’t lie. If you lie, you will pay and your people will suffer” (#11, iv. 9, p. 35).<sup>11</sup> Knowing they were directed by and accountable to the Creator encouraged First Nation leaders to work for the benefit of their community members, remain honest and do the right thing.

On the second front, First Nation leaders were traditionally accountable to their people. Leaders were responsible to help their people and governed according to the values of their nation (Pealow, n.d., p. 8). Nation members evaluated the performance of their leaders based on how well they had adhered to the “traditional values of kindness, respect, sharing and compassion” (Mercredi and Turpel, 1993, p. 37).

In traditional First Nations governance, political accountability to community members largely occurred through participatory governance and consensus decision making. In its study on First Nations accountability, interviewees informed the Auditor General of Canada that traditionally, “Their concept of accountability originated, they said, from the need to build consensus through broad participation and consultation” (1996, para 13.73). The requirement to have clans consent to political decisions was interdependent with accountability in that leaders

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<sup>11</sup> Code stands for participant #11, in vivo code # 9 on page 35 of the participant’s interview transcript.

would inevitably have to report to clans the results of decisions. Reporting was often done in ceremonial settings where leaders would publicly relay to the Creator and nation members the manner in which they had fulfilled their obligations (Borrows, 2010, p. 81). In addition to consensus and reporting, traditional governance systems had other built-in methods that kept leaders accountable to the community members such as leadership selection practices and general meetings (Pealow, nd, p. 8).

The *Indian Act* eliminated traditional accountability practices of First Nations leadership. First, the western political tradition of separating church and state made its way into the *Indian Act* in that there was no mention of deity within the context of band governance. Over time, the absence of deity in *Indian Act* band governance would have eroded spiritual accountability by creating distance between First Nation leaders and the Creator. This observation does not suggest that today's Indigenous leaders are not spiritual and that spirituality is completely absent from present-day First Nations governments. While spiritual beliefs and practices are still adhered to in modern First Nations governments, the *Indian Act* would most certainly have depreciated the strength and perseverance of spiritual accountability that existed in traditional governance systems.

The *Indian Act* also abolished the traditional requirement of leaders to be accountable to their community members by making band council accountable to the Minister of Indian Affairs (INAC, 2011). The *Indian Act* was silent about band council having to be accountable to its electorate and did not require council to provide information to nation members about its plans, actions, budgets or expenditures (Abele, 2007). Criticizing the non-requirement of accountability to the electorate, a First Nation author has commented,

That is the one of the biggest defects of the system of governance set out under the *Indian Act*. Even though elected Chiefs and Council are voted in through community elections, they are not ultimately accountable to the very community members that elected them in the first place (Helin, 2006, p. 142).

A professor of Indigenous studies shared her experience with the accountability deficit when she was formerly employed by a First Nations government: “Band governance problems can be traced to the *Indian Act* which demands a mountain of paperwork to hold Chiefs and councils accountable only to Ottawa, but not to band members. The mechanism of accountability is missing,” she said. “The systems fosters that” (Welch and Sanders, 2013, para. 24).

Some First Nation governments had taken it upon themselves to be accountable to their community members by instituting internal financial reporting policies. Nevertheless, under the *Indian Act*, “there is no current requirement for them to do so. Nor is there any formal mechanism to undertake recovery in the event of misappropriation of funds” (INAC, 2011, p. 3). Professor Taiiaki Alfred was quoted as saying that despite the *Indian Act*, many Chiefs worked hard to be accountable to their people. Governing under the *Indian Act*, however, could be precarious because it created the conditions for political corruption. Under those conditions, the accountability gap could be exploited by leaders susceptible to greed and selfishness (as cited in Helin, 2006, p. 142).

Abele summarizes the political problems caused by the imposition of a governance structure that was foreign to First Nations: “The *Indian Act* has a powerful impact on the quality of democracy in Band governments. Having the force of law and backed by financial power, the Act mandates one particular set of institutions and practices at the exclusion of others. In this

way, it affects the abilities of First Nations to shape more accountable and democratic governments” (2007, p. 3).

This chapter described how First Nations governance had changed through time. Prior to European contact, First Nations were autonomous with traditional political systems that supported effective governance. The imposition of the foreign *Indian Act*, however, changed the methods and quality of First Nations governance. Three major types of these imposed changes were examined: the replacement of direct democracy with representative democracy, the separation of powers with concentration, and accountability to the spirit and community members with ministerial accountability. Many First Nations people hold the *Indian Act* responsible for much of the political problems that First Nations face. And, as will be shown in later chapters, these impacts of the *Indian Act* on First Nations governance continue to present day.

## **CHAPTER TWO**

### **An Indigenous – Qualitative Approach**

As the chosen design of this research project is an Indigenous – Qualitative approach, the chapter begins with my compliance of ethical considerations in research involving Indigenous people. That will be followed by an explanation of how I used Indigenous research methodologies to guide my work. The latter half of the chapter will focus on the qualitative approach and the type of qualitative methodology employed in this study.

#### **Ethical Considerations in Research Involving Indigenous People**

I applied for and received ethical approval for my research project from the University of Victoria Human Research Ethics Board. In addition to obliging to typical ethical standards for human participant research, I committed to conduct my research in accordance to an Indigenous research paradigm. An Indigenous research paradigm includes epistemological and methodological premises as well as ethical protocols and principles for research involving Indigenous people (Kovach, 2005, Wilson, 2008). The ways that I adhered to ethical protocols and principles for research involving Indigenous people are highlighted below.

- Participant and community engagement. In the past, research has been done to First Nations instead of with First Nations (First Nations Centre [FNC], 2005). To mitigate the historical disempowerment of Indigenous people through research, researchers should ensure that Indigenous participants and communities are engaged through-out the research process. Participant and community engagement could include the review and approval of the research proposal, input into the research design and review of results (Assembly of First Nations [AFN], n.d; Tri-Council Policy Statement [TCPS], 2010; University of Victoria, 2003). I actively sought the

involvement of First Nations through-out the entire research process. At the proposal stage, I met with First Nation leaders in BC and Alberta to review my dissertation proposal. Based on their feedback, the focus of my dissertation changed from traditional First Nations governance to contemporary First Nations governance. During the interview stage, I provided participants with a summary of the research design along with general research questions and asked for their input. Because of their feedback, the interview questions changed several times throughout the data-gathering phase of my research. After the interviews, I sent participants a copy of their interview transcripts. I asked them to review it for accuracy and to add or take out anything with which they did not feel comfortable. During the analysis phase of my study, I also met with a participant Chief and asked if the theoretical scheme I had developed accurately represented reality. I finalized the theoretical scheme with his input.

- Building trust-based relationships. First Nations people have experienced a negative history with western research, one that was often based on "...exploitation, racism, ethnocentrism and harmfulness" (Ermine, Sinclair and Jeffrey, 2004, p. 12). Because of this, "...native people have viewed research with suspicion and hostility, as something intrusive, exploitative and unethical" and researchers as "intruders and predators" who misrepresented the Indigenous way of life (Ermine, et.al, 2004, p. 12). Given the negative research history, it was possible that although I was First Nation, potential Indigenous participants would not trust me. I understood the need to prove my trustworthiness and worked to establish trustful relationships with participants. While most of the participants were only available for one interview, I strived to build

a trustful connection with participants before, during and after the interviews. I did this by getting to know the participants, establishing an Indigenous common ground, through regular non-threatening interaction and being very clear about my research intentions. That I knew some of the participants beforehand or had prior connections in some of the communities made building trustful relationships less challenging. The comfort level of participants during the interviews, and the volume and nature of the information they shared with me, confirmed that a level of trust existed between them and me.

- Control. First Nation academic, Margaret Kovach wrote: “Gaining control of the research process has been pivotal for Indigenous people in decolonization” (2005, p. 23). Since I utilized an Indigenous research paradigm that is centered on a decolonizing agenda, I was cognizant of the need to provide a measure of control to participants. I looked to the University of Victoria’s protocols and principles for conducting research in an Indigenous context for guidance. Based on these protocols, I advised participants that they had full control over the information that they shared with me. Participants were made aware they could withdraw part of all their information at any time. In addition to their interview transcripts, participants were informed that they could review the findings and edit their information (2003., p. 5)
- Fairness. The Royal Commission on Aboriginal Peoples recommends that the viewpoints of Indigenous participants and communities be represented fairly in the research report (1996). I was careful not to let the analysis of the data engulf and obscure the viewpoints of participants. I did this by basing the findings on the in vivo comments of participants and ensuring that their voices were at the center of my

research report. Fairness can also include acknowledging the contribution of Indigenous participants and communities in the research report (University of Victoria, 2003; AFN, n.d.). The participants in my study preferred that their anonymity and confidentiality be maintained. While I did not disclose the names of participants or the First Nations communities they were from, I did recognize their contributions in the Acknowledgement section of this report.

- **Access.** The First Nations Centre states that “First Nations peoples must have access to information and data about themselves and their communities, regardless of where it is currently held” (2005, p. 2). Indigenous people were generally viewed as mere sources of data. Subsequently, Indigenous research was typically controlled by outside researchers and not made accessible to the Indigenous participants or communities (FNC, 2005, p. 5). Moreover, research findings were not returned to Indigenous communities or “returned in a language that is inaccessible” (FNC, 2005, p. 7). I made certain that participants had access to their information and the research report in four ways. First, as noted earlier, all participants were given their interview transcripts to review and edit. Second, I wrote my dissertation in an easily accessible language. Third, depending on their preference, participants will be sent a final copy of my dissertation or a summary of findings. Participants were also advised that my research report would be publicly available on the University of Victoria website and at Library and Archives Canada. Fourth, I communicated my availability to present my research to respective Indigenous political organizations or community groups.
- **Humility.** Historically, there has been a power imbalance between Indigenous people and researchers that resulted from, among other things, the imposition of western

research, culturally inappropriate research paradigms, and the invalidation of Indigenous knowledge (Ermine, et.al., 2004, p. 16). As the researcher, I was mindful of this power imbalance and stayed humble on my visits to reserves and in my interactions with participants. I dressed in appropriate clothing (i.e. no suits), did not boast about my academic credentials, did not use academic language or talk theory, sat level with participants, was relaxed and friendly, related to participants as a fellow First Nations citizen, and was always respectful of local customs and traditions.

### **Use of Indigenous Research Methodologies**

Given that I am First Nation and the research participants were exclusively First Nation, it made sense to use Indigenous research methodologies to guide my dissertation research.

As noted above, Indigenous research methodologies are based on a decolonizing agenda and strive for social change (Brown & Strega, 2005). In pre-research conversations with First Nations people, I learned that after enduring 150 years of ineffective band governance under the *Indian Act*, First Nations were motivated to move toward effective governance. Thus, Indigenous research methodologies appealed to me because the motivation of First Nations for effective governance was consistent with the methodologies' decolonizing agenda and aspects of social change.

Indigenous research methodologies have no pre-set approaches (Potts & Brown, 2005). Nevertheless, in addition to ethical protocols, a researcher utilizing Indigenous research methodologies must ensure that approaches are rooted in Indigenous cosmology, worldview, and epistemology (Wilson, 2008). To that end, I made sure that,

- My research was respectful of Indigenous epistemologies. Having grown up on-reserve, I was aware that First Nations believed in natural and supernatural realities

and that knowledge could be acquired physically and spiritually (Potts & Brown, 2005; Kovach, 2006). I knew that research participants would likely share information with me that came from worldly and spiritual sources such as nature, oral history, dreams, visions and ceremonies (Kovach, 2006; Wilson, 2008). As expected, research participants provided information that originated from these sources during the course of our interviews. Being First Nation, I was respectful of Indigenous epistemologies and believed them to be legitimate and credible. In accordance to the TCPS, I did not include the sacred knowledge that was shared with me in my research report (2010).

- I understood the relational worldview of First Nations. I recognized the importance that First Nations placed in relationships with family, community, nature, and the spirit world (Wilson 2008). While I was in the field and during the analysis of the data, I worked hard to understand these relationships. As opposed to automatically concluding nepotism, for example, I recognized that traditionally, there was a strong relationship between family and governance. While relations between family and governance were tainted long ago by the *Indian Act*, it nonetheless continues to modern day.
- I was respectful of the First Nations holistic paradigm. First Nations tend to see the interconnectedness of all things and understand the world from this perspective (Kovach 2006, Strega 2005). I stayed true to the holistic paradigm of First Nations by looking at the whole picture, not just politics and governance. I made an effort to understand the information provided by participants in a social, economic, historical,

cultural, and spiritual context, and the interconnectedness between these contexts so that I could gain a full and accurate perspective of their experiences.

- Indigenous methodologies require adherence to reciprocity (Kovach 2006, Wilson 2008). During my research, I made sure to practice reciprocity. Because participants had given me information, I was aware that I needed to give back to them. One way that I did this was through the provision of culturally appropriate gifts to research participants. My reciprocity plan also included making my research useful to First Nations. Unfortunately, the negative history of Indigenous research has included findings that were useful to the researcher but not necessarily useful to First Nations individuals and communities that participated in the research (Kovach 2006; Wilson 2008). First Nations have been demanding that research on Indigenous issues contribute to their self-determination (Wilson 2008). Given that effective governance is an important factor in self-determination, I am optimistic that my research will contribute in some small way to the First Nations agenda.
- Finally, my research sought to be respectful of First Nations cultural protocols. Being First Nation myself, I was aware of the cultural protocols of First Nations, such as having tea or eating with Elders and other community members, and giving tobacco to holders of knowledge (Kovach 2006). I adhered to all cultural protocols and was privileged to have coffee, lunch and dinner with numerous participants. I also provided tobacco and traditional food to participants who were Elders or spiritual people.

### **Why a Qualitative Approach?**

The use of qualitative research was appropriate when the issue being investigated required an in-depth understanding best achieved by going “out into the field and finding out what people are doing and thinking” (Strauss & Corbin, 1998, p. 11). The aim of my research was to understand how First Nations achieved and maintained effective governance. In order to acquire a comprehensive understanding, it was necessary for me to go to reserves in Alberta and BC and find out directly from First Nation citizens how they perceived and realized effective governance.

A qualitative approach was also suitable if knowledge about the research topic was limited (Strauss & Corbin, 1998). My examination of available information showed there was adequate literature about the inherent right to self-government. There was also a great deal of media coverage about political debauchery in some First Nation communities. However, information about why and how First Nations attained effective governance, be it within or outside the context of self-government, was somewhat limited. The limited supply of knowledge in this area made a qualitative inquiry desirable.

Finally, qualitative research was appropriate if the research population was vulnerable (Creswell, 2007). Because of colonization, federal policy and other factors, First Nations in Canada have historically been and continue to be susceptible to discrimination, exclusion, and marginalization. Since my research pertained to First Nations issues, a qualitative approach would be more sensitive to an Indigenous population made vulnerable by oppression. A qualitative method, done with sensitivity and with an Indigenous approach, could avoid further oppression as it allowed participants to be involved in the research and empowered them to share their stories. In turn, this would enable the voice of participants to be heard, valued and incorporated into the research (Creswell, 2007).

## **Grounded Theory Methodology**

### **Three grounded theory methodologies from which to choose.**

There were three main types of grounded theory methodology in the literature from which to select. The original form of grounded theory developed by Barney Glaser and Anselm Strauss in 1967 is often referred to as classical grounded theory. There were differing views of the philosophical underpinning of classical grounded theory. One of the co-founders of the original form stated that since the data embodied reality, the goal of classical grounded theory was to find the truth contained within it (Mills, Bonner & Francis, 2006, p. 3). The discovery of theory would require the data to be observed by an objective researcher. Such statements led some grounded theory practitioners to conclude that the epistemology of classical grounded theory was positivistic (Ghezeliheh & Emani, 2009). Others thought that classical grounded theory was driven by post-positivism because at least one of its founders was a critical realist and believed in an objective external reality (Evan, 2013; Ghezeliheh & Emani, 2009). By studying this objective external reality, the theory would emerge.

Whether classical grounded theory relies on a positivist epistemology or a critical realist ontology, it is certain that this methodology is based on an emergent conceptual model where codes and themes emerge from the data and conceptualizations guide the analysis (Kendall, 1999). Procedures entailed open and theoretical coding and the constant comparison of concepts that would eventually allow the theory to emerge (Evans, 2013). Classical grounded theory was more open and unrestricted because a framework to guide the research was not prescribed (Kendall, 1999; McCallin, 2003). There were no rules or procedures for the implementation of classical grounded theory (McCallin, 2003).

The second type is constructivist grounded theory. Constructivist grounded theory was developed by Kathy Charmaz, a sociologist, professor and former student of Glaser and Strauss (Mills, et.al, 2006). The epistemological position of constructivism is that there is no objective external reality. Instead, reality is socially constructed in the minds of people. As such, there are as many realities as there are people (Charmaz, 2006; Ghezeliheh and Emani, 2009; Mills et.al, 2006). For constructivists, what exists depends on what people think exists (Ghezelijeh & Emani, 2009, p. 17). Because what exists in the minds of people is relative to their cultural, social, and historical experiences, the ontology of constructivist grounded theory is relativist (Mills et.al, 2006).

Where the role of the researcher is concerned, constructivist grounded theory views the researcher not as distant objective observer but as a subjective human being that is an active part of the research process (Mills et.al, 2006). The researcher is not looking for “the truth,” but is co-constructing truths with research participants by closely interacting with them (Mills et.al, 2006). Procedure-wise, the founder of constructive grounded theory described it as a systematic but adaptable method where data is gathered and coded in three phases (initial, focused and theoretical). Memo writing leads to conceptual categories and data analyzed qualitatively so that theories grounded within it could be constructed (Charmaz, 2006).

The third type is Straussian grounded theory. After Anselm Straus parted ways with Barney Glaser, he partnered with his academic colleague, Juliet Corbin, and the two developed the Straussian form of grounded theory (Gelling, 2011). The philosophical premise of Straussian grounded theory has not been easy to pinpoint because Strauss and Corbin were not explicit about the philosophical paradigm behind their form. The founder of constructivist grounded theory, Kathy Charmaz, contended that Strauss and Corbin believed in an external, objective

reality (Mills et.al, 2006; Ghezelijeh & Emani, 2009). Evidence of this, according to Charmaz, is found in the terminology of Straussian grounded theory about the “emergence” of a theory from the data. The term “emergence” implied that reality was contained in the data waiting to be discovered (Mills et.al, 2006). Existence of an external reality waiting to be uncovered through observation indicated that Straussian grounded theory was positivist (Ghezelijeh & Emani, 2009). Strauss and Corbin countered that they did not believe in a “pre-existing reality out there” and denied they are positivists of any sort (Mills et.al, 2006, p.3). While they did not make their paradigm clear, Strauss and Corbin addressed truth and reality in which they stated that theories were “embedded in history” (Mills, et.al, 2006, p. 3). This led some researchers to conclude that the ontology of Straussian grounded theory was relativist (Mills, et.al, 2006).

In addition to open and theoretical coding and the constant comparison of concepts found in classical grounded theory, Strauss and Corbin added to their version a phase they called axial coding (1998). Axial coding involves the use of a coding paradigm that helps identify relationships between categories and sub-categories according to conditions, actions and consequences (Strauss & Corbin 1998; Kendall, 1999). Glaser opposed the use of a coding paradigm, arguing “codes should be driven by conceptual interests that have emerged from data and not forced into any particular scheme” (Kendall, 1999, p. 748). Strauss and Corbin maintain their paradigm model allows theory to be found in the data. Furthermore, they believe their structured approach assists novice researchers to develop grounded theory in a consistent manner because it is a more systemized and clear-cut approach (Kendall, 1999; McCallin 2003, Partington, 2000).

**The grounded theory methodology I chose to use.**

Knowing the paradigms and characteristics behind the three forms of grounded theory was important because I needed this information to make a decision on which type of grounded theory to use. For a solid research design, the research paradigm must be compatible with the researcher's beliefs about truth and reality (Fendt & Sachs, 2008; Ghezelijah & Emani 2009; Suddaby 2006).

With its positivistic epistemology, classical grounded theory was the least compatible with my beliefs about reality and the nature of knowledge. Many First Nations people, including myself, are spiritually oriented and have a strong relationship with the spirit world. I was raised to believe in an Indigenous epistemology where knowledge could be acquired not only physically, but also through metaphysical means like ceremony and spirituality (Potts & Brown, 2005; Kovach, 2006). Positivism, however, does not accept the metaphysical and believes that knowledge could only come from what could be observed and measured (Trochim, 2006). Clearly, the positivistic notions of classical grounded theory rubbed against my upbringing and belief in Indigenous epistemology.

Constructivist grounded theory appears to be more in tune with an Indigenous epistemology as it does not accept the idea of a universal truth and a positivist epistemology. Instead, this form of grounded theory believes in multiple realities (Mills et.al, 2006). Belief in multiple realities is also true for Indigenous epistemology (Potts & Brown, 2005; Kovach 2006). In addition, constructivist grounded theory advocates the involvement of participants in the research process and in the creation of knowledge (Ghezelijah & Emani, 2006). The establishment of a relationship between the researcher and participants and the meaningful involvement of participants is compatible to the relational nature of a First Nations research paradigm (Wilson,

2008). Given this, I was inclined to agree with the philosophical and methodological foundation of constructivist grounded theory.

Relativism holds that truth is relative to culture, society and history. As noted previously, some research practitioners believe that Straussian grounded theory is relativist because Strauss and Corbin addressed truth and reality and stated that theories were rooted in history (Mills, et.al, 2006, p. 3). It appeared that the relativism of Straussian grounded theory is compatible with Indigenous epistemology. To explain, truth for Indigenous people not only exists in culture, but also in a historical context when the oral history of Elders and the teachings of ancestors were considered. Because of this, I felt that the relativism of Straussian grounded theory was in line with Indigenous epistemology where culture and history were important sources of knowledge. Furthermore, though they never did specify their philosophical base, I was also cognizant of Strauss and Corbin's denial of positivism and their identification as a qualitative research methodology (Mills, et.al, 2006; Strauss & Corbin, 1998). This position also made Straussian grounded theory appealing to me because Indigenous researchers have determined that the qualitative approach is most in harmony with Indigenous methodologies (Kovach, 2005).

In addition to being relatively congruent with the Indigenous paradigm, what also attracted me to Straussian grounded theory was that it was best suited for novice researchers (Strauss & Corbin, 1998). Many new researchers have been uneasy with the looseness of the classical approach because there were no rules or procedures to guide them (McCallin, 2003). The difficulty students were having with the implementation of grounded theory motivated Strauss and Corbin to develop a version of grounded theory that would assist rookie researchers to "learn to construct in-depth grounded theory in a consistent manner" (Kendall, 1990, 745). Straussian-grounded theory provides "a clear explicit framework often reassuring to new

researchers” (McCallin, 2003, 205). Fendt and Sachs further suggested that the type of grounded theory chosen should fit the researcher’s personality and experience (2008). Since I prefer structure and I was a new researcher, it was practical to use Straussian grounded theory in my dissertation research.

### **Purpose and Research Questions**

The purpose of my research is to understand and explain how First Nations achieve and maintain effective governance. In view of this purpose an onlooker might ask, “What do you mean by effective governance?” Defining the meaning of effective governance beforehand had its usefulness as it could guide the gathering of data. Nevertheless, I had to consider whose definition I would be using given that the indicators of effective governance are likely influenced by western thought. It was true that many First Nations’ ideas about what constitutes effective governance would be similar to western ideas. In fact, the Harvard Project, which has studied North American Indigenous governance at length, found that,

Such things as separation of powers, checks and balances, the powers of recall and referendum, and other governance techniques sound quintessentially western...But sustainable human societies around the globe have long used such techniques to provide stability in the social rules by which the community operates and to ensure that those who govern channel their efforts into promoting community ends, rather than narrowly self-interested ones. They are widely used, in diverse forms, in Indigenous North America as well. (Begay Jr., Cornell, Jorgensen and Kalt, 2007, p. 43).

While this is true, there was bound to be some differences between First Nations and western views of effective governance. For instance, the western notion that democratic elections were necessary for effective governance may not be conducive to those First Nations that have

hereditary political systems. Another example is the primary importance that western governments placed on individually based rights. For First Nations, this could be contrary to the traditional principle of collectivism and holding communal rights in high regard (Institute on Governance, 1999).

For the most part, I decided not to use a pre-determined definition of effective governance to guide the gathering of data. I made this decision for two reasons. First, the definition would likely have western features that might contradict First Nation participants' definition of effective governance. Second, the whole idea of grounded theory was not to apply pre-developed ideas but to let concepts come from the data. Thus, having participants define effective governance for themselves is more conducive both to Indigenous and grounded theory methodologies. Sure enough, participants had solid concepts of what they considered to be effective governance.

### **Research questions.**

Grounded theory aims to develop a theory, not test a hypothesis. To do this, research questions must be wide enough to allow the researcher to investigate fully the phenomenon under study (Strauss & Corbin, 1998, p. 40). Strauss and Corbin recommended that the initial research questions be broad. The questions should then become more refined as the research progressed and the concepts are discovered.

At the beginning of the field research, I presented my initial research questions to the first few participants and asked for their feedback. My first set of general questions focused on functions normally associated with the three branches of western government (legislative, executive and judicial). When I asked a participant these questions, I quickly found out these questions did not work. This led me to conclude that most First Nations people probably did not

think of governance along those lines. This discovery also contributed to my decision not to use a pre-determined definition of effective governance to guide my research. The next set of broad questions centred on the notion of “new” effective governance systems. As data gathering and analysis progressed, it became clear that First Nations rarely adopted new governance systems. The word “new” was consequently dropped from the broad research questions in the interviews that followed. The revisionary process of my research questions was consistent with grounded theory methodology in that constant comparison and analysis made it possible to determine that certain questions were not appropriate in a First Nations context.

Henceforth, the three general questions that guided my research were:

1. What factors motivate First Nations to move from the status quo to effective governance?
2. How do First Nations achieve effective governance?
3. How do First Nations maintain effective governance?

Following each general research question were a number of sub-questions. Although the three broad research questions remained the same, the sub-questions tended to evolve as data gathering and constant comparison progressed. Again, this was consistent with grounded theory method where the initial research questions were general but became more focused as the research proceeded and concepts and their relationships began to emerge (Strauss and Corbin, 1998, p. 41). The general and sub-questions are in Appendix A.

## **Data Collection**

### **Participant selection and recruitment.**

The first task of my research was to determine whom to interview. Because I was utilizing grounded theory methodology, I was aware a preliminary sampling plan could not be

developed because sampling was to be guided by emerging concepts and theories (Egan, 2002). This presented a challenge since concepts and theories were not yet identified. Strauss and Corbin advise that in the initial sampling phase, the “selection of interviewees is relatively open” and that researchers should determine who to talk to by looking for people related to the subject of interest (1998, p. 206-208). In other words, non-probability purposive sampling could be utilized in a grounded theory research project (Baker, Wuest & Stern, 1992; Strauss & Corbin, 1998). With the purpose of my research in mind, I determined that my target population would be First Nations men and women residing on or off reserves in Alberta and BC, and who were knowledgeable about or connected to First Nations governance in some way. This could include anyone from band members, Elders, band administrators, current and former leaders, and First Nation academics or professionals who specialized in Indigenous governance. The reason I limited my target population to First Nations people was because I wanted an authentic insider perspective of First Nations governance issues as opposed to outside interpretations of those issues.

The first few research participants were First Nations people I knew and who were familiar or associated with First Nations governance. I contacted all of these people directly by telephone or email, briefed them on my research topic, and asked if they would be willing to be interviewed. The majority agreed. A snowball technique was used in that I asked the first few participants if they knew of other First Nations people knowledgeable about governance that I could interview. When the names of other people were provided, I asked the initial interviewees if they could contact the potential participants to see if they would be willing to talk to me about my research. I requested that they pass along my contact information so that potential participants could contact me if they were interested in participating. Other initial interviewees

said they would tell potential participants about my research and ask them for permission to pass along their contact information to me. Some potential research participants contacted me directly while others gave their verbal permission to the initial interviewees for me to contact them. I was surprised by the willingness of most potential participants to be interviewed. One participant Chief indicated a possible reason for their enthusiasm when he said, “You are First Nation. We want to see you get your PhD” (Participant #15).

Upon agreement to participate, all research participants were provided with a one-page briefing of my research project. While the research was not about their respective nations, participants were notified they would need to verify whether permission was needed from their band councils to be interviewed. They were also advised that on the date of the actual interview, their written informed consent would be required. The one-page briefing of my research that was distributed to research participants prior to their interviews can be located in Appendix B. Interview times and locations were then scheduled.

### **Interviews.**

When interview dates arrived, participants were provided with a verbal briefing of my research project. For those participants who had indicated previously that permission may be needed from their band councils to be interviewed, I obtained written permission from their Chiefs prior to interview dates and showed the signed form to participants at the time of their interviews. Interestingly, two participants who thought they needed permission from their council to be interviewed did not. When I called their Chief to ask for permission, he said, “You do not need my permission to speak to nation members. Talk to anyone you want.”

Some participants were offended by the prospect of having to get permission from their band councils to be interviewed. They said it was within their right to decide. The participants

who felt they did not need permission from their band councils to be interviewed were asked to confirm this in writing at the time of their interviews. Blank copies of the permission forms are located in Appendix C.

Following that, I verbally reviewed the informed consent form, line by line, with participants. When they indicated their understanding of the contents, each participant signed two copies of the informed consent form. One informed consent form was provided to the participant and the other was kept by me. Thereafter, I advised that the interview would take around one to one half hour and that it would be tape-recorded. I asked participants to inform me if they did not feel comfortable with being tape recorded, or with certain parts of the interview recorded, and I would turn the recorder off. Only one participant requested that she not be tape recorded during a sensitive part of our discussion. When discussion of the sensitive topic was completed, the tape recorder was again turned-on with her permission. All of the other interviews were tape recorded for the entire duration.

The interview process for my research followed the sampling procedures found in Straussian grounded theory. Strauss and Corbin describe data collection as occurring in three phases. The first is the open sampling phase where the selection of research participants was open because concepts had yet to be identified (1998, p. 206). While phase one of sampling was open, potential interviewees still had to be related to the research subject in some manner. Thus, I decided that in open sampling, a good strategy would be to have the first group of research participants be a cross-section of my target population and consist of one community member, one band administrator, one band councillor and one Chief. It was my good fortune to identify, get agreement from and interview all four. Open sampling proved an important phase of my research because the preliminary assumptions I entered the field with -- such as branches of

government and adoption of new governance systems -- were refuted quickly by the first group of research participants and replaced with concepts more relevant to their realities.

The second data collection phase of Straussian grounded theory is relational sampling where the researcher begins searching for variations within concepts and relationships between concepts (Strauss & Corbin, 1998, p. 210). I took the introductory concepts established in open sampling and began expanding these concepts in the relational sampling phase. I did this by focusing questioning around these concepts in the second set of interviews. Doing so allowed me to get a better sense of the concepts in terms of what they meant and how they were similar or dissimilar. Additionally, comparative analysis during this phase began to show repetitions and relationships between concepts, which, in turn, laid the groundwork for the development of categories. Similar to the first phase, the people I interviewed during relational sampling represented a cross-section of the target population.

The third phase is selective sampling. The objective of selective sampling was to corroborate relationships between concepts, ensure that categories were fully developed, and to establish the foundation of theory development by combining categories (Strauss & Corbin, 1998, p. 211). To do this, the researcher had to be particularly selective about deciding who to interview and chose participants that would increase the likelihood of comparative analysis (Strauss & Corbin, 1998). Being highly selective in the field, however, was challenging because I did not have extensive knowledge about the background, skills and experience of potential participants. As such, I did not know which participants might increase chances for comparative analysis. The best I could do in the selective sampling phase was to choose research participants based on their reputations in the area of First Nations governance. I therefore selected research participants who were or had been long-time leaders with reputations for good leadership. Also

in the mix was a reputable and culturally strong Elder known to be an advocate of effective governance as well as the executives of tribal councils that had frontline experience with governance issues. I felt that these individuals would provide me with the knowledge needed for comparative purposes.

In grounded theory, sampling continues until theoretical saturation has taken place (Baker et.al., 1992; Strauss & Corbin, 1998). Theoretical saturation occurs when all the categories have been completely filled and well developed, the relationships between them determined, and no new data emerge (Strauss & Corbin, 1998, p. 212). While the numbers were fluid, the literature suggests that saturation could occur anywhere from eight to 30 interviews (Creswell, 2007). In my research, theoretical saturation occurred by the 20<sup>th</sup> interview as incoming data became repetitive. To be sure, I reviewed my data and the analysis I had done up to that point and found that the concepts and categories were well developed and relationships between them were becoming clear.

In total, I conducted 20 interviews. Fourteen of the participants were from Alberta and came from one of seven reserves or political organizations in that province. The fourteen participants from Alberta included 11 men and four women. Of these, five were leaders, four were Elders, one was a community member and four were administrators. Six of the participants were from BC and came from one of five reserves in that province. The six participants from BC included two men and four women. Of these, four were leaders, zero were Elders, one was a community member, and one was an administrator. The participants ranged in age from young adults to seniors.

Two of the interviews took place in the homes of participants while the rest took place in public locations including places of work, coffee shops and restaurants.

## **Data Analysis Procedures**

In preparation for data analysis, I manually transcribed each interview. Although manual transcription was laborious and time consuming, it enabled me to become intimately familiar with the contents of each interview transcript. I knew which participant made specific comments and where those comments could be found in his or her transcript. Having intimate knowledge of the contents of the transcripts enabled me to quickly determine similarities and differences in the data and allowed for the precise organization of concepts and categories.

Similar to the sampling process, Strauss and Corbin describe the coding process in phases. With Straussian grounded theory, the phases of analysis included open coding, axial coding and selective coding (1998). Although I have reported it that way, sampling and coding did not occur in a linear fashion. In practice, sampling and coding occurred simultaneously and often went back and forth between phases because the concepts that emerged had to be constantly compared and refined.

### **Open coding.**

My analysis started with open coding. The aim of open coding was to find, label and develop concepts within the data. To do this, the researcher must delve into the data and examine the thoughts, ideas and possible meanings within it. This required breaking down the data into separate units, investigating each unit, and then comparing units for similarities and differences (Strauss & Corbin, 1998, p. 102). The discovery of concepts in open coding usually involves microanalysis where passages in the data are examined line-by-line and key words and phrases related to the phenomenon identified (Moghaddam, 2006; Strauss & Corbin, 1998).

Prior to performing microanalysis, I read each transcript from start to finish. Doing so refreshed my memory as to the contents of data and cognitively prepared me for the pending

microanalysis. I used two methods of microanalysis. The first was in vivo coding often used in grounded theory research. In vivo coding was appropriate if a researcher wanted to capture “Indigenous terms” from the participants of a particular culture and ensure their voices took precedence in the research (Saldana, 2009, p. 74). I proceeded with in vivo coding by coding the actual words and phrases of participants that appeared significant and seemed to address my broad research questions. In vivo coding provided me with clues as to what to pay attention to and helped me identify important topics for memo writing.

The second micro analytical function I performed was process coding as I wanted to track movement and change in First Nations governance over time. Process coding is quite suitable for grounded theory studies because it searches for the actions and interactions that people had taken in response to a given problem (Strauss & Corbin, 1998, p. 96). Process coding essentially laid the groundwork for the next phase of axial coding where the paradigm model was employed. To explain briefly, the paradigm model sought to determine relationships between concepts by identifying its conditions, actions/interactions and consequences (Strauss & Corbin, 1998). For process coding, I used gerunds and coded for actual actions. Each transcript had an average of 200 process codes. Strauss and Corbin state that a phenomenon is an event, object, action or interaction. A concept is a phenomenon that has been labelled (1998, p. 103). Hence, the in vivo and process codes I developed became the concepts.

Once a number of concepts accrued, the next step in open coding was to organize the concepts and develop categories. A category was to consist of concepts that were similar or related in some way (Strauss & Corbin, 1998). As described by Strauss and Corbin, categories had more explanatory properties because they explained the similarities and relationships of the concepts contained in those categories (1998, p. 13). I therefore organized the concepts

accumulated from all the transcripts according to their similarities and relationships. The organization of the concepts soon led to the identification of patterns and themes, which became the categories. This resulted in the development of 11 categories.

### **Axial coding.**

The advice of a grounded theorist was to envision Straussian grounded theory as a pyramid. At the bottom of the pyramid was open coding which produced a sundry of concepts and categories. Axial coding represented the middle of the pyramid where analysis and constant comparison resulted in fewer categories. At the top of the pyramid, selective coding led to even fewer categories that were explanatory in nature. These major categories provided the basis for the central category from which the theory would emerge (Moghaddam, 2006, para 33). Heeding this advice, I continued to analyze and compare the data and was able to reduce the number of categories I had down to six. There were 1) factors of change, 2) models of governance, 3) characteristics of effective governance, 4) process, 5) buy-in/resistance, and, 6) maintenance.

As suggested above, the intent of axial coding is to construct a theoretical framework that explains the circumstances that brought about the phenomenon (Moghaddam, 2006; Strauss & Corbin, 1998). Axial coding “is the act of relating categories to sub-categories along the lines of their properties and dimensions.” (Strauss & Corbin, 1998, p. 124). Linking categories and sub-categories in this way allows the researcher to see patterns and variations and provide the platform for the core phenomenon to materialize (Strauss & Corbin, 1998). Straussian grounded theory defines properties as the characteristics of a category and dimensions as the range of properties.

To relate categories to sub-categories, I first had to develop the properties and dimensions of the categories. To determine what the properties were of each category, I looked at what the

participants said about that category. For example, for the category, “factors of change,” participants said the things that motivated them to think about the need for governance improvements were the self-interest of some of their leaders, social problems, being oppressed by the *Indian Act*, poverty, non-recognition of treaty and Aboriginal rights, and cultural estrangement. These became the properties of the category “factors of change.”

To determine the dimensions, I examined the range in language used by participants to describe each property. For instance, in the “factors of change” category, participant descriptions of leaders ranged from occasional self-interest to frequent self-interest. Below is an example of how I used the participant data to develop the properties and dimensions of the categories.

Table 1

The properties and dimensions of a category

<b>Category: Factors of Change</b>		
<i>Properties</i>	<i>Dimensions</i>	
Leader self-interest	Occasional	→ Frequent
Community social problems	Moderate	→ High
<i>Indian Act</i> oppression	Moderate	→ Acute
Poverty	Moderate rates	→ High rates
Treaty and Aboriginal rights	Unrecognized	→ Recognized
Cultural awareness	Forgotten	→ Remembered

The properties and dimensions exercise helped me to discover several factors. First, the dimensional variations of properties allowed me to get a glimpse of participant experiences. For instance, if participants said their leaders were frequently self-interested, this indicated the issue was significant and impacted the quality of governance. Second, I noticed the same group of actors surfaced in and influenced most categories. To demonstrate, when I developed the properties and dimensions for the category “factors of change,” I saw that the following actors were involved:

Table 2

The associated actors.

Category: Factors of Change	
<b>Issue that motivated a desire for change</b>	<b>The actor associated with that issue</b>
Self-interest	Leadership
Social problems	Community members
<i>Indian Act</i> oppression	Governance instruments
Poverty	Economy
Non-recognition of rights	Treaty and Aboriginal rights
Cultural estrangement	Cultures and traditions

I realized that since the same group of actors kept turning up in most categories, they represented a pattern. Third, given that the actors signified patterns and influenced dimensional variations, it was clear they were the sub-categories of categories. Thus, the properties and dimensions exercise was effective in helping me to identify the sub-categories, and how they related to the categories.

Axial coding looks for answers as to why, where, when, how a phenomenon occurred and with what results. The answers to these questions begin to show relationships between categories (Strauss & Corbin, 1998, p. 127). Unique to Straussian grounded theory is the coding paradigm (Partington, 2000). The coding paradigm helped provide answers to why, where, when, how and with what results. By assessing categories according to the paradigm's classifications of conditions, actions/interactions and consequences, the researcher could connect structure to process and process to outcomes. In other words, the paradigm facilitated understanding why and how an event occurred and the results of that event (Strauss & Corbin, 1998, p. 127). I approached this technique by plotting the six categories and sub-categories I had arrived at during axial coding into the paradigm model. Table 3 shows this plotting.

Table 3

The paradigm model.

Phenomenon: How do First Nations achieve and maintain effective governance?			
	<i>Conditions</i> <i>Why, where, when?</i> <i>Forms the structure</i>	<i>Actions/Interactions</i> <i>Who, how?</i> <i>Represents processes</i>	<i>Consequences</i> <i>Outcomes of actions.</i>
My categories	Factors of change	Processes	Buy-in/Resistance
	Models of governance		Maintenance
	Characteristics of effective governance		
My sub-categories	The six actors influenced conditions	The six actors influenced actions/interactions	The six actors influenced outcomes

I was pleasantly surprised to see that my categories were essentially the same as the paradigm’s headings and together with the sub-categories, answered the questions of why, where, when, whom, how and with what result. To explain better, “factors of change” were the issues that participants disliked and motivated them to want change. “Characteristics of effective governance” and “models of governance” were the governance changes participants wanted to see. Because change begins with motivations (factors of change) and visions of something better (characteristics of effective governance, models of governance), these categories formed the conditions needed to initiate change. My category “processes” were the actions that participants’ communities took toward effective governance and was the same as the paradigm title of actions and interactions. My category “buy-in/resistance” were the consequences of those actions because community members sometimes bought into actions taken towards effective governance or sometimes resisted. My category “maintenance” was also a consequence as it spoke to whether communities were able to maintain political improvements. Once again, the sub-

categories, or actors, were present in every paradigm heading in that they influenced conditions, actions and consequences.

I recalled Barney Glaser's concern about forcing data into a theoretical scheme and, instead, letting the concepts, categories and theory to emerge from the data (Kendall, 1999). That my categories and sub-categories turned out to be conditions, actions/interactions and consequences meant that participants had inadvertently created and populated the paradigm model. Thus, the theory the paradigm model would produce would indeed be authentic.

### **Selective Coding.**

Selective coding was the third phase of analysis in Straussian grounded theory. The main objective of selective coding is to integrate and refine categories. This resulted in the formation of major categories. Further integration would then lead to a central category from which an all-encompassing theory would materialize (Strauss & Corbin, 1998, p. 144).

### ***The major categories.***

In selective coding, I continued to compare the categories developed in the axial phase. I searched for additional similarities and patterns. The further integration and refinement of categories resulted in four major categories and were labelled motivators, visions, actions and maintenance. The data also showed that the same six key actors (leadership, community members, governance instruments, economy, treaty and Aboriginal rights, cultures and traditions) were present and influenced each of the major categories. As such, the key actors remained as the sub-categories of the major categories. While the path was not always linear, the major categories and six sub-categories reflected an inter-related journey of effective First Nations governance. The inter-relationships between major categories and sub-categories and their impact on the journey of First Nations governance are described in the results chapters.

***The central category.***

A researcher using Straussian grounded theory must decide on a central category during the selective coding process. Through the further integration and refinement of the major categories in selective coding, a central category emerges that represents the main theme of the research. All major categories were related to the central category and together help explain the phenomenon (Strauss & Corbin, 1998, p. 146).

I followed the Straussian techniques of integration that aid in the determination of a central category. Specifically, I reviewed my memos about what I thought was going on, I wrote storylines about the role and impact of the major categories and sub-categories in the journey of effective First Nations governance and I engaged in concept mapping (Strauss & Corbin, 1998, p. 148). Strauss and Corbin also stated that determining processes was a necessary part of theory building (1998, p. 163). I therefore re-examined the earlier process coding I had done because I was curious what actions to improve governance had actually taken place. I selectively coded by organizing the actions according to the six key actors. From there, I grouped the actions into those supported the evolution of governance and those that supported the political status quo.

As a result of reviewing memos, story-lining, diagramming and process coding, a central category emerged to which the four major categories were connected to and influenced by. Together, they formed a theoretical scheme that explained how First Nations achieved and maintained effective governance. The central category and the theory it produced will be discussed in Chapter 8.

## CHAPTER THREE

### Motivators for Wanting Better First Nations Governance

The results of this study are presented in two parts. The first part – Chapters 4, 5, 6 and 7 – focus on the findings of the four major categories that materialized during selective coding. The second part of the results will concentrate on the central category and emergent theory and will be presented in Chapter 8.

Selective coding resulted in four major categories. These were motivators, visions, actions and maintenance. There were also six sub-categories, or actors, present in each core category. While not necessarily linear, the major categories and sub-categories reflected an inter-related journey of effective First Nations governance. Figure 1 below illustrates this journey.

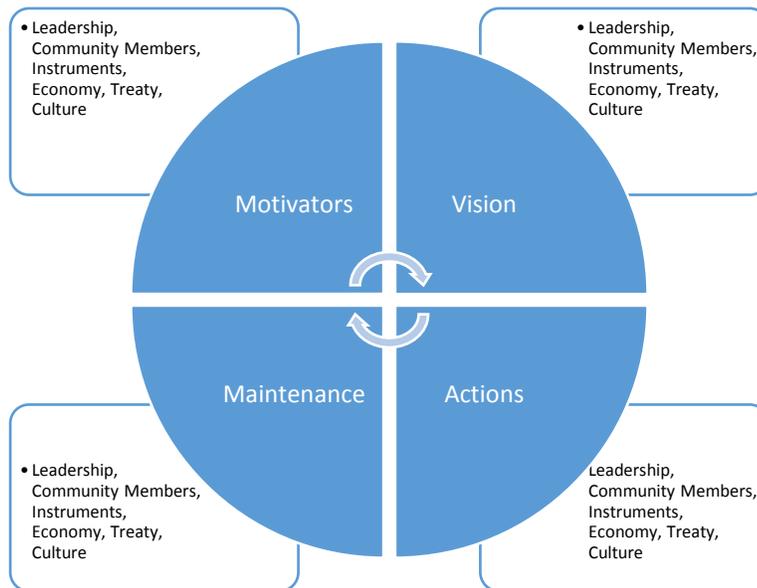


Figure 1. Categories involved in the journey of effective First Nations governance.

Relationships and interactions between the major categories and subcategories and their contributions in the journey towards effective First Nations governance will now be presented.

Discussion will begin with motivators and conclude with maintenance.

## **Motivators**

Given there are usually reasons for change, I was interested in learning about the factors that motivated participants to want political change. Results showed that each of the actors had reasons for wanting effective governance within their nations.

### **Leadership.**

There were a number of leadership issues that participants believed had an impact on the quality of governance. The two most mentioned were self-interest and low levels of capacity.

### ***Self-interest.***

Participants were unhappy that some council members advanced their self-interest by taking care of themselves, their families and supporters at the exclusion of other nation members. A participant who was an elected band councillor, said council members “turn their backs on community and it’s about self, self-interest. And they never turn their back to community to be heard unless it’s election time” (#2, iv. 157.2, p. 42). “We have lost the mentality of caring about each other,” said a Chief. “It’s not ‘what’s in it for my nation.’ It’s ‘what’s in it for me?’” (#11, iv. 55.2, p. 20). Another leader, a former Chief, was adamant that “Good decisions should not be based on financial gain for yourself. That’s self-interest. That’s a problem. Greed is a problem. And that’s how some of them are making decisions” (#7, iv. 72, p. 24).

### ***Many Leaders had low levels of capacity.***

According to the census, the percentage of Aboriginal adults with “less than a high school education” was twice that of the Canadian population (as cited in Paquette and Fallon, 2010, p. 126). Judging by the remarks made by those who participated in my study, the reported

low level of education amongst Indigenous people included First Nations leaders. In the words of a respondent chief executive officer [CEO], “knowledge by virtue of election doesn’t exist. And that’s one of the main problems that we have” (#17, iv. 65, p. 18). He gave more detail by adding “there is a very, very low percentage of those Chiefs and council sitting on boards that are educated, or have lots of experience, or both” (#17, iv. 68, p. 19). Another CEO of a band council said the “majority” of council members from his reserve “do not have too much level of education. They’re smart people, but they don’t have the outward view” (#8, iv. 20.2, p. 5).

In addition to the observations of senior administrators, council members themselves witnessed minimal education and training on council. A newly elected band councillor who had a university degree was surprised to find her political colleagues “come into this role as a council, not really sure what to do, not maybe having training in a specific field or anything” (#5, iv. 49.2, p. 16).

Respondents observed that low capacity levels amongst leaders could be problematic to political decision making. A participant CEO insinuated that one impact of low capacity amongst leaders was uninformed decision making:

I think that is an important thing for people to keep in mind, just because you’re elected doesn’t mean you’re an expert in it. You see, in First Nations, they do that a lot. All of a sudden, I’m the Chief or a councillor, now you have to do what I tell you. But you don’t know anything about how (#17, iv. 74, p. 21).

A university-educated former Chief thought that education was imperative to effective governance and provided an example of how low capacity could impact political decision making:

Yes, it's [education] extremely important because when your council, often your director of band corporations, and you're also dealing with multi-million dollars and you are also negotiating contracts with governments and large industries, big name corporations, a lot of oil and gas companies, as well as forestry and hydro projects. Major big projects you're dealing with. And if you don't know what you're doing, this is where you end up handing all your decision making to a consultant (#7, iv. 172, 173, p. 62).

The comments of a CEO from another province were identical. He said that because of minimal education, many leaders "have to take the opinion of hired consultants and lawyers" (#8, iv. 21, p. 5). Low capacity caused some First Nation leaders to be over-reliant on outside consultants. This made some participants nervous, especially if those consultants were untrustworthy. According to yet a different CEO, "Chiefs and councils are getting run over by shysters because they have no clue. Here's the scary thing: these Chiefs and councils are making decisions based on the advice of shysters" (#17, iv.177, p.53).

### **Community Members.**

What were the factors that motivated First Nation community members to think about the need for effective governance? The two mentioned frequently by participants were social problems and the fact that council was not accountable to the community members.

### ***Social Problems.***

It is well known that a sundry of social problems have afflicted First Nations communities for many years. It was apparent from interviews that these problems still existed on reserves and was a source of distress for the participants. The types of social problems mentioned by participants ranged from addictions to suicide.

The connection between addictions and governance appeared to be two-fold. First was the suggestion that some council members themselves were addicted and this affected their integrity as leaders. “It all has to do with accountability,” said a participant community member, “You know, you can’t be talking about health programs and all that stuff and then be going out on the week-end and getting drunk. That’s accountability” (#1, vi. 148, p. 41). Likewise, an Elder said that something everyone had to do to have good government was to “Be honest and just [pauses]. Sobriety to me is one of the things that’s got to [pauses]. A lot of people, our Chief, he still drinks (#16, iv. 77, p. 25). These statements indicated that in the eyes of some participants, an important ingredient to effective governance was the sobriety of leaders. In contrast, a sitting Chief had a different view on leaders consuming alcohol. He was of the mind that effective governance was about developing policy and the “Leaders who is developing it, if you see them with a glass of wine in their hand, it doesn’t mean they are drunks or bad leaders” (#4, iv. 53.2, p. 16). The Chief concluded that people were quick to judge. But it was important to remember that what made leaders healthy was not whether they drank alcohol, but “the fact they want to make changes for their people” (#4, iv. 57, p. 17).

The second connection between addictions and governance was the expectation of community members that their leaders intervene and try to alleviate social problems. A CEO of a band council was disappointed that his tribal council had not developed a community wellness program or even bothered to deliberate on the issue of social problems.

We just don’t run [pauses]. There are so many drug overdoses and deaths, and all kinds of addictions. And we don’t even have an adequate program, really. You should have one big, geez, one big centre that all the funds flow into and apply for extra outside funds.

And be treating people. But we don't. Where do those people go? And those are the issues that don't even get talked about or tackled (#17, iv. 85-87, p. 23).

That it is the responsibility of leaders to address social problems was also suggested by a respondent Chief:

Like, when there is a suicide, you don't talk about it. "Oh, the poor kid," and we all go to his funeral. Then we all go on our busy way until there is another suicide. But we are not dealing with what is the problem (#13, iv. 59, p. 16).

There was indication this Chief worried about the impact of social problems on the future of First Nations leadership when he added, "So, if we don't start tackling those, our young warriors who are committing suicide would be our future leaders." For this Chief, dealing with social problems was one of the many responsibilities of leadership (#13, iv. 60, 61, p. 16).

Finally, a participant community member articulated how social problems often caused First Nation communities to want change:

You have to hit the bottom before you wake up. And then, you revive yourself. I think in a lot of communities, that's what's happening. The kids are so despondent [pauses]. Increase in suicide, drug use. People have lost hope. But once a community goes through a series of negativity, there's people that all of a sudden come up and say, "Enough is enough. Let's make changes." (#6, iv. 32, p. 11).

***Council was not accountable to the Community Members.***

Participants were troubled by the fact that the community members were not viewed as the authority and that council was not accountable to them. An Elder disclosed that members of

her nation did not get updates from leadership.<sup>12</sup> “We don’t know what the leaders are doing or what issues have come up,” she said. “If all of that existed, that would be good” (#10, iv. 64.3, p. 17). Similarly, another Elder complained, “Right now, there is absolutely no transparency. They said they would be transparent, but it just becomes political rhetoric” (#12, iv. 15.2, p. 5). A former Chief noticed that in his community, “...nobody really follows up. Even if the money is spent inappropriately, nobody does anything, right? If there was somehow we could make Chief and Council accountable, that would be good” (#18, iv. 212, p. 53).

As mentioned in an earlier chapter, band councils only have to be accountable to the Minister of Indian Affairs (Abele, 2007; INAC, 2011). Not surprisingly, respondents disliked this arrangement. A participant felt that band governance needed to be for the people and by the people since it was them that elected the council. Yet, under the *Indian Act*, leaders could do whatever they wanted (#20, iv. 77, p. 22). A former Chief remembered that with contribution agreements under the *Indian Act*, “the only person you were accountable to was the Minister of Indian Affairs, not the people. That is contrary to our ways” (#14, iv. 4, p. 2). Not long after, the same respondent talked about the impact of no accountability on the community members. “So, all the accountability is to the department rather than to the people. So people never have a say” she said (#14, iv. 16, p. 5).

### **Governance Instruments.**

By governance instruments, I mean the apparatus normally used by most governments to govern their societies such as laws, constitutions, and policies. The two governance instruments

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<sup>12</sup> Participants did not talk about Elders as leaders but rather as community members. This is likely due to the fact the *Indian Act* removed the political decision making power Elders once had under traditional First Nations governance. Participants’ nations appeared to stay consistent with the *Indian Act* in that they utilized Elders as political advisors, not decision-makers.

that motivated participants to think about the need for effective governance were the oppression of the *Indian Act* and policy issues.

***The oppression of the Indian Act.***

In a report she prepared for the National Centre on First Nations Governance, Frances Abele reviewed the *Indian Act* to determine if it provided the foundation needed to support sound democratic governance and effective administration (2007, p. 2). Although the Act contained some rules and procedures for band governments, many typical governance functions, administrative practices and management principles were not formed fully or were deficient. In general, Abele found the provisions of the *Indian Act* “do not constitute a design for a system of government, governance or management on reserves” (Abele, 2007, p. 3, 18). Thus, whether the *Indian Act* is a fulsome apparatus of governance is debateable as it does not prescribe a complete governance system, responsibilities and rules of government. Nevertheless, for my purposes, the *Indian Act* is a governance instrument of the Canadian state because First Nations have had to govern their communities under this law since its introduction.

The number one concern participants had about the *Indian Act* was that it was oppressive. Oppression was a source of contention for a respondent Chief who remarked that, “White rules has crippled us” (#11, iv. 73, p. 24). Several participants believed the intent of legislated oppression was to ensure that First Nations did not advance on any front. Attesting to this was a former Chief who observed how the *Indian Act* “has really held captive First Nations people intellectually, economically and politically” (#15, iv. 31.2, p. 8). More frank was a band administrator who said, “They geared it up. Set all the rules, set all the regulations in order for us to fail. When you look at the *Indian Act*, it keeps you in a position” (#3, iv. 5.2, p. 2).

In the political arena, First Nation political candidates displeased with the conditions in their communities often campaign on a platform of change. Upon their election, these leaders soon discover the difficulty of realizing their visions due to the oppressive nature of the *Indian Act*. A respondent band councillor said political contenders “have all these ideas.” But once elected to office, these leaders realize they could not implement their ideas because they “have to pay the piper and follow all of their [Indian Affairs] policies” (#2, iv. 7, p. 2). Similarly, a Chief found that every time First Nations leaders turned around, “they have to ask the government for permission or they have to follow *Indian Act* regulations” (#7, iv. 1, p. 1). Participants believed that the *Indian Act*’s control of band governance and oppression of leadership was motivating First Nations to contemplate change. This motivation was reflected by another former Chief who stated, “this is how the *Indian Act* has reduced the authority, had reduced the responsibility, had reduced the jurisdiction of First Nations people in Canada. So, we have to correct that” (#15, iv. 44, p. 12).

### ***Policy issues.***

When respondents thought about their nations, a couple of policy issues especially concerned them. The first was the lack of policy, specifically on matters of ethics and responsible political behaviour. One respondent band administrator learned from experience the predicament that lack of policy could place a council. In her words, “We’re actually getting caught in something right now because, um, you need policies” (#3, iv. 60, p. 21). Others implied the absence of policy made it difficult to deal with unethical behaviour by some leaders. A CEO, for example, stated “We depend on the good intentions of our leaders too much. It works well if you’ve got good ethical leaders. But once you don’t, there are no safeguards there within our system to protect our resources” (#8, iv. 58.2, p. 14). A band councillor thought that

for her band council, “some work needs to happen, some policies and procedures need to be made about conflict of interest” (#2, iv. 53, p. 15). A former Chief also spoke along those lines in that there needed to be “strong policies in place to deal with conflict of interest, confidentiality. A lot of ethical type policies need to be established” (#7, iv. 33, p. 13). She continued, “Once administration is operating, um, under strict policies, then I think that would be more effective because Chief and Council would have to be more accountable and transparent. They would have to follow policies” (#7, iv. 34.2, p. 13).

In other cases, policies existed but were not enforced by band council. The reserve residency policy appeared to be one that was difficult to impose. Many First Nations have developed residency policies meant to control who, in addition to nation members, can live on the reserve. Residency policies often contain provisions that allow council to evict unsavory characters like drug dealers and other criminals. Discussing the non-enforcement of his nation’s residency policy, a respondent Elder said people banned had been seen on his reserve but “Nobody is doing anything about it” (#12, iv. 117, p. 46). Similarly, a CEO from a different nation shared that, “We have people living on the reserve that are not residents. They break our residency policy and we don’t do anything” (#8, iv. 135.2, p. 37). He was frustrated that his council could not agree on the acquisition of peace officers to help enforce the policy and concluded, “So your policies mean nothing because you can’t enforce nothing” (#8, iv. 136, p. 37).

### **Economy.**

The fourth sub-category is the tribal economy. Participants revealed that the two economy-related issues that motivated them to want better governance were poverty and dependency on government funding.

### *Poverty.*

Given that poverty has inundated most First Nation communities, it was inevitable that the participants interviewed for this study also brought up this issue. Participants were troubled by the impoverishment in their communities and considered it a motivator for political change. Poverty prompted the desire for change in a number of ways. To start, participants believed First Nations community members had grown weary of poverty and wanted to escape it. When I asked a respondent band councillor what factors contributed to political change in First Nation communities, she answered that nation members wanted to get out of poverty and wanted more opportunities so they could be more self-sufficient (#2, iv. 3, p. 1). The fatigue generated by poverty was also articulated by a community member who said that First Nations people, the youth in particular, were “bright enough to see the rotating doors of poverty, of despair and they get tired of that” (#6, iv. 30, p. 11). He explained that since earlier generations of First Nations people had lived through years of abject poverty, they did not want the younger generations to suffer the same fate and impressed upon their children that a better life was possible. “And that better life encompassed them getting away from poverty that always afflicted our communities, which is still there after all these years because of the system” (#6, iv. 2, p. 1). The system this respondent referred to was federal Indian policy, which had significantly contributed to the impoverishment of First Nations. The ways federal policy had created poverty included obstructing economic development on reserve lands and the consistent underfunding of First Nations (Abele, 2007; Holmes, 2002; Milloy 2008). A different participant also addressed government underfunding and believed there was ill intent. She commented, “So first of all, all of the criteria and the funding mechanisms that we get from the federal government has never been enough. And I think a lot of that was geared to make us fail” (#3, iv. 5, p. 2).

In addition to community members tired of being poor and wanting change, poverty also motivated First Nations leadership to think about political change. At the start of his first term, a Chief found himself hat in hand, begging everyone his council knew for money. In addition to his council discovering that money was owed to contractors for work done, “we find out two of our major programs have no money and our bank account is empty. So we really made up our minds in the beginning to start making change” (#4, iv. 19-21, p. 6). On another reserve, the nation was once wealthy from natural resources. However, natural resources since had depleted and the nation was experiencing financial shortages. The nation’s CEO thought the lack of funds would induce leadership to think about the need for political change:

I’d have to say, though, our governance structure is cumbersome. Here, we really need to have a push to look at it. Maybe our reduction in natural resource funds will lead to that. We cannot afford to pay 15 members of council and the associated costs around that. It was easy when we had lots of money (#8, iv, 24, p. 6).

***Dependency on government funding.***

First Nation writer, Calvin Helin, states that “dependency also extends to Aboriginal governments, which, with a few exceptions, are financially dependent on transfers from federal government” (2006, p. 104). In fact, the sole source of revenue for most First Nations in Canada comes from government transfer payments (Helin, 2006, p. 128).<sup>13</sup> Participants in this study were aware that because the only source of income for many First Nations was from the federal government, that government was able to exert a considerable degree of control over band

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<sup>13</sup> *The Indian Act* and Indian Affairs make economic development on reserve lands next to impossible. This is discussed in Chapter 8.

councils. One avenue through which government exerted control was through financial contribution agreements. A former Chief said all Indian Affairs looked at with respect to the contribution agreements was that Chief and Council were operating according to federal government ways (#14, iv. 15, p. 5).

Respondents recognized that in order to reduce the level of government control, First Nations needed to diversify their sources of income. A participant CEO said his nation needed to start making its own money, “Or else we’re never going to be independent. We’re just going to be under someone else’s [pauses], kind of swaying what you do. Until that happens, we’re not going anywhere” (#8, iv. 134, p. 36).

Another CEO said First Nations often complain that the federal government is paternalistic. This respondent felt it was up to First Nations leadership to change that circumstance. “You know, until they take ownership of that, First Nations leaders takes ownership of that, you will always have one source of income. You’ll always have what I call a master-slave relationship,” he said (#17, iv. 52, p. 15). In other words, with only one funder, First Nations have no choice but to do what the federal government wants. If they went against government, First Nations could face repercussions such as the withholding of funds. When I asked him how First Nations could change that circumstance, this CEO responded, “I think they need to diversify” (#17, iv. 56, p. 16). He then shared a story of how his tribal council was able to loosen the grip that Indian Affairs had over it through diversification. The amount of government funding was determined in conjunction with a nation’s own source revenues. By branching out fiscally, this tribal council had reduced its funding from Indian Affairs from 85% of its total budget to less than 30%. Apparently, an Indian Affairs officer demanded this CEO change a report because it did not make the government look good. The Indian Affairs officer

threatened to deny the standard ten percent funding holdback if the report was not changed.

Diversification allowed this CEO to stand his ground:

I told this guy to piss off. I said, “Fine. I don’t care. Go ahead.” I said, “Put it on paper that if I don’t change this, you’re not going to release my 10%.” And it was a huge freeing experience for an organization to be able to tell [pauses]. And INAC is still running on the mentality that “Oh no, they have to do, they have to write what we want because we’re the only funder.” (#17, iv. 59, 60, p. 17).

Continuing on, the CEO added,

But the first time you are able tell the person who is designated your master to “Screw off, I don’t need it,” that’s a very freeing experience. And I think First Nations need to get to that. They need to have the experience of being able to say, “That’s wonderful, but you’re not my only source.” And once they can do that, they will never be held captive again (#17, iv. 62, 63, p. 18).

### **Treaty and Aboriginal rights.**

The fifth sub-category is treaty and Aboriginal rights. Participants indicated that what motivated them to want better governance was the fact their treaty and Aboriginal rights were not recognized. In addition to this, the awareness of community members, or lack therefore, also prompted participants to think about the need for better governance.

#### ***Treaty rights are not recognized.***

Treaty making in Canada began in the 1700s. Exactly what treaty rights consist of remains contested by the parties but include such things as traditions, customs, land and resource

rights, fishing and hunting rights, and the right to self-government (INAC, 2010a; BC Treaty Commission, 2009; Holmes, 2002; Montpetit, 2007). To the displeasure of First Nations, Canada began its non-recognition of treaty rights shortly after confederation and introduced several pieces of Indian legislation that completely disregarded treaty rights (Milloy, 2008).

After many, many decades of protests, advocacy and negotiation by First Nations, Canada recognized and affirmed existing treaty and Aboriginal rights in section 35 of the *Constitution Act, 1982*. Despite expressed recognition, First Nations observed that the federal government had not followed through and the non-recognition of their rights, particularly treaty rights, continued to present day. A former Chief from a historical numbered treaty protested that, “Canada and the provinces, at any time, do not recognize what treaties mean” (#7, iv. 75.3, p. 25). Reflecting on the numbered treaty his nation had entered into, a different respondent was discouraged because “Treaties here have no value” (#20, iv. 34, p. 12). A different Chief whose nation was also party to a numbered treaty explained the historical treaties were peace agreements that were to be kept for a lifetime (#15, iv. 39.2, p. 11). He noted the two parties that had entered into those treaties, First Nations and Canada, were still here. The lack of recognition by the federal government caused treaty First Nations to look back on what was agreed to and say, “Well, these are the agreements. The other side did not honour the agreements. We continue to honour the agreements” (#15, iv. 43, p. 12).

Besides expressing their disappointment, participants provided more detail on government’s disregard for their treaty and Aboriginal rights. High in importance was the inherent right of First Nations to govern themselves, an entitlement believed by many to be essential to effective governance. As explained by a former Chief:

And under treaty, like our people come with the understanding that we never gave up our right of self-determination. First Nations make treaties, treaties don't make nations.

Nations make treaties which includes the right of self-determination. It was in the exercise of that right our people entered into treaty with another nation (#14, iv. 53, 54, p. 13).

The above respondent noted the numbered treaty her nation had signed recognized First Nations' self-governance and law-making authority and was intended for First Nations and the newcomers to live side-by-side without interference (#14, iv. 64, p. 15). This perspective was same for another former Chief from a numbered treaty who stated the treaty was an agreement between equals about how the two nations would live together (#15, iv. 38, p. 10). The same Chief said the *Indian Act* was to take into consideration the various treaties but failed to do so (#15, iv. 29, p. 8). In the observation of these participant Chiefs, the *Indian Act* ignored the treaties, terminated the right of First Nations to govern themselves and made them wards of the Canadian state.

Participants understood that because the agreements were not implemented, government continued to not recognize treaty rights through various forms of legislation. "Because we haven't implemented treaty, Canada is bringing in more laws to interfere with our way of life," said one respondent (#14, iv. 158, p. 38). Most worrisome to participants were those laws that contravened First Nations' collective rights to their territories, in particular, what became known as the *First Nations Private Property Ownership Act* and the *First Nations Matrimonial Property Act*. In reference to these laws, the same respondent pointed out that "Canada is not supposed to come in through the back door and legislate over our rights. And that's what they've been doing and continue to do...Because of our collective rights, they are not supposed to destroy that"

(#14, 227, p. 56). A respondent from a different nation agreed that because First Nations were not self-governing, the federal government could enforce its legislation. Speaking about the matrimonial property law, he commented, “Now we are getting rights put on top because we are not doing it on our own. Now, we’re getting it imposed” (#8, iv. 109, p. 31). The respondent that spoke earlier was of the same mind. She suggested that until the inherent right to self-government was implemented and First Nations established their authority and began making their own laws, that government would continue to impose legislation. “So when we don’t occupy an area of jurisdiction, like matrimonial property law, the government is legislating to fill that gap. So, we need to fill those gaps,” she said (#14, iv. 220, p. 55).

#### *Awareness of treaty and Aboriginal rights among First Nations.*

Participants noticed that fellow nation members were either unaware or becoming aware about their treaty and Aboriginal rights.

A few respondents were concerned that some First Nations community members had minimal knowledge about their treaty and Aboriginal rights. One participant said her nation, a signatory to a historical numbered treaty, was beginning to have discussions about treaty rights. Through those discussions, the lack of knowledge about treaty and Aboriginal rights of some nation members became clear.

And I find a lot of our people have no idea what they are. Because of the residential school, people forgot. Because of the way they were so colonized, they don’t remember or it wasn’t passed down. So there’s not a lot of people that know (#14, iv. 116, p. 28).

For an Elder, treaty rights were collective rights. Because of this, fellow nation members had to think about their rights as collective. This Elder was concerned that because of

colonization, younger generations of First Nations were no longer thinking collectively. “Our treaties were signed as a collective right, not individual,” he said. “So, it’s got to stay that way. And they are moving our children away from thinking like that” (#16, iv. 37, p. 11).

The lack of awareness likely contributed to the tendency of some First Nations people to mistake *Indian Act* provisions for treaty and Aboriginal rights. Some First Nations people believed, for example, that the land and election provisions in the *Indian Act* were treaty rights. “So, our people being colonized believed that was the implementation of the treaty, which it wasn’t,” remarked a former Chief (#14, iv. 81, p. 19). To alleviate confusion, another former Chief said:

I think, you know, we need to ensure that we understand Canadian legislation. In conjunction with understanding the rights we have as First Nations people, the descendants of the people who made treaty with the Canadian Crown, we have to remind ourselves that the *Indian Act* should not be confused with our treaties and treaty rights (#15, iv. 26, p. 8).

Similarly, a CEO saw that both First Nations community members and leaders did not understand the difference between treaty and the *Indian Act*. Some First Nations community members and leaders believed that certain benefits were treaty rights even though that was not necessarily true. As told by this respondent:

And it doesn’t say a lot of the common things that people revert to immediately and say, “Nope, that’s a treaty right, that’s a treaty right.” It’s not a treaty right. It’s not a treaty promise. It’s not a treaty interpretation. Many of the things they’ll ask for become Indian Affairs or an *Indian Act* comment. I think education on that type of thing would be

exceptionally important. And I think it would lead them to effective governance if they better understood (#17, iv. 31-34, p. 10).

While there were First Nations people that were unaware, others were gaining an awareness about treaty and Aboriginal rights. One respondent observed that awareness increased after treaty and Aboriginal rights were recognized and affirmed in the *Constitution Act, 1982*.

But it made people aware. “Hey, we’ve got treaty and Aboriginal rights and they are not recognized. And, what are they?” So people are looking more into their inherent rights and their treaty rights. You know, what they can do as a nation. And then learning more about treaty, like nations make treaties. And we all know prior to the coming of the settler people, we had our own systems of government, you know, governance. We had our own laws. We had our own ways of doing things (#14, iv. 20, p. 6).

The awareness of First Nations people led to their desire to have treaty and Aboriginal rights recognized and implemented. This was particularly true for the inherent right to self-government that many considered essential to effective governance.

### **Cultures and traditions.**

The sixth sub-category is cultures and traditions. Participants observed that despite memories eroded through colonization, cultures and traditions had survived and First Nations people were remembering or learning about them. This, in turn, motivated them to think about the need for better governance. Recollection also led some First Nations people to conclude that traditional First Nations governance worked better than Indian Act band governance and that reincorporation of traditional political practices would lead to effective governance.

*Community members were remembering their cultures and traditions.*

Respondents noticed that fellow nation members remembered or were learning about their cultures and traditions. Despite the federal government's attempt to assimilate by not allowing First Nations to practice their ways, cultures and traditions had survived. In reference to the *Indian Act's* abolishment of traditional First Nations governance, a respondent commented, "A new governance system was imposed. I think that we retain [pauses]. You can't knock everything out of people. So, I think we retain things" (#20, iv. 123, p. 32). Further substantiating the survival of culture was an Elder who stated that, "All First Nations still remember their old ways. We still have our Elders. Some of them still remember" (#16, iv. 43, p. 12).

The federal government's assimilation plan included the establishment of Indian reserves where First Nations people would be contained until they were ready to transition into Canadian society (Coates, 2008).<sup>14</sup> Ironically, reserves had an opposite effect on assimilation in that the enclosure of First Nations helped maintain their cultures. This was explained by one respondent who said, "One thing I think was positive from the reserve system, it has held some cultures and languages intact (#7, iv. 95, p. 32).

A former leader thought that some First Nations people were starting to recover from the legacy of Indian residential school were remembering their traditional ways and becoming more interested in their nationhood (#14, iv. 25, p. 7). She explained that previously, First Nations people were so colonized that they had forgotten their history, spirituality, cultural identity and values, and traditional laws and governance systems. However, cultures and traditions were being revived and First Nations people were beginning to realize who they were. Cultural pride

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<sup>14</sup> Up until 1941, First Nations were segregated onto Indian reserves and were not allowed to leave their reserves unless they had a pass authorized by federal government's Indian Agents (Deerchild, 2015).

was increasing and First Nations people were starting to talk about the effectiveness of traditional governance systems (#14, iv. 27, p. 8).

***Community members believed traditional governance was more effective.***

Cultural awareness impelled some respondents to compare traditional governance with *Indian Act* band governance and conclude that the former was more effective. Case in point was the Elder who said that long before *Indian Act* band governance, his nation “had an effective governance system” (#9, iv. 2, p. 2).

With decisions a key function to any government, respondents compared traditional decision-making against *Indian Act* decision-making. Traditional decision-making was thought to be better because adequate time was taken to make decisions. A community member revealed he did not like the way political decisions were made under *Indian Act* band governance because decisions were made hastily and nothing was thought out (#1, iv. 70, p. 19). “If it’s pertaining to the whole nation, we just don’t say, ‘well, we have to decide right now,’ then go ahead and make the decision,” he said. “It doesn’t work like that with our people” (#1, iv. 13, p. 4). A band councillor had the same complaint about decision-making at her nation’s council table. “It’s like we’ve created this fast fast fast [pauses]. We need to make quick decisions and sometimes that’s not the best way to do it either” (#2, iv. 108, p. 29).

In addition to rushed decisions, respondents found it objectionable that governance under the *Indian Act* excluded community members. Usually a small group of leaders made most of the political decisions. For instance, a band councillor said her nation was an *Indian Act* band where decisions followed parliamentary procedures involving a mover and seconder. Subsequently, discussion about issues could end quickly through a council member’s call to question. “There’s

not a lot of dialogue,” she said. “Two people can really push something through” (#2, iv. 45, 46, p. 13). Another band councillor also expressed concern with simple majority because a few people could make major decisions that affected the entire nation. “I have a hard time with parliamentary procedures,” she said (#5, iv. 38, p. 12). A community member also disliked parliamentary-style decision making because it was contrary to the traditions of his people.

But the Chief and Council over at the band office, that’s a totally different ball of wax.

They make a meeting, they plan it, they talk about it, they make a decision. All in favour, all opposed, that kind of approach. That doesn’t work with traditional governance (#1, iv. 19, p. 6).

The community member above disliked the way decisions were made under the *Indian Act* because “It turns into more of a dictatorship” (#1, iv. 72, p. 19). He argued that decision-making under traditional governance was more effective because leaders took the time to make decisions and involved community members in the decision-making process. The respondent shared that traditionally, his nation’s leadership would be engaged in an extended back-and-forth process with nation members until agreement was reached. The phrase this participant used to describe the traditional decision-making process was to “chew on it for a while” where leaders and nation members took the time to think about and discuss an issue before reaching a decision. As shared by the respondent, “They chew on it for a while. They spit it out and look at it and see what it is they are talking about. So nothing is never made overnight” (#1, iv. 14. p. 4).

Other respondents agreed that a major part of what made traditional decision-making effective was the participation of nation members. In clan-based traditional governance, for example, all community members participated in the political decision-making process through their clans. Members of a clan would discuss an issue and communicate what was agreed to the

clan lead. The clan lead, in turn, would take the decision of his or her clan to the larger political table, usually an assembly of clan heads. A respondent whose nation was traditionally clan-based said, “I heard we used to have heads of families that provide information to that leader of that house. The leader of the house would be the voice of the family. They didn’t actually make the decisions” (#2, iv. 103, p. 27). A respondent from a different province was also a member of a nation that was traditionally clan-based. He admired traditional decision making because the clan system allowed community members to participate:

I think the people are always involved in the decisions because when you look at the clan heads, they talk to their family members about the issues. And when they have a good handle on the issue itself, and how to resolve the decisions they have to make, they call together the clan heads and make a decision based on the information they have filtered from their families (#6, iv. 85, p. 34).

In sum, an assortment of issues ranging from the self-interest of leadership to political decision making contrary to cultural ways motivated First Nations to want political change. The journey of effective governance had commenced. The next chapter will focus on the second phase in the journey, participant visions of effective governance.

## CHAPTER FOUR

### Visions of Effective First Nations Governance

The second phase in the journey towards good First Nations governance was visions. In addition to being motivated to want change, participants had clear ideas of what improvements they wanted to see and what they viewed as effective governance. This chapter presents the actors' visions of effective governance.

#### Leadership

The two most mentioned changes that participants wanted was for their leaders to increase their leadership capacity and to allow opposition.

##### **Increased capacity of leaders.**

As this dissertation proceeds, the continuation of traditional kinship-based leadership selection in modern-day First Nations communities will become apparent. For now, it is sufficient to say that the relatives voted into office often had little education, training or experience. Participants believed that low capacity levels of leaders contributed to ineffective governance. They felt that First Nations should move away from electing relatives to electing leaders who were qualified because doing so would contribute to effective governance. Frustrated by the propensity for kinship-based leadership selection, a CEO said, "I don't know, you need to just keep the education going the best you can. People need to elect leaders not just for my cousin" (#8, iv. 169, p. 47). When asked what she thought were the characteristics of effective governance, another senior administrator offered a similar view when she replied, "The background of leaders is important, what they did in the past in terms of training. Were they innovative? What is their work experience?" (#19, iv. 133, p. 35). She maintained "the qualities we look for in leaders should be their work experience, their qualifications" (#19, iv. 137, p. 35).

The reason why leadership and governance would benefit from education, training and experience was made evident by yet a different band administrator who remarked that “Another thing that has to happen with effective governance, another thing that is needed is knowledge” (#3, iv. 97.2, p. 35). When asked what type of knowledge council members required, this administrator answered, “Knowledge about everything. About education, about health, about economic development” (#3, iv. 98, p. 35). This band administrator implied that leaders had to make decisions in many areas and that increased capacity would help them make better decisions. Likewise, a band councillor said that being on council, “you are making decisions in so many areas, in health, education, everything. You don’t necessarily come with a bunch of training and skills, but to prepare individuals for that role” (#5, iv. 50, p. 16). This band councillor had a vision for the future where young people trained for leadership. In preparation for the future, young people should have an opportunity to learn about the roles and responsibilities of council with some practical experience (#5, iv. 51, p. 16).

A university-educated Chief in office for many years emphasized the need for educated leaders and the consequence of not being educated. He acknowledged there were not many leadership candidates in his community with university degrees. He suggested the impact that the lack of education had on governance could be curtailed somewhat by requiring councillors to have a minimum education of grade 12 and to have their own credit card. “Otherwise, once you get in, your thinking will be limited by only trying to get out of personal debt. That is the way people that get in think,” he said (#11, iv. 118, p. 41). Surprised, I asked, “They don’t look at the good of the nation?” He answered, “No, they don’t look at that” (#11, iv. 119, p. 41). For this Chief, having a personal credit card was a reflection of good credit and financial management

skills. In his mind, requiring a minimal education of grade 12, combined with good credit and money management, would help these leaders to govern better.

### **Allow opposition.**

A hallmark of accountability in western democracy had been the public critique of government and governors. Within parliamentary systems, criticism is usually built into the governance structure through an official opposition, question period and other mechanisms. In band governments, this vital feature of accountability is missing in that formal political opposition does not exist. Underscoring the consequences of this omission, an Elder remarked, “Because there is no official opposition, leaders can do as they please” (#12, iv. 13, p. 4).

Having seen the impact that a political structure deficient of opposition has had on accountability, participants wanted their leadership to allow and respond to opposition. A former Chief, long concerned with the lack of accountability within his tribal council, wondered if the entire political system should be revamped and an official opposition incorporated. “If there is an opposition, that way, we can monitor who is working like they are supposed to. These are the types of things I think about,” he said (#18, iv. 215, p. 54). After sharing his vision of a re-organized political system for his tribe, the former Chief concluded, “That way, we can have this opposition party to make sure that accountability is there, make sure that redress is there” (#18, iv. 221, p. 55). It was obvious the desire for opposition had been thought about thoroughly when an Elder contemplated whether First Nations governments should fashion themselves similar to the federal political structure in terms of an official opposition that was remunerated. “But there, they have an official opposition and the opposition is paid by the government,” he said. “For us, whoever came in second should be the opposition and should receive something” (#12, iv. 14, p.

5). The depth of this Elder's vision was such that he had even considered what the duties of an official opposition within First Nations government might be.

Official opposition has the right to research and they have the right to see where the money is going and why. They can argue on those points. But we have to ensure that it is not so much that it bogs down the government (#12, iv. 29, p. 9).

## **Community Members**

### **Council to be accountable to and communicate with community members.**

Between elections, the *Indian Act* made band councils exclusively accountable to the minister of Indian Affairs. The act does not require band councils to be accountable to the community members that elected them. Regardless of what the *Indian Act* says, participants believe that the electorate should be the source of authority in First Nations communities. In that regard, an Elder stated, "The people are the ones that place the Chief and Councillors in positions of power. Because we put them in there, they should be listening to the people" (#10, iv. 55.3, p. 14). A former Chief was of the same view with his remark that "the authority of leadership is really given to them by the people. It's not always viewed that way. But that's really where the authority comes from, the people" (#13, iv. 74, p. 21). To that end, participants thought that in spite of the *Indian Act*, an inversion needed to occur where council was accountable to community members first. A band councillor, for instance, commented, "For me, accountability needs to be with your people. It needs to be flipped over in that the government is below them" (#2, iv. 131, p. 35). Adding to that was a band administrator who said, "And you need the council to be accountable to the community first before government. That has to happen" (#3, iv. 49.2, p. 18).

Participants were clear that in order for effective governance to be realized, it was necessary for council to keep nation members informed. Attesting to this was a former Chief who maintained that “if there is going to be effective governance, there needs to be communication” (#18, iv. 2, p. 1). A community member had a parallel perspective with his comment that “I think governance has to do with people being informed” (#6, iv. 109, p. 48).

Participants reported being told directly by nation members that they wanted communication from leadership. In talking with community members from her reserve, a band councillor shared, “Well, the message I am getting is they want updates, they want to be informed, they want to be heard is there is an issue arising” (#5, iv. 54, p. 17). In another community, a band manager recounted that tribal administration had interviewed nation members about their wishes for band government. The interviews revealed the most important issue for the nation members was, “They wanted communication. They wanted to be informed” (#3, iv. 24, p. 8). An Elder from a different nation provided more detail about the type and frequency of communication that community members wanted. “Every four months at least, or six months, bi-yearly, we should get a report. It doesn’t have to be detailed, but there should be some kind of report” (#9, iv. 82, p. 21). A band councillor explained that because there was no communication from council, innuendo tended to occur because “people don’t know so they make up their own stories” (#2, iv. 62, p.18). To alleviate misrepresentations, this band councillor suggested developing a communication strategy that would enable nation members to see what their Chief was doing in terms of meetings attended and other activities (#2, iv. 66, p. 19).

Finally, a former Chief emphasized the critical connection between keeping the community members informed and effective governance with his warning that, “if there is no

communication and trust, if a Chief is going to continue with corruption, he will eliminate trust and then run things as he pleases” (#18, iv. 3, p. 2).

**Increased capacity of community members will contribute to effective governance.**

Participants thought effective governance in First Nations communities would be more attainable if the capacity of the community members also increased. In their view, what kept the political status quo intact was that the members of the community did not know how governance was supposed to function.

The main problem appeared to be community members’ misunderstanding about the powers and role of council. For example, a CEO affirmed that nation members tended to think their leadership had ultimate power over everything in the community. “That’s a misconception” he said (#20, iv, 101, p. 28). In like manner, a band councillor stated, “The perception in the community is that Chief and Council picks all the people. Chief and Council picks who gets a prawn licence, the crab licence” (#2, iv. 58.2, p. 17). A former Chief also spoke about community members’ misguided ideas about the role of council. “The perception [pauses]. They are not there just to fix doors and broken doorknobs, windows, and, you know, plumbing” (#13, iv. 71.2, p. 20). Participants were concerned the low capacity of community members contributed to the concentration of power, which then led to other problems. This was made evident by a former Chief who remarked: “If no one is educated, you can manipulate it the way you want. All you have to say to the people is, “This is the way it’s supposed to be.” If they don’t understand, they’ll believe you. You can have all the power you want” (#18, iv. 7, p. 2).

A CEO described the level of power exercised by council members as “false” and continued, “Their only role is policies and ensuring policies are being followed. That’s why I

say, ‘understand the system’” (#20, iv. 102, p. 28). According to another respondent, governance improvement would require a devolution of power from Chief and Council (#8, iv. 16, p. 4). However, a different participant was certain that “Without figuring out and educating people on the separation of powers, no matter what [governance system] you bring in, even if it’s traditional, it will be [pauses]. It won’t be followed” (#20, iv. 105, p. 28).

Participants felt that if governance were to be improved, leadership would need to increase the capacity of community members. A Chief believed that increasing the capacity of community members was one of many responsibilities of leadership. “It’s not just about governance, it’s not just about transparency, it’s not just about accountability” he said. “It’s about bringing the people and how do you evolve them?” (#13, iv. 23, p. 6). He meant how do you grow the people, how do you increase their capacity so they are better able to support political improvements. Because without the evolution of community members, change will be impossible to make. Similarly, a band councillor recognized that “Once you start leading in a more effective way, you’ve got to create capacity for the band to move with you” (#2, iv. 142, p. 39).

Participants recognized that once the capacity of community members was increased, they would contribute to the development of effective governance. This was the position of a former Chief who surmised, “As people get more and more educated, slowly, we will make changes for the better (#18, iv. 74, p. 19). Another respondent was of the same mind and stated, “The people themselves, if they are educated, they will contribute” (#19, iv. 38, p. 8).

## **Governance Instruments**

### **Modify the *Indian Act*.**

Considering the amount of grievances that First Nations had about the *Indian Act*, it could be assumed they would be eager to part with the Act and move onto a more enhanced system of governance. I was astounded to discover this was not the case. A participant community member confirmed that the adoption of a different governance system was unlikely. It was his observation that “There are very few examples of communities creating something like a new governance system” (#6, iv. 34, p. 12). As far as the political future of First Nations was concerned, the same respondent added, “Will they radically change and form a new government? I don’t see it” (#6, iv. 118, p. 49).

Apprehensive about divorcing the *Indian Act*, what most of the respondents wanted to see was a modified *Indian Act*. When I asked a former Chief if First Nations should dispose of the *Indian Act*, he answered, “No. I think we should revamp it” (#15, iv. 46, p. 13). Another Chief expressed a similar opinion when she commented that, “A lot of the procedures and rules do come from the *Indian Act*. But they can be modified to go further” (#7, iv. 53, p. 19).<sup>15</sup>

For an Elder, the alteration of the *Indian Act* should not a final destination for First Nations but a provisional measure on the road to autonomy. “I have been talking about a modification to the *Indian Act*,” he said. “If we remove parts of it and look at it that would be a modification. Eventually, with the intent to make our own. That would be the path to go” (#12, iv. 73.2, p. 26). When I asked him to clarify, the Elder replied, “Modify the *Indian Act* with the intent to self-government, our own” (#12, iv. 74, p. 26). Though not explicit, keeping the *Indian Act* but eventually moving to self-government appeared to be on the minds other respondents. A

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<sup>15</sup> Given the history of extinguishment of their rights, many First Nations prefer to take small steps and move slowly. This will become more evident in the Actions chapter.

band councillor talked about the possibility of her nation having its own governance system but thought, “maybe there are pieces that we need to keep from the old system” (#2, iv. 140, iv. 39). Likewise, a former Chief contended that First Nations knew the *Indian Act* system very well. “So I think probably some of those practices, if you want to call it that, can be incorporated into a modern system” (#7, iv. 18, p. 7).

The vision of some respondents to keep portions of the *Indian Act* could very well become a reality. According to a CEO, the federal government was planning to allow First Nations to opt in or out of provisions in the *Indian Act* (#17, iv. 26, p. 9). On this subject, he added:

So, the *Indian Act* isn't going anywhere. But what they are doing is they are putting clauses in. So whether it will be the electoral clause, or whether it will be the *First Nations Land Management Act*, some of the statistical things, whether it will be the *Matrimonial Property Act*, safe drinking water, those are all [pauses]. What we're seeing is anything that can be added on will be or the opportunity will be. So really, the *Indian Act* becomes vanilla ice cream. If you want the *First Nations Land Management Act*, those are sprinkles you can add on. If you want to opt into whatever other things are coming down the road, you can add onto that (#17, iv. 40, 41, p. 12).

## **Economy**

### **Leadership with business and financial capacity.**

To build effective tribal economies, some respondents saw the need for band councils to develop their business capacity. Respondents feared the lack of business capacity could have a negative impact on economic development. A band administrator, for instance, said, “You really

need an innovative council. Because, like, economic development, it has to happen. Otherwise, nothing is going to move ahead” (#3, iv. 57, p. 20). When I asked her what she meant by “innovative,” the respondent answered, “Business-wise” (#3, iv. 58, p. 20).

Frustrated by band council’s blockage of band member initiated small businesses on his reserve, a CEO thought that education would resolve some of those issues. He stated, “You need to have a new educated group of leaders coming in that have some background, not just in reserve politics, but real outside business. People who have a little more worldly experience” (#8, iv. 18, p. 4). Similarly, a former Chief said leaders that sit on band corporate boards must be educated. He continued that the corporate board members, “If they are business people and business minded, they’ll see growth. Otherwise it will only be about my share, where’s my share? When it’s like that, there’s no growth” (#18, iv. 126, p. 33).<sup>16</sup>

In addition to business capacity, respondents felt the financial capacity of leadership was essential. An Elder was suspicious as to why some leaders lacked financial skills and said, “That we don’t know how to budget is intentional and part of the colonization indoctrination. If you are left not knowing how to do anything, you are better controlled” (#9, iv. 118, p. 31).

There were two reasons why respondents believed that financial capacity was required for economic development. First, even if reserve businesses were profitable, if Chief and Council did not manage earnings effectively, the nation could easily find itself in arrears. Recollecting his

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<sup>16</sup> This reflects the self-interest theme examined in the previous chapter. A distributive form of politics and governance rather than a productive focus on policy and politics. The reasons why are discussed throughout the thesis.

experiences on council, a former Chief cautioned what could result when leaders lacked financial capacity such as budgeting:

Being in Chief and Council for so many years, the businesses that we started, I've seen the figures at the tribal level. I've seen how the money works. You've got to make sure the money lasts, budget it into the 12 months and from there, quarterly. When there are those that don't have that mentality, they can spend it in one month (#18, iv. 127, p. 33).

The Chief added that if band council members did not have financial skills, "they see a lot of money in front of them are mesmerized by it and play with it. You have to realize this money has to take you through the whole year" (#18, iv. 129, p. 33).

Second, participants thought that financial capacity of leadership was necessary to prevent outside control of council and to protect it from being deceived. A former Chief whose nation had generated wealth from resource development remarked, "Council has to work hard at understanding finance, basically, because they are dealing, in many cases, with multi-million dollars" (#7, iv. 39, p. 14). This former Chief was concerned that when council lacked financial capacity, they relied on consultants and allowed these consultants to do and spend as they pleased. Because of this, council members "have to understand finances, including reading financial statements. So that's how I think they would become more effective" (#7, iv. 40.2, p. 15). With business and financial management capacity, participants envisioned band councils that were more prepared to build their nations' economies successfully.

### **Build nation economies.**

Participants visualized a future of where First Nations had developed their economies and were less dependent on government funding. Given under-funding and continual cutbacks by

government, respondents saw that First Nations' reliance on federal funds made them vulnerable. For that reason, participants felt it would be prudent for band councils to generate their own source revenues.

Feeling the effects of reduced government funding, a community member disclosed that financially, things were "getting tighter and tighter" for First Nations, making economic development necessary (#1, iv. 143, p. 41). Another community largely reliant on government funding had also been experiencing a financial crisis. An Elder from this community advised his band council that to get through the financial crises, it needed to think of things it did not before, "the idea we never thought possible, you know, economic development" (#9, iv. 28, p. 7). A band administrator echoed the necessity for leadership to think further than government funding when she said band councillors "have to look beyond what's there and try to do everything they can to make the community richer" (#3, iv. 62, p. 21).

Noteworthy was the foresight of a respondent CEO. He had been urging his tribal council to diversify its funding because Indian Affairs "is not self-sustainable and will not exist as we know it" (#17, iv. 145, p. 42). The rationale, he continued, was an economic one where the federal government was finding it increasingly difficult to afford the Canada Pension Plan (CPP). In the opinion of this respondent, should the time come for the Canadian taxpayer to decide whether to fund CPP or Aboriginal transfers, it would vote for CPP. Whatever moral or treaty arguments First Nations made to defend their funding, "it doesn't matter because the Canadian system is based on the electoral vote" (#17, 146, p. 43). "Whether you like it or not," said this CEO, "you're going to have to change" (#17, iv. 149, p. 44). Many First Nations realize they are vulnerable and have to diversify. As noted earlier, the *Indian Act* land restrictions obstruct

economic development. However, more FNs are diversifying through the *First Nations Land Management Act*. This will be discussed more fully in the Actions chapter.

Respondents thought that generating their own wealth would provide First Nations with more freedom to meet their responsibilities and proceed with plans previously unfunded by government. A regional tribal council had pursued, in fact, economic growth to the point that “we can have the luxury of developing something that we’ll never get funding for” (#17, iv. 152, p. 45). A band administrator also alluded to the ability to pursue un-funded projects when she said economic development had to happen so that the nation could support what needed doing for the community (#3, iv. 49, p. 17). According to her, First Nations required additional cash flow in order to get things moving in their communities and to allow them to do a better job (#3, iv. 63, p. 21). Later, the band administrator emphasized the fact that effective governance required money. To achieve effective governance, First Nations needed to generate their own source revenues: “I think what I’m trying to bring across to you is that you need so many different things to have effective governance. Honestly, what life is all about; you wouldn’t be able to do anything without economic development. You need the extra dollars” (#3, iv. 103, p. 38).

## **Treaty and Aboriginal Rights**

### **Recognition and implementation of treaty and Aboriginal rights.**

First Nations’ concept of effective governance has always included the recognition and implementation of their inherent right to self-government and title to their territories (National Centre for First Nations Governance, 2008, p.1). The First Nations participants interviewed for this study were no exception. They saw a future where political improvements are made by

clarifying treaty and Aboriginal rights, establishing a new relationship with Canada based on treaty, implementing their inherent right to self-government and being compensated for their lands and resources.

***First Nations to define treaty rights.***

Defining treaty and Aboriginal rights has been a controversial subject. Government believes the definition of treaty rights would bring more clarity and certainty. Many First Nations disagree and argue that treaty and Aboriginal rights could be defined right out of existence (BC Treaty Commission, 2009; UBC, 2009a). Despite the controversy surrounding the definition of treaty and Aboriginal rights, at least one participant believed that First Nations had to take it upon themselves to define their rights. “We ourselves have to define what our treaty and Aboriginal rights are instead of Canada and the courts always defining it,” she said (#14, iv. 114, p. 28). The respondent acknowledged that many First Nations people did not know what their treaty and Aboriginal rights were. Moreover, much of what had been written about treaty and Aboriginal rights had been done “by missionaries and other ‘Indian experts,’ so called experts” (#14, iv. 117.2, p. 28). Though the meaning of treaty rights had become unclear because of faded memories and outside opinions, the respondent said there were still Elders alive who understood their true meaning and had passed this knowledge onto younger generations. Based on this knowledge, First Nations needed to come together and say, “Okay, this is what we know. This is what we think. Let’s put something together” (#14, iv. 119, p. 29). The respondent persevered that First Nations had to define their rights as opposed to waiting for Canada to do it. Canada was not interested in treaty rights and preferred that First Nations stay with the *Indian Act* and under the control of government (#14, iv. 120, p. 29). It was her view that First Nations could not waste any more time defining their rights. First Nations had to determine the type of

relationship that treaty established with Canada, agree on what their rights were and what they meant (#14, iv. 131, p. 31).

***A nation-to-nation relationship.***

Currently, the relationship that most First Nations in Canada have with the federal government is one based on the *Indian Act*. Participants were well aware that treaties originally were made on a nation-to-nation basis. The *Indian Act*, however, disregarded that relationship and established an alternative relationship where the federal government was principal and First Nations were subordinate. Participants were aware of the talk to transform the *Indian Act*. However, prior to making any changes to the *Indian Act*, they wanted the nation-to-nation relationship between First Nations and Canada reinvigorated. In a discussion about what a future relationship might look like if the *Indian Act* were transformed, one respondent suggested that an entrenched treaty relationship would provide more certainty. “Well, the relationship should be treaty,” he said. “A treaty relationship, not [pauses]. The *Indian Act* is an act of parliament. It’s legislation that can be changed or done away with (#20, iv. 30, p. 11). Another respondent thought that before anything was done to the *Indian Act*, “we have to implement treaty according to its spirit and intent. In order to do that [pauses]. And that’s got to be nation-to-nation” (#14, iv. 109, p. 27). She recalled that treaty had established the political relationship between First Nations and Canada (#14, iv. 111, p. 27). Because of the existence of a nation-to-nation relationship, First Nations should tell Canada, “Okay, this is our treaty. We are nations. We have a political relationship with you based on treaty number [*number removed*] which was handed down to you from Great Britain on the obligations of the treaty” (#20, iv. 133, p. 32). The comments of a former Chief from another nation were almost identical. He felt the *Indian Act* should be modified. However, “before the revamp, we have to make Canada understand what

those treaties meant and how they tricked us. The true spirit and intent, as least the numbered treaties” (#15, iv. 46, p. 13). Much like the other respondent who mentioned treaty obligations, this Chief added, “And we have to make sure that, you know, Canadian politicians own up to it” (#15, iv. 48, p. 13).

***Implement the inherent right to self-government.***

Some participants thought that governance improvements could result from self-government. “Changes are very difficult to make under the *Indian Act*. It’s almost impossible,” remarked an Elder. “But then you can do it by self-government agreement” (#9, iv. 10, p. 3).

Participants drew attention to the fact that self-government was there for the taking as it was inherent and protected by treaty. An Elder thought First Nations would be better off without the control of the *Indian Act*. Because it was inherent, the Elder implied it was not up to government to grant the right of self-government. He maintained that First Nations “can’t depend solely on government for self-governance” (#12, iv. 69, p. 24). Another respondent said much the same when she submitted that self-government was an existing right protected by treaty. “The treaty protects our nationhood,” she stated, “It protects our right to self-determination which includes governance, the right to government” (#14, iv. 87, p. 22).

Several respondents framed self-government within the context of constitutional development. Respondents had given thought about the components that could be included in a constitution. High in importance was the inclusion of rules that would support effective governance, assist First Nations with resolving problems and control the actions of leadership. “We need constitutions,” a band administrator said, “The rules would be contained in there. There are such big issues that all of the communities have to deal with” (#3, iv. 68, p. 23). An

Elder talked about the need for a roles and responsibilities code for elected officials: “The constitution, the roles of elected officials should be one aspect of the total framework.” (#9, iv. 52, p. 13). This Elder foresaw that “there will be a lot of rules like that. The constitution should serve as a framework for all these little rules. That’s the way I see it, the constitution. This is what we have to work on” (#9, iv. 58, p. 14). Moreover, it was clear this Elder believed that self-government would strengthen political accountability. It was his wish that once a nation decided to adopt self-government, “when that happens, the very first thing the Chief needs to do is develop a system that is conducive to the welfare of the community, not conducive to whatever the Chief is doing” (#9, iv. 11, p. 3). Wanting to see his nation implement a constitution, this Elder was adamant that “the focus will need to be on accountability” (#9, iv. 38, p. 9). The same was true for a former leader who was confident a constitution would better regulate political behavior and increase the answerability of leadership. “If it was a constitution,” he said, “the government would be guided by policy and there would be more accountability and transparency concerning the money” (#18, iv. 209, p. 53).

### *Compensation for lands and natural resources.*

First Nations signatories of historical treaties have long argued they did not surrender their traditional territories or the natural resources and maintain they were deceived at the time of treaty making. According to one respondent whose nation was party to a numbered treaty, the government had promoted the treaties as peace agreements (#15, iv. 39, p. 11). He explained how the Canadian government misled First Nations:

However, they, you know, I think misinformed, misinterpreted, misrepresented our ancestors at the time of treaty making. They told us, “No, no, we just want the Queen’s

children to live amongst you in peace.” But secretly, the written word was a land sale. They tricked us that way (#15, iv. 41, p. 11).

Most of the numbered treaties were established during the 1800s, a time when First Nations did not speak, read or write English. The government-appointed non-native interpreters frequently did not speak the native language of the First Nations party to historical treaties (Hildebrandt, Carter and First Rider, 1996). Considering the language barriers, conditions for deception would have been ripe.

A different leader from a nation that had signed a numbered treaty also alleged government dishonesty. She argued that since First Nations had not given up their lands through treaty, government should compensate them for the lands that it took from First Nations.

And you have to pay fair compensation for the land. When we entered treaty, our people were never of the understanding that they were ceding or surrendering their lands. They weren't. And the treaties were written in a language that said we gave up our lands, we sold our lands, and we would get this \$5.00 a year, which is crap (#14, iv. 58, p.14).<sup>17</sup>

In addition to land, respondents contended that First Nations had not relinquished their interests in the natural resources contained in their territories. “The natural resources were never put on the table for discussion,” said a respondent. “We never consented to extinguish them or to give title to them to the government” (#14, iv. 77, p. 18). Another respondent also suggested that First Nations had been appropriated of natural resources through treaty:

It wasn't just the Red Indian who got treaty rights. It was the white man that got treaty rights. Look at all the land they took away from us; that's their treaty rights. Look at all

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<sup>17</sup> The federal government issues every eligible treaty Indian a treaty annuity payment of \$5.00 (INAC, 2013f).

the resources and oil and gas, and what have you. They took all of that away from us.

That's their treaty rights. People talk about treaty rights, they always think, "Oh, no, it's the special things that are owed to Indians." No, they also have treaty rights. They forgot how much more they got in comparison to what we got (#15, iv. 43, p.12).

There was frustration that despite having not given up their interests, First Nations had not benefitted from the natural resources taken from their territories. One respondent suspected that because money was owed to First Nations for stolen natural resources, the government preferred an *Indian Act* relationship as a way to maintain control. "They don't want to admit that they did wrong to us," she said. "They stole the natural resources. There's never been a sharing. They never got our consent" (#14, iv. 126, p. 30). This respondent believed that the issue of natural resources needed to be clarified. In that regard, First Nations should say to government, "You've never paid for natural resources which we have never given you. We've never consented for you to take it. You owe us this much" (#14, iv. 133, p. 32).

## **Cultures and traditions.**

### **Culture and tradition as the foundation of governance.**

Some contributors to this study pictured a governance system built on a foundation of culture and tradition. "I always believe that our governance systems could be based on our traditional systems," said one participant (#6, iv. 83, p. 33). An Elder stated that if First Nations were going to include culture and tradition in governance, "if we are going to incorporate it, we should run things according to how things were done back in the old days" (#9, iv. 97, p. 25). The foresight of this Elder was extensive in that he not only thought governance should be tradition-based but considered ways to do this. "We take back our traditional values and have

fact-finding workshops to find out how to use our traditional values,” he said (#9, iv. 99, p. 25).

In the exact manner, a former Chief also thought First Nations should examine their traditions to determine what to incorporate into modern-day governance:

You know, our ancestors survived for millennia without any help from the white man.

We have to look at the important aspects of how they maintained themselves as nations, how they were able to provide for their families and those that looked up to them. We have to use those (#15, iv. 17, p. 5).

Participants had various meanings for the foundational elements of governance. Some signified governance systems based on policy and bylaws, while the vision of others expanded to constitutional structures. The aforementioned former Chief, for instance, envisioned a tradition-based comprehensive constitutional framework. This became clear as he talked about how First Nations could build their governance structures with the help of Elders who still remembered the principles and practices of yesteryear:

But never leave the Elders out of it because they will tell you, “These are the important ways of our ancestors. This is how they survived.” So, you put your base together. And from there, you put, hopefully, at least two of your important aspects of leadership. You have your legislation together and then you have your administration. And sometimes, if the people are far enough advanced, they will also look at the judiciary aspect. But those important aspects of how we run as a people have to have that important base (#15, iv. 58, 59, p. 16).

Whichever type of governance structure imagined, the most frequently mentioned attributes participants felt ought to be incorporated into a political foundation were cultural

values and principles. A band councillor thought culture played a pivotal role in governance because, “Most societies have a constitution or guiding principles that are grounded in some of those basic teachings, what we call [*name of First Nation removed*] teachings” (#5, iv. 63, p. 19). For a band administrator, many aspects of First Nations culture were still strong and would always remain. Assured by this, there were certain types of traditional values and principles this respondent wanted to see incorporated into modern governance structures. “You know, the strong ethics, caring about each other and strong families...Those need to set the foundation for any of the bylaw development and any of the policies and procedures,” she said (#3, iv. 88, 89, p. 31).

While other respondents did not specify the type of governance structure, they were certain that the incorporation of cultural values and principles into the political structure would benefit the quality of governance. For a band councillor:

There are certain foundational pieces of culture that would help us in a way where we wouldn't be making unfair [pauses]. Or we wouldn't be doing nepotism, we wouldn't be doing unfair decision-making, we wouldn't be trying to act in the best interest of self (#2, iv. 100, p. 27).

A community member also thought culture and tradition were foundational to governance. When I asked him to clarify what aspects of culture and tradition ought to be included, the community member answered:

Values. Because in the values, it talks about honesty. They are just given things that human [pauses]. It doesn't necessarily have to be Aboriginal, but just humans and nature. It's the honesty. It's how they are going to treat each other. The respect they have. The

integrity they have to honour things and keep their word. Um, and all of this is based on who they are as a people (#6, iv. 63, p. 23).

A Chief knew of other First Nations that had incorporated cultural values into governance and saw it had helped them. “But I do know that I see communities that have missions or cultural values instituted within part of the administration or decision-making process,” he said. “It makes it more unified. It brings it to a full perspective” (#13, iv. 96, p. 27). Finally, an Elder thought that what made First Nations unique was their traditions. “If we apply this in our community, we can make a better community for our reserves” he said (#16, iv. 14, p. 4).

### **Traditional governance will be more authentic.**

A strongly held belief amongst respondents was that the *Indian Act* is foreign to First Nations. “The *Indian Act* was made by white people. At the same time, if you look at the *Indian Act*, it’s not for us. They made it,” said a former Chief (#18, iv. 99, p. 25). Participants referred to the issue of legitimacy when they suggested the reason that *Indian Act* band governance was not working well was because it was foreign. Another former Chief said First Nations needed to face reality and say:

Well, we’ve tried these old ways and these old ways aren’t really our ways. They were thrown at us by white bureaucrats who didn’t know who we were. And they tried to force us to live and operate and rule in a [*stated word was inaudible*] fashion. And it hasn’t really worked” (#15, iv. 5, 6, p. 3).

A band councillor provided some insight into the effect of political inauthenticity when she relayed the constant denunciation of council by nation members. “I think in terms of

leadership, because it's a foreign system, there are so many negative attacks. And that's all you ever really hear" (#2, iv. 73, p. 20).

Participants' belief that political difficulties in their communities were the result of an illegitimate governance system was consistent with the most well-known research on this topic. This research was conducted by Harvard University researchers and known as the Harvard Project. On the issue of legitimacy, the Harvard Project researchers wrote:

For many Native nations, the result of essentially imposed governance institutions and methods has been mismatches between formal structures of government and Indigenous beliefs about the legitimate use and organization of governing authority. No wonder many Native nations see their own governments as foreign and illegitimate (Cornell and Kalt, 2007, p. 25).

To alleviate political problems some respondents thought First Nations should engage aspects of traditional governance as that would be more authentic and thus more legitimate. "If it were developed according to the way we live," stated an Elder, "I think that would work" (#10, iv. 41.2, p. 10). When I asked what she meant, the Elder answered,

Like, the white man says this is how it will be. Even though we don't know how to do it, even though we don't know how, we try and go on that path. If they developed it the way we know, like traditionally, we will know how to do that and it will work. When the white people teach us something according to their rules, we don't know how to do it and we don't follow it. We can do it if we did it according to our way, what we know. Do you know what I mean? (#10, iv. 42, p. 10)

Still on the issue of legitimacy, another Elder thought governance would be more functional if First Nations moved away from the *Indian Act* and returned to political systems directed by traditional authority:

And the power too, if it belongs to us, then it will work. These things, the power was taken from us. If we are going to take it back, we have to look for our own power. Bring that back and operate using our own power. The political system that we operate under, it's a foreign system. It's a European system" (#9, iv. 44, p. 11).

A band councillor from another nation also visualized the idea of returning to traditional authority. First Nations people, she believed, trusted and had faith in traditional systems. "Taking that a step further, though. Not just having trust in the traditional way of life but having that system of authority enshrined in their governance model somehow," she said (#5, iv. 6, p. 2).

As can be determined by the above discussion, participants had clear and concrete ideas about necessities for effective governance. Their visions of effective governance often formed in response to existing political problems. For effective governance to be realized, participants believed that: (i) the capacity of leadership and community members had to be increased; (ii) the *Indian Act* should be modified as a transitional measure to eventual self-government; (iii) that First Nations had to become less dependent of government funding and build their tribal economies; (iv) that treaty and Aboriginal rights should be genuinely recognized and implemented; and finally, (v) that cultural and traditional values be incorporated into political structures.

The next phase in the journey of First Nations governance is taking steps towards the improvement of governance. In the chapter to follow, participants share some of the actions their leadership and communities took to improve governance.

## CHAPTER FIVE

### Actions taken toward Effective Governance

The third phase in the journey towards effective First Nations governance is actions. By actions, I mean the specific steps that leadership and community members took to support better governance. This chapter discusses the actual actions taken by the six actors to improve governance.

#### Leadership

Participants thought the leader that had the best chance of initiating political change was the Chief. A CEO believed change would be possible if there was a Chief in place that had a good understanding of governance (#20, iv. 3, p. 1). “So really, the Chief is the key,” he said. “That’s the person who will create change,” he said (#20, iv. 4.2, p. 2).<sup>18</sup> Participants also believed that change would be more likely if the leader possessed certain attributes.

#### Attributes that help leaders take action.

Respondents determined the attributes a leader needed to make change were vision and willingness. Two respondent Chiefs spoke about the need for vision. One said, “If they are open-minded and their worldview is more than just rez life, then you will start to see effective governance” (#4, iv. 49, p. 14). The other commented, “It’s kind of like you have to develop an overall master plan of your community and where you think your community should go as a leader” (#13, iv. 22, p. 6). However, vision alone would not lead to political change. It had to be reinforced by a leader’s willingness to make change. Articulating this was an Elder who said:

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<sup>18</sup> Participants specifically said the Chief. Although there were several band administrators that participated in this study, there was little mention of band administrators initiating change.

If we are going to change, we've got to elect a person or potential Chief to promise that he's going to look after the [pauses], to make changes even if we are afraid. We must elect someone who is willing to make changes (#9, iv. 15, p. 4).

As will be seen in the following discussion, there were leaders that had vision and were willing to make improvements to enhance governance.

### **Actions taken by leadership.**

#### *Leaders made efforts to build the capacity of council.*

Participants said leaders made efforts to build the capacity of their councils so that effective governance could be achieved. Capacity building took place formally or informally. With respect to formal capacity building, a band administrator reported that each time an election was held, the newly elected council underwent orientation and governance training (#3, iv. 99, p.36). In her experience, this type of capacity building was valuable because it contributed to transparency, better communication and community confidence in political decision-making (#3, iv.101, p.36).

Capacity building also took place informally. This usually involved a leader coaching council. A former Chief, for example, promoted rational thinking amongst her council members. When something "horrible" happened in the community, this Chief would say to her council, "But we know those people. They know right from wrong. We know right from wrong. When it's wrong, we know it. So there is no excuse. Why are they in that situation? They could have chosen differently" (#7, iv. 181, p. 65). The objective of this former Chief was for councillors to move from reactive, often biased thinking to a more balanced approach where critical thought distinguished right from wrong and helped council make fairer decisions.

Another Chief attempted to counter political favouritism by teaching his council about fairness and equality. This Chief had been in power intermittently over several terms and often encountered resistance in his quest for effective governance. In a recent election, the Chief was optimistic because a newly elected councillor also had a vision for effective governance:

So we had a brand new councillor that is green. That made the transition easier because they wanted to see change. So we worked it so that me and the other councillor worked with the third one, not trying to convince him. But showing him where the wrongs were, why the contract shouldn't go to this individual just because he worked for the band for so long. That we have to broaden our view and advertise (#4, iv. 16, p.5).

Thanks to the capacity-building efforts of this Chief, his council was able to move from politically based hiring to merit-based hiring during his tenure.

***Leadership communicated and was more accountable to community members.***

A common complaint against First Nation governments has been the lack of communication and accountability. This was true for one nation where community members accused the council of not communicating enough (#3, iv. 107.2, p. 39). Unlike other communities where the fear of repercussions could silence community members, the people of this nation were described as assertive and insistent. During a general meeting, community members passed a resolution that directed council to provide reports at general meetings. Administrative staff were required to attend general meetings and “the community has the right to ask any questions that they want from any staff member” (#3, iv. 40, p. 14). The council complied with the motion and also sent out a bi-weekly community newsletter and developed a

website. According to the band administrator, “as soon as we started communicating more, the complaints were less” (#3, iv. 77, p. 26).

Likewise, a Chief from another community shared that his council held regular general meetings. At these meetings, the band administrator “has to stand up before the community and answer questions, not just read a report” (#4, iv. 94, p. 27). To improve accountability and transparency even more, this council also held open council meetings. The Chief said community members knew council meeting were open:

Anyone can attend...Anyone is allowed to come in and observe. At the meeting, of course, we explain that for some things we have to go in-camera. We explain why and give examples of why. When we go in-camera and they have to leave, they understand (#4, iv. 92, 93 p .27).

In some cases, it appeared that when a council went from no accountability to communicating and reporting to nation members, challenging after-effects occurred. This was the case for one nation, where some members demanded to know every detail of financial expenditures. As conveyed by an Elder from that nation:

Our Chief, when he was Chief before, did that. At the rodeo centre, he told us how the money was being used. A report was put out that said where the money was spent in general. But (*name of band member removed*) said she wanted something more specific. Okay, how specific do you want it? That became the question. But he did try. This is what I’m doing, this is where I’m going (#12, iv. 157, p. 63).

Regardless of the challenges, leaders in this study attempted to govern better by communicating and being more accountable to community members, even though they were not required to do so under the *Indian Act*.

***Leaders separated council and management.***

Another prominent problem for many First Nation administrations has been the lack of separation in roles and responsibilities between council and management. This lack of separation often takes the form of micromanagement by leadership. The Chiefs in this study recognized that micro-management hindered effective governance and made active attempts to separate politics from management. One respondent had witnessed past Chiefs obstructing managers from making decisions about the programs they managed. Having witnessed the stifling effect of micro-management, this respondent said when he became Chief, “my thinking was, and I’m not going to micro-manage. I pay people to manage. I give them power.” (#18, iv. 122, p. 32).

A former Chief, when she was in power, also made active attempts to separate council from administration. She was adamant that governance rules make clear that council cannot act on behalf of individual band members (#7, iv. 137, p.48). When Chief, she recalled how:

I made it clear to council that anything that comes to them, they have no authority to go and act or harass a band department or something because so-and-so was not getting whatever. That has to be immediately be sent to the band manager’s attention. He has to deal with it. (#7, iv. 139, p. 48)

***Leaders resisted nepotism.***

Nepotism was a recurring theme amongst the participants; a complicated issue that was not easily resolved, especially in the context of kin-based leadership selection. While leaders that

resisted nepotism risked being overthrown, respondent leaders had the courage to do just that. A former Chief said she applied the rules to everyone and was even strict with her family when she was in office. This included her mother who was a qualified and respected Elder. “And that was hard, you know, because I really wanted my mom involved,” she said (#7, iv. 146.2, p. 51). With family central to First Nations society, and First Nations communities consisting of extended families, it could be challenging for leadership to avoid nepotism. This was put articulately by another Chief:

But being on reserve and ending nepotism is very hard because a small village like (*name of nation removed*), we’re all related. So no matter which way you turn, it’s considered nepotism. Everybody is related. So what you do is, we started picking the best person for the job, which also went against the grain. The people were used to having certain families have certain jobs and they figured that was going to be the mainstay (#4, iv.5, p.2).

The risk paid off for the above Chief as he was re-elected. A different Chief provided a possible reason why. He shared that his council tried to believe in all nation members and make them feel they were just as important as any other person. The Chief suggested that when community members were treated equally, it increased their trust in leadership. The trust of community members allowed leadership to build a stronger government (#18, iv. 173, p. 44).

## **Community Members**

### **Community members used the election system.**

One avenue through which community members pursued effective governance was through the election system. The experiences of participants pointed to three ways this was

done. First, community members voted out leaders they viewed as self-interested or dishonorable. A community member accentuated the need for policy that benefited all nation members. If leaders did otherwise, they risked ouster. As explained by the respondent, “But if it’s done out of selfishness and in the right of a certain family, it is usually taken right out at the next voting.” (#1, iv. 139, p. 38). A band administrator from another nation said of her leaders, “they’re careful and they would never ever rip the system off. They wouldn’t do anything like that. It’s just unaccepted in the community” (#3, iv. 108, p. 39). The band administrator continued that if their leaders were to misappropriate, the community members would throw them out of office (#3, iv. 110, p. 40).

Second, in some nations, community members were moving away from kin-based leadership selection and beginning to vote in leaders they believed were qualified and would govern well. A band councillor was troubled that clan voting in her community often resulted in the same status quo leaders being re-elected. But she was hopeful this practice might be changing because “people are starting to vote on who they think the best candidates are” (#2, iv.165, p.45). On another front, an Elder discussed the lack of political transparency in his community and the mistrust this created amongst the community members. Because of this, he had been advocating to the community members the need to elect better leaders. This Elder was proactive and even put forward the candidate he felt would govern more effectively. The Elder shared that “Yeah, we had nominations last night. I went and nominated [*name of candidate removed*]. I said, ‘We’ve got to change.’” (#16, iv. 62.2, p. 21).

Third, First Nations youth wanted change and involved themselves in the election system in one form or other. A band administrator shared that nation’s youth who were too young to vote were saying, “We want to be heard! They wanted to have voting privileges” (#3, iv. 116, p.

42).<sup>19</sup> What's more, this nation's younger generations who were eligible to vote were said to be more forward looking than the older generations, knew what they wanted, "and they would go and vote the people in they think should be there" (#3, iv. 2, p. 1). Similarly, a community member spoke about the First Nations communities where he was previously employed. He remembered younger generations in those communities had witnessed dishonourable acts by leaders, did not like it, and "elect people into positions that would do a little better than the previous" (#6, iv. 25, p. 9).

Along with voting for change, other young community members ran for office. A recently elected band councillor recounted her campaign experience: "There are not a lot of people my age running, but there was a lot of interest that I was. I think that's cool. It's putting people in the mind frame that the old boys club isn't going to be there forever" (#2, iv. 166, p. 45).

### **Other actions that community members took.**

Community members frustrated with the existing state of political affairs sometimes initiated action in hopes it would lead to improvements. Community members took action in various ways. Some community members sought assistance from Indian Affairs. A band councillor shared a story of how a group of community members from her nation was unhappy with audit and the manner in which financial figures were presented. To mitigate complaints, the council had explained the figures to this group in writing. In spite of this, the group remained dissatisfied, began writing letters, contacted Indian Affairs "and said we were doing things with

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<sup>19</sup> The voting age for First Nations under *Indian Act* elections is 21 years. Nations that have adopted band custom election codes can reduce the voting age to no less than 18 years. I did not ask participants if their nations had band custom election codes. The INAC website states the number of First Nations in Canada that have band custom election codes (300+) but does not identify which FNs have band custom election codes (2015a)

the money” (#2, iv. 23.2, p. 6). The next comment does not suggest this respondent’s band council had done anything wrong. That said, it seemed that nation members from across the country were not hesitant to complain to Indian Affairs because “From 2002-2004, the Department of Indian Affairs reported 984 allegations of criminal or complaints of non-criminal wrongdoing by their native government bodies or organizations” (as cited in Helin, 2006, p. 158). The respondent band councillor did not disclose if Indian Affairs had responded to nation member complaints.

Some participants indicated that women were determined initiators of action in First Nations communities. Women on reserve saw the need for change and began talking about this need. At one community, a talking circle had been organized by women and was attended by mostly women. These women knew they had to effect change and talked about what the most important issues were during talking circles (#3, iv. 26.2, p. 10). These women seemed to have an impact as the respondent began to notice change. “The change is subtle. But it’s there,” she said (#3, iv. 27, p. 10).

On the topic of Indigenous women as catalysts of political change, a different respondent said women contributed to so much to change in First Nations communities because their view of family and community was different than men’s (#6, iv. 40, p. 4). Women initiated change by having discussions in the background, creating awareness and maneuvering activities and energies (#6, iv. 41, p. 15). This respondent, a First Nation male who had worked for a number of First Nations communities, continued:

And that is what is so positive about native women or women in charge. They have more savvy in settling issues than a man does because they will take into consideration a lot of other factors than a man. I don’t care what community I’ve worked in or lived in, those

things I always see. The women, I should say, have a lot to do with that change within communities. They are a big contributing factor (#6, iv. 42, 43, p. 15).

Echoing this was another participant. As an educated female band councillor, she shared her experiences at the council table. Upon election, she found there was a great deal of male ego at the council table. The respondent felt female First Nation leaders had less ego because:

It's not really about me. And I always seem to be talking about my kids when I'm sharing [at the council table]. I hear them [male council members] never really mention their family when they speak, which I find interesting because my goal, my dream is that my kids' lives will be better because of my role in contributing to leadership. But I really don't hear that from our men. It's a very different language they use. I think they are threatened by educated women (#2, iv. 159, p. 43).

This female band councillor saw that men outnumbered women and dominated her nation's leadership table. In her opinion, more women on band council were needed because their unique thinking would contribute to the evolution of effective governance. "Gender-wise, I think women think differently," she said. "In effective leadership, there needs to be space for women" (#2, iv. 160, p. 43).

## **Governance Instruments**

### **Policies and procedures were developed.**

With policy being important to effective governance, several of the respondents' nations had developed or were in the process of developing policies. In some cases, First Nations sought outside help in the development of policies because they did not have policy expertise. A band administrator talked about her council's community planning process and revealed, "Our

next phase, in terms of governance, is that we're developing policy" (#3, iv. 22, p. 8). This nation planned to work with a community planner to standardize policies and "actually make it better" (#3, iv. 23, p. 8). In another community, the Chief reported his band council understood that it needed help to create policies. So, it sought the assistance of its regional tribal council which had experience in policy development. The Chief recounted how, "they come in and help us develop it" (#4, iv. 40.2, p. 11).

Participants recognized certain types of policies were critical in helping leadership govern better. This was the case for a Chief whose council was currently working on fiscal policies. He stressed, "We have to develop our own financial policies for us to have effective governance," (#11, iv. 105, p. 37). Likewise, a participant with a university degree told of how she had assisted other nations with policies. In doing so, she emphasized the role of ethical-type rules to effective governance:

Some of the policies I have drafted in the past, um, have actually a leadership oath that they have to sign and have commissioned by an authorized notary. And that's to state at the beginning of the term that you're going to follow policies. You're not going to be in a conflict of interest, you're not going to do this, and you're not going to do that. I think that's part of what we need in our moving forward into an effective governance system, is we're going to need those types of legal documents to help us (#7, 133, p. 46).

***Indian Act* bylaws were developed.**

The BC Assembly of First Nations (BC AFN) stated that First Nations could use *Indian Act* provisions to reduce federal control, enhance their governance and increase their jurisdiction. The provisions it referred to were those that enabled First Nations to develop their own bylaws

and codes. The BC AFN reminded First Nations that while by-law development through the *Indian Act* was not an appropriate avenue for the implementation of self-government, “it is a good first step” (Wilson-Raybould and Raybould, 2014, p. 23).

Section 81 of the *Indian Act* provides authority to band councils to develop certain types of bylaws. Some participants reported that their nations had developed or were in the process of developing bylaws. The community members of one nation, for example, had voted in favour of a residency bylaw to evict sexual abusers from the community. A respondent band administrator employed by this nation had witnessed these evictions and exclaimed, “I’ve been there for a year and a half. One, two, three people were just, bang, out!” (#3, iv. 42.2, p. 15). In another community, an Elder reported that his nation’s administrative staff “were working on governance. They were writing up all the laws, election codes, and stuff like that” (#16, iv. 69, iv. 23). A former Chief from the same nation as this Elder confirmed staff were working on rules. However, the council’s intention had been for staff to go outside *Indian Act* bylaws and lay the groundwork for autonomy:

We have a governance department. But it’s not functioning, in my opinion. They were supposed to draft our laws. I was on council when we set up that governance [department]. What they were supposed to start doing was start drafting our own legislation. But what they’ve been just doing is bylaws. And that’s under the *Indian Act* system (#14, iv. 214, p. 54).

This respondent’s comments suggested that certain issues, such as capacity and dependence on the *Indian Act*, might have impeded the governance staff of this nation from going beyond *Indian Act* bylaws.

## **Economy**

### **Some communities established economic development corporations.**

After many years of legislated poverty and dependency on government funds, the federal government aspired to assist First Nations in becoming financially self-sufficient (Calliou, 2012; OAG, 1993). Government's primary means to achieve this was through the 1989 Canadian Indigenous Economic Development Strategy. The mission of this program was to support Indigenous communities with institutional arrangements and business development (OAG, 2003).

Many First Nations attempted to prepare for business through this program. One way was through the establishment of economic development corporations. Some nations had taken this route as a few respondents mentioned their councils had set up economic development corporations (#3, iv. 64, p. 21; #7, iv. 172, p. 61; #17, iv. 152, p. 45). It appeared that some development corporations had made money. One respondent said their tribal council's development corporation yielded some financial growth. As a result, the tribal council became less reliant on government funds and was able to pay for projects previously unfunded (#17, iv. 153, p.45)

Others were able to deal with off-reserve taxation through their economic development corporations. Under section 87(2) of the *Indian Act*, bands and band members are tax exempt from the ownership, occupation and possession of property on reserve lands (*Indian Act*, 1985). Off-reserve property, on the other hand, is subject to tax even if the owners are First Nation. A respondent's nation had averted off-reserve taxation of income through the creation of an economic development corporation. The corporation purchased a couple of off-reserve

properties, began business operations and was able to employ some nation members. The band administrator from that nation shared that “We set up a development corporation and we kept the tax man away. We worked on tax exemption. So all the people in the little logging operation, even though they are off-reserve, they are still tax exempt,” (#3, iv. 64.2, p. 21). Still, the tax man could not be kept completely away from off-reserve property as the band administrator later added, “the development corporation still has to pay land taxes on those pieces of property” (#3, iv. 104.2, p. 38). Even though it had to pay property tax, this nation did not have the luxury of a large land base and knew it had to do business off-reserve if it was get out of poverty and become self-reliant.

### **Economic development.**

In addition to being central to their culture, history and political future, First Nations are keenly aware that land is a significant contributor to economic development. Recognizing this reality, a respondent Chief remarked, “Land and economic development is supposed to go hand-in-hand,” (#11, iv. 138, p. 47). Land restrictions within the *Indian Act* have made economic development difficult for First Nations mainly because reserve lands cannot be used as collateral to obtain financing for business start-up (Standing Senate Committee on Aboriginal Peoples, 2007). Indian Affairs acknowledge this problem, stating, “It is widely accepted the *Indian Act* presents significant and persistent barriers to economic development on reserve lands” (INAC, 2013b, p. 4).

Despite *Indian Act* land restrictions, some First Nations have carried out economic development activities on-reserve. In this study, five respondents indicated their nations had developed their natural resources and created on-reserve businesses including gaming, gas stations and restaurants (Participants #7, 8, 12, 18 and 19). Although it was not clear how these

nations attained the funds needed for business start-up, they still managed to move towards on-reserve economic development while remaining within the confines of the *Indian Act*.

Two participants indicated their nations were developing their economies outside of the *Act*. One way was by purchasing off-reserve property for the purpose of economic development. Since the purchased properties were not reserve lands, they were not subject to the restrictions of the *Indian Act* and were usable in various ways. A band administrator said her nation bought off-reserve property, which was now making money (#3, iv. 12, p. 4). She shared her council had “stepped outside the *Indian Act*,” and bought an old mine site and a dock, the latter of which had created employment for nation members. “They get all the fish coming in and everybody works on the dock loading fish. At the mine site, it’s being leased to different companies,” she said (#3, iv. 64, p. 21).

Consider another nation that wanted to do business outside the *Indian Act*. Under *Indian Act*, all capital and revenue money generated from reserve lands are held in trust by Indian Affairs on behalf of First Nations. These include land sales, proceeds from natural resources and proceeds from multi-source revenues. First Nations that want to access their trust money must apply to government and receive approval by the minister, a bureaucratic process that was burdensome and time consuming (INAC, 2013d). The respondent Chief of this nation was trying to get Indian Affairs to release its trust fund for use to develop the economy. “We are doing it away from the *Indian Act*,” stated this Chief. “We want to control it.” (#11, iv. 45, p. 15). He explained that if the government released the trust fund, the plan was to invest one million dollars of it into economic development (#11, iv. 148, p. 51). Since *Indian Act* land regulations made it difficult for First Nations to borrow money for economic development, it looked as though this nation was planning to make the investment itself.

## Treaty and Aboriginal Rights

### Constitutional development.

Though formal self-government agreements had yet to be completed, some participants revealed that their nations were in the process of developing, or had already developed constitutions. A few respondents belonged to nations participating in the BC treaty process.<sup>20</sup> A respondent Chief from BC reported his nation was working on a constitution and was currently discussing the policies that would make up the governance structure (#4, iv. 34, p. 10). A band councillor from the same nation confirmed her nation had started to work on a constitution but it would take time to complete. The nation was planning to seek input from its community members, including Elders, so the constitution would be more reflective of cultural teachings. Because of this process, the band councillor felt the constitution would take two or three years to complete (#5, iv. 73, p. 22).

Apart from the BC treaty process, modern-day self-government agreements are achieved through comprehensive land claims, sectoral agreements and the First Nations Land Management Act (INAC, 2015b).<sup>21</sup> In Alberta, three respondents confirmed their nations had constitutions that were in progress or had been developed (Participants 13, 15 and 20). A former Chief of one Alberta First Nation reported that “we did work on a constitution when I was Chief. I’m not sure how far it got” (#13, iv. 106, p. 30). A quick look at the Indian Affairs website showed this nation did not have a completed self-government agreement in place (INAC,

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<sup>20</sup> At stage three in the BC treaty process, the structures and authorities of the Indigenous government are developed and agreed to by the parties (BC Treaty Commission. Retrieved from [www.bctreaty.ca/six-stages](http://www.bctreaty.ca/six-stages).)

<sup>21</sup> The First Nations Land Management Act allows participating First Nations to opt out of the land provisions in the *Indian Act* and assume control of reserve lands and resources (First Nations Land Management Resource Center, 2017).

2015b). However, the nation was accepted into the *First Nations Land Management Act* regime. This meant constitutional development would be required at the appropriate stage of that process.

Interestingly, another Alberta nation had developed what appeared to be a customary constitution outside of the federal government process. A former Chief of that nation said his tribe always had an unwritten constitution but, several years ago, decided to put it in writing. This customary constitution was developed with the input of nation Elders who communicated the important aspects of being a [*name of nation ancestry removed*] Indian and the ways of the tribe. The customary constitution required the nation's leadership to keep these main principles in mind when leading and making decisions.<sup>22</sup> It also required administrators to use the principles as a guide in carrying out their administrative duties and for the people to keep the principles in mind when being led. The customary constitution made nation members aware of leadership responsibilities and obliged them to remind leaders of their responsibilities should they go off track. "You remind them that they are forgetting about the constitution they put together," explained the respondent Chief (#15, iv. 20, p. 6). This Chief also shared how his tribe's principle of collectivism prescribed the way their leaders should govern. "Never forget why you are there. You're not there for yourself, not for your family. You're there for the people as a whole, your tribe, your band, your nation," he said (#15, iv. 79, p. 21).

Another respondent, from the same nation, also spoke fondly of their customary constitution. He said the constitution began by stating the Creator had put the [*name of nation ancestry removed*] people on a specific piece of land with a specific language, culture and

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<sup>22</sup> I tried to get a copy of this customary constitution but was unsuccessful. I asked the participants if I could see a copy but did not hear back from them. The customary constitution is not posted on the tribe's website or the www.

religion. The customary constitution was clear the Great Spirit had granted the tribe the right to self-government. “So that trumps everything,” he said. “The Queen, Ottawa. It trumps everything because it’s connected to the Creator” (#20, iv. 83, p. 24). Like his fellow nation-member above, this respondent said the constitution guided the activities of his nation’s administration and government. Any decisions, planning or documents had to be based on the traditional principles of the tribe (#20, iv. 86, p. 25).

### **Treaty and Aboriginal rights were protected.**

Meaningful recognition of treaty and Aboriginal rights, particularly as it relates to land, had increased over the past years. Genuine recognition was the result of several court cases concerning Aboriginal title over traditional territories. These legal battles culminated into a momentous Supreme Court of Canada decision in 2014 where Aboriginal title over traditional territory was confirmed (Abouchar, Birchall and Donihee, 2014). Governments, corporations and other groups would have to obtain the consent of First Nations with proven title for use of their traditional lands. The Supreme Court decision was expected to significantly change the process of resource development in Canada (Miller, 2014, para. 9, 23).

A band administrator from a nation with resource-rich lands was aware of the court rulings. “You know, traditional territories is a big thing,” she said. “It’s huge in terms of legislation and all the court cases where they have to recognize Aboriginal rights and title” (#3, iv. 87, p. 30). This respondent had no doubt that these court cases would aid First Nations in the protection of their treaty and Aboriginal rights, including rights to land and resources. Whereas in the past, First Nations had little power to intervene when natural resources were being extracted from their traditional territories, now “the companies, the province and feds have to recognize that those traditional territories do belong to [name of nation removed]. So, we are not

going to allow them to get away with coming in and taking everything that they want. Even the province has to accept that” (#3, iv. 8, p. 3).

With respect to resource development on Indigenous territories, a respondent who was formerly Chief was adamant that First Nation leadership had the responsibility to make decisions based on the best interests of the community. When deciding what was best for the community, the respondent Chief insisted, “you have to think about treaty rights because those rights are very, very important” (#7, iv. 71, p. 24). It was the duty of First Nation leaders, this former Chief insisted, to protect treaty rights. “Our ancestors signed those treaties in good faith,” she said. “We relied on those treaties in this day and age” (#7, iv. 74, p. 25). With the responsibility to protect, First Nation leaders had to think about treaty rights when dealing with the federal and provincial governments (#7, iv. 75, p. 25).

Protection of treaty and Aboriginal rights, however, did not necessarily mean the obstruction of resource development on First Nation territories. Due to the lack of federal funding, many First Nation leaders were in situations where additional revenue was needed to help their impoverished communities. When she was Chief, the aforementioned respondent witnessed all the revenues from the nation’s territory go to the province and non-native contractors: “So, it was time to get to the table and get a share of those revenues in order to help the community deal with the lack of federal funding. Basically, you had to do that. You couldn’t sit back while meanwhile, your land is getting trampled or destroyed” (#7, iv. 77, p. 26).

Although her nation needed money and it was time to get to the table, this former Chief was aware that resource development had to be balanced with treaty rights, particularly cultural and traditional sustenance rights. The way she approached the balance between resource development and treaty rights was to ensure First Nations were consulted. She worked with

government so her nation could have some control on development. In addition, the nation did traditional land-use studies that identified important animal habitats for hunting rights and areas of traditional sustenance such as berry picking grounds. The land-use studies pinpointed where the trap lines, beaver and fishing ponds and moose calving areas were, and, in the words of the respondent, “make sure the pipe lines are not in those areas” (#7, iv. 78, p. 27). While the former Chief was careful to balance treaty rights with development, she was aware that other First Nations leaders did not necessarily have the same objective:

But if you ignore all that and don't do any consultation, and just jump on the bandwagon without thinking about what the Elders are saying about those areas, either ceremonial or used for hunting and trapping, where's there's cabins or where there is even grave sites located. Then you're not balancing it and really, you're helping to erode your treaty rights (#7, iv. 82, p. 28).

In addition to these activities, this former Chief also balanced resource development with treaty rights through reclamation. As she explained, “that's when industry goes in and does their work, sets up a pipeline, a road, or whatever, and they're done. We're trying to get them to go back in there and hire band members to reclaim that area” (#7, iv. 165, p.59). Nation members were hired to clean up the disturbed portions of their traditional territories so they could be restored back to their natural state. She made it plain that was part of protecting and preserving the nation's land and added, “Regardless of whether they are treaty rights or not, I think you really need to work on preservation. That's again, for future generations” (#7, iv. 166, p. 60).

## **Cultures and Traditions**

There are two main ways respondents said their nation utilized culture and tradition in governance. These were to incorporate a band custom election code and to balance culture with governance. In an *Indian Act* context, culture and governance are separate. In a traditional context, the two were not separate. Given that the majority of First Nations in Canada continue to govern under the *Indian Act*, participants talked about governance and culture as if they were two separate things. They talked of “incorporating” culture into the existing system of governance (i.e. *Indian Act* band governance).

### **First Nations implemented band custom election codes.**

Section 74(1) of the *Indian Act* states that band council, which consists of a Chief and Councillors, shall be elected in accordance to the act. Section 2(1) of the *Indian Act* states that in a case where section 74 does not apply, band council can be chosen according the custom of the band (*Indian Act*, 1985). This section, along with the federal government’s “Conversion to Community Election System” policy, afforded the opportunity for First Nations to move from *Indian Act* elections to band custom leadership selection (Standing Senate Committee on Aboriginal People, 2010, p. 8, 9). The label can be misleading, however, because leadership selection under band custom does not necessarily mean traditional selection procedures. “Custom” stated the Senate Standing Committee on Aboriginal Peoples, “means community-designed electoral codes rather than hereditary, clan or consensual based systems of leadership selection” (2010, p. 8). Conversely, Indian Affairs imposed minimal electoral requirements to band custom selection procedures.<sup>23</sup> According to the Senate Standing Committee, Indian

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<sup>23</sup> Indian Affairs minimal requirements for band custom election codes: appointment of electoral officer, voter and candidate eligibility, time frames, nomination of candidates, conduct of the poll, participation of off-reserve voters, term of office, appeal mechanism, amendment mechanism (National Centre for First Nations Governance, n.d., p.12)

Affairs has not allowed First Nations to revert to non-electoral selection practices (2010, p. 9).<sup>24</sup> The intent of band custom election code was not to reinstate traditional leadership selection practices, but to permit First Nations to develop their own leadership selection rules within parameters of governance still set down by the federal government.

To adopt band custom, a First Nation is required to develop a written band custom election code, have it approved by a majority of band members and submit the code to Indian Affairs for final approval. Once a First Nation implements an approved band custom election code, *Indian Act* election regulations no longer apply and Indian Affairs ceases to be an appeal body in election disputes. Over half of the 600+ First Nations communities in Canada now have band custom election codes (Senate Standing Committee on Aboriginal People, 2010, p. 6).

In this study, some of the respondents mentioned their nations had adopted band custom election codes. A few participants thought the band custom election code was beneficial for First Nations because it was more in line with culture and tradition. One respondent implied that the requirement to hold a referendum to adopt a band custom election code was consistent with the traditional practice of involving community members in governance. In this regard, the respondent commented that, “our systems of elections, you could [pauses]. It was up to the people. So, those types of things that reflected our ways were kind of in the *Indian Act*” (#14, iv. 81, p. 19). Likewise, an Elder thought band custom election, sometimes referred to as tribal custom, reflected the ways of First Nations. “In our case, we had an effective governance system. Long before we accepted the contemporary system, which we call tribal custom. Tribal custom,

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<sup>24</sup> Some First Nations have assumed non-electoral leadership selection practices after their original codes were approved by Indian Affairs. Indian Affairs has not intervened in post-approval amendments to band custom codes on the grounds it no longer has jurisdiction in band custom leadership selection regimes (O’Neil, 2013).

the way we understand it, is a good fit because it contains traditional practices in governance” (#9, iv. 3, p. 1).

Other respondents disagreed that band custom election codes were cultural or traditional. That was the opinion of a former Chief who said, “It’s not really band custom that it’s different from the *Indian Act*” (#7, iv. 31, p. 12). Another former Chief stated, “Even if you look at the tradition, people will say, ‘Oh, we are under our own traditions of elections.’ Well, it’s not” (#14, iv. 121, p. 29).

In addition to being more conducive to culture and tradition, band custom elections appealed to a band councillor because it provided First Nations with a greater level of control. She believed it supported the inherent right to self-determination and assisted First Nations in advancing this right.

My nation actually has a custom election code. That’s where we have a little bit more ownership over terms of office, how many people. There’s more flexibility of having councillors and Chiefs who live off-reserve in a certain area. So there is a bit of movement for us in trying to move that way (#2, iv. 41.2, p. 12).

It also appeared the power that community members traditionally exercised could be restored through a band custom election code. Depending on how the code was written, it could be used to hold First Nation leaders accountable and reprimand them for unethical behaviour. A CEO knew of leaders who had engaged in favouritism and were reproached through band custom election codes. “We’ve had Chiefs in Alberta suspended, two or three this year, for doing similar type things,” he said (#17, iv. 71, p. 20). When I asked who did the suspending, he replied the band custom election code had given community members the authority to act. “Because they

are custom, Indian Affairs has no say. So, it was their own people in that particular case,” he answered (#17, iv. 72, p. 20). The CEO was aware these suspensions had resulted in some fall-out. “But those are important things to do, when your people are going to stand up and say, ‘Chief, you can’t do that’” (#17, iv. 73, p. 21).

### **Balance with culture.**

Respondents were frustrated because *Indian Act* band governance did not leave room for culture. A band councillor, for instance, was bothered because “I really don’t see culture or tradition anywhere in this current system” (#2, iv. 99.2, p. 26). Participants felt that improvements could happen if culture and tradition were balanced with governance. For a former Chief, traditions had much to teach First Nations and should be included in modern-day governance. According to him, “The good aspect of our ways, the good aspects of new western ways. I think that will give us a good balance” (#15, iv. 8, p. 3). Similarly, a band councillor wanted to see “traditional protocol and procedures and make it fit for some of the policies and procedures we could make for. So, it’s kind of like using the best of both worlds” (#2, iv. 98 p. 26).

A respondent Chief provided an example of how community culture is balanced with Indian Act band governance policy. He shared that in order to restore the nation’s federally funded social housing program; the government required the nation to develop a policy that stipulated a maximum of five people per house. Furthermore, residents were required to submit a list of names of people living in a house:

Well, that’s good for government to know. Now, this is where culture and policies and procedures clash because the policy states that five people can live in this house, no

more. That's the policy. That's what the [housing] committee is trying follow and enforce. Culturally, if I have my whole family living at home, I have me, my wife, my three kids. If my cousin needs a place to stay, we don't turn him away. If my sister and her family of six need a place to stay, we don't turn them away. We invite them in. That is culturally. So here is where the policy and culture clash (#4, iv. 103-105, p. 30).

The Chief continued that if a cousin needed a place to stay, cultural protocol made it necessary to bend the housing policy (#4, iv. 109, p. 32). He recognized the value of policies. They often helped the nation solve problems or steer its way through challenging situations. "But not to have it [the government policy] so that it interferes with our cultural way of taking care of our people," he said (#4, iv. 111, p. 33). In the mind of this Chief, if culture and policy were going to coincide, balance between them was essential: "You've got to have a softening so the two can live with each other but not overcast each other. One doesn't overcast or shadow the other. It's got to be balanced. That's what's happening. That's an example of how we get culture involved with governance" (#4, iv. 113, p. 33).

### **Involvement of Elders.**

Traditionally, Elders had special roles and responsibilities in matters of governance that ranged from advisors to Elders' councils with decision-making authority (RCAP 1996, Volume 2, Chapter 3, Section 1.2). Like the days of old, participants relayed that some of their nations involved Elders in current political processes. The political participation of Elders ranged from offering prayers, resolving disputes and providing input. With respect to the latter, it was usually band council that determined what issues it wanted Elder input on. Obviously, the scope of input would be different for every nation. For instance, the Elders Advisory of my nation was asked to provide input on band custom election revisions. At the request of council, it also provided

advice on an assortment of matters including political conflicts. It was up to the band council to accept or ignore the advice of Elders.

A Chief related that his council brought in Elders to do blessings as a way to give them their voice back. “You have to remember they went to residential school and they were basically taught to be seen and not heard,” he stated (#4, iv. 98, p. 29). Because of their involvement, the Elders of this nation were becoming more aware of their traditional roles. They were becoming more vocal and understood their contribution was culturally appropriate. The respondent Chief added, “the Elders are given a chance to speak up in our cultural way,” (#4, iv. 98, 99, p. 29). In a like manner, a band councillor shared the way her nation worked was to ensure their Elders were always present. As the historians or memory keepers, the Elders provided input to the council and community based on oral teachings and the First Nation way of being (#5, iv. 72, p. 22).

Other nations created Elders’ Senates or Councils for providing feedback to political decision-making. This was the case for a tribal council whose CEO revealed, “We have an Elders’ Senate so we can run our contemporary programs with traditional input” (#17, iv. 156, p. 46). A band administrator related that her nation had an Elders’ Advisory Council. “If they want Chief and Council to deal with something, they would just write a letter or send the Elders’ coordinator over. And we deal with it as quickly as we can,” she said (#3, iv. 91, p. 32).

Elders also participate in the capacity of resolving disagreements. “Dispute resolution,” mused a band councillor, “is something we must have done traditionally. There couldn’t have been everyone had always agreed on everything” (#2, iv. 120, p. 32). In her eyes, conflict had become contentious where a win-win solution was almost impossible. The participant band councillor preferred the use of traditional dispute resolution and divulged that her nation had

tried justice circles with the involvement of Elders. “The role I’ve seen as Elders, they don’t really even say anything,” she said. “Just their presence makes people act different.” (#2, iv. 123, p. 33). This band councillor noticed that because the traditional method involved Elders acting as witnesses to the dispute resolution process, the opposing parties were much more accountable to the agreed upon outcome (#2, iv. 124, p. 33).

Last, a respondent reported having worked for a First Nation that established an Elders’ Society that was responsible for, among other things, dispute resolution. Members of this nation had been suing their band council over unresolved issues. To mitigate expensive court costs and drawn-out legal proceedings, the Elders’ Society was created with the expectation that conflicts would be resolved at the community level. The Elders’ Society had been in operation for a number of years. While it could not resolve all disagreements, for the most part, the Elders’ Society did well with dispute resolution. The respondent, however, had mixed feelings about the Elders’ Society. She thought it was unfair to give Elders the job of dispute resolution because it often put them in very difficult situations when the conflict involved their relatives. Regardless, this nation was planning to incorporate the Elders’ Society and envisioning it as an unbiased and independent review panel (#7, iv. 25, p. 43).

Respondents were well aware that change did not stop at making internal adjustments. If the changes made to improve governance were to last, more work had to be done. The next chapter will examine the ways that leaders undertook to maintain political improvements.

## CHAPTER SIX

### **Maintaining Governance Improvements**

The next challenge for leadership that initiate governance improvements is to maintain those improvements. Participants reported that attempts to maintain governance improvements were done in a number of ways. Because a leader cannot act alone, and improvements would be difficult to maintain without council support, one challenge was to obtain council buy-in for changes. Similarly, leaders understood that buy-in from community members was needed. To reduce the fear of change and increase the likelihood of gaining community member support, leaders made small changes and moved at a slow pace. In addition, councils increased their communication with community members. Since council and community support was also needed to sustain new or improved governance instruments, leaders employed a number of methods to get this support including working through clans, increasing awareness and providing community members as a whole with certain levels of decision-making power. Economically, leaders appreciated that the best way to attract and keep investment into their economic development ventures was through stable tribal government and maintaining strong and positive relationships with government and industry. Surprisingly, participants did not discuss the ways in which treaty or cultural improvements pertaining to governance had been maintained. In those sections, possible reasons why will be discussed

#### **Leadership**

##### **Sought buy-in from council and administrative staff.**

Participants involved in the improvement of governance issues talked about the importance of buy-in from council and administrative staff if progress was to be maintained. The

participant who talked most about council buy-in was a Chief who had made political enhancements in his community. “I was lucky,” he said. “I had two councillors that agreed to the changes we were making. That’s another important part is that you need your council’s buy-in” (#4, iv. 13, p. 4). When I asked how he went about obtaining council’s buy-in, the Chief answered, “explaining to them it was time for change and we have to do something” (#4, iv. 14, p. 4). This Chief had worked hard to get the support of the council and as a result, “that made the big changes easier” (#4, iv. 18, p. 5). This hard work included advocating for governance improvements, working with like-minded councillors to convince reluctant councillors and increasing council’s awareness about the importance and benefits of change.

This respondent Chief said making change also required the buy-in and follow-through from band office staff: “So that’s the next step, having your administrator and staff follow-through. Because if they aren’t, you can make all the policies you want, but your second in command, and the steps as they go down, if they are not following along, you lose it” (#4, iv. 60, p. 18). This Chief’s experience was that change was holistic. Rather than trying to transform only certain groups in the community, the Chief found that change worked as a total unit; all segments of the population had to be included. Otherwise, change could not be supported. In the words of the respondent Chief, “Like an Indian reserve, you can’t change it by just changing Chief and Council. The whole thing comes in one package,” (#34, iv. 64, p. 19). This discovery was important because native and non-native communities alike tend to assume that all that was required to make political change was a change in government. But this Chief learned that unless all segments of the population were addressed, the political status quo was likely to return. “So if you don’t have it balled up to where the Chief and Council, the band administrator, the staff and

the community, if you miss anyone of those components, it's like a barrel of apples," he said (#4, iv. 66, p. 19).

## **Community Members**

### **Made small changes and took it slow.**

Participants also understood the necessity of getting the support of the general community if political change to governance and policy was to be sustained. As one Chief remarked, "Without the buy-in of the community, forget it" (#4, iv. 70, p. 21).

Experience taught participants that gaining the support of community members required making small changes at a slow pace. If they tried to take big steps or move too quickly, it could lead to community member resistance. Again, the aforementioned Chief shared what happened when he tried to make change from the onset: "When you initiate change, it takes a long time. It doesn't happen overnight. You can't say, "Well, I'm going to get elected and I'm going to make all these changes," which is the mistake I made. I tried to make changes right away. And the people, they didn't like the change as it happened" (#4, iv. 3, 4, p. 2).

Likewise, a community member had witnessed nation member opposition to change in First Nations communities he had previously worked in. He commented, "I see this too, where a leader moves good forward and it moves too good. And then the people back off" (#6, iv. 104, p. 46). Another former Chief also was familiar with the need to move slowly in order to have community members accept improvements. When this respondent was Chief, he was warned by an Elder to reduce the pace of change. The Elder advised the Chief, "the things you are running is very good. There is development and other things happening for [*name of nation removed*]. But don't take the people too fast" (#18, iv. 9, p. 3).

One of the Chiefs disclosed how he worked to get the support of community members. “By making changes over time. Changes over time that they see and recognize and become comfortable with. Sometimes it’s going to take two or three times to make change,” he said (#4, iv. 7, p. 2). The Chief admitted that implementing change was very hard in the beginning. But eventually, the community members noticed the change and began to support it. As stated by the Chief, “So, it’s really small, incremental little changes along the way, the community buys-in and keeps buying-in” (#4, iv. 24, p. 6).

### **Involve and communicate with community members.**

Along with moving slowly and taking small steps, participants were aware that the maintenance of political changes required leadership to involve and communicate with nation members. A former Chief explained, “When you’re not involved, you don’t care. You just worry about what you’re going to get” (#14, iv. 156, p. 38). She added, “If you participate, you’re more effective, you’re more responsible. So, we’ve got to bring our people to be more responsible; to me, that’s effective governance” (#14, iv. 183, p. 44).

To that end, a Chief revealed that the old way of doing business was for council to make decisions without the involvement of community members. When he became Chief, a change was made to seek the input of community members. He revealed that “it takes a long time for people to adjust to that because they are so used to the old way. They weren’t used to sitting down and reading and making decisions,” (#4, iv. 47, p. 13). Onward in the conversation, I asked this Chief how he retained community support for this new way of doing things. His answer: “Keeping them informed. And involved. And being accessible. You have to be accessible” (#4, iv. 114, p. 34).

Another First Nation band council involved their members in a comprehensive community planning process where their contribution was sought through a series of community meetings. The band administrator relayed that “from there, we brought it [the draft community plan] back to the people and said, ‘This is what you’ve told us. These are the changes we are going to make’” (#3, iv. 20, p. 7). The actions of this nation appeared to be consistent with a former Chief’s belief that legitimacy was crucial to the maintenance of political change. An effective way to achieve legitimacy was through the involvement of the community members. “It’s ownership,” she said. “It’s an ownership thing, like, ‘This is ours. We made it. It’s working for us’” (#7, iv. 154, p. 55). Indeed, the Harvard Project researchers found that if a native government was going to work, the nation’s citizens had to view the political institution as theirs. If community members did not view it as theirs, the political institution would likely be “overturned, ignored or abused” (Begay, et.al, 2007, p. 45).

## **Governance Instruments**

### **Sought community support for new or improved governance instruments.**

Participants recognized that an important aspect to maintenance of new or improved governance instruments was community support for them. If nation members supported the new or improved governance instruments, they would make an effort to protect them.

Some respondent leaders had a traditional perspective and believed the support of the community members would be strongest if their involvement was clan-based. A band councillor expressed concern that families were not being heard in political decisions and asserted, “It’s not [pauses], like if all my family had come together and we all agreed, that is the best way. There would be so much buy-in” (#2, iv. 105, p. 28). Correspondingly, a former Chief thought the best

way to maintain political change was to have a representative from each family sign the proposed governance document, be it policy, constitution or another instrument. By having each clan sign, the Chief believed it would become a document endorsed by the community members, “and it can’t be changed without the approval of the people. So the people are safeguarding it” (#13, iv. 105, p. 30). As it turned out, some nations were already securing the support of the community members through clans. This was evident when a different former Chief spoke about the change efforts of her nation and commented, “That’s what we do. When we develop anything, we always bring in the people at large and we try and bring in people from different families” (#14, iv. 153, p. 37).

Decision-making was one area that leadership involved community members. In regard to policy development and implementation, another former Chief said, “If you don’t involve the community, it’s definitely not going to work. They will not vote for it” (#7, iv. 57, p. 20). “The people should always be part of the decision-making,” said another participant. “We need to communicate, collaborate, seek approval and even educate” (#3, iv. 17, p. 6).

A Chief from a smaller nation motivated the support of the community members through general community involvement. The form that involvement took was by allowing the community members to decide on the adoption of policies. Prior to voting, preliminary work was done where councillors went into the community and advocated for policy development. As a result of advocacy, “the people are starting to buy into it,” said the Chief (#4, iv. 38, p. 11). Once the policies had been developed and then debated by council, the Chief shared that “we’ll pass it through the community and the community will vote on. The only problem was having the community be fully aware of the policies and procedures” (#4, iv. 41, p. 12). The Chief’s latter statement indicated that even with advocacy, the capacity of the community members was still a

challenge and could hinder support for policies. With this in mind, I asked the Chief what else his council did to increase the awareness of community members. He replied, “We have community meetings. We send out copies of the policies and procedures” (#4, iv. 43, p. 12). By the same token, a CEO underscored the link between the informed participation of the community members and lasting governance improvements when he stated, “That’s how you change things, let people make informed decisions” (#8, iv. 45, p. 10).

**Have community members experience the benefits of governance instruments.**

For change to be maintained, participants felt that community members needed to experience the benefits of new or improved governance instruments. Accountability policy was one that community members saw as beneficial. A Chief talked about the procedures contained in his nation’s accountability policy in terms of reporting and answering community members’ questions at general meetings. The Chief said, “Those are the ways people see. They are slowly starting to learn that this is what you get by effective governance. And the transparency. Because in the past, there was no reporting” (#4, iv. 96, p. 28). Similarly, a participant community member noticed that in his community, the Chief had implemented a governance instrument. “It wasn’t a constitution, but it had something to do with work and accountability. He made it in such a way that it would be a benefit to everybody” (#1, iv. 137, p. 38). The community member continued that even though that Chief was eventually defeated in an election, “the policy he put in place, and it was a good one, so they kept it” (#1, iv. 138, p. 38). Considering the past accountability deficits caused by the *Indian Act*, it is likely the community members from these nations appreciated the measures their leadership took to be accountable to the band electorate.

**Have administration experience the benefits of governance instruments.**

If a leader wanted to create or improve governance instruments, band council's approval was required. Once passed, effort had to be made to keep the support of council so that new or improved governance instruments could be maintained. Without council's support, council members could easily disregard governance instruments or make motions to dilute or dispose of them.

Participants revealed that leaders were sometimes pressured by the clans that had supported them to downgrade policies to their advantage. A CEO thought if policies were more durable, council members would benefit because it would help shield them from clan pressure. He explained that:

When you're a politician, you need to gather support to keep your position. So they've got things pulling on them from different directions. Here, there's a lot of clan politics and you need to develop a system where the Chief and Council are less able to, uh, [pauses], things are put into policies where you cannot just change it on a whim because of political pressures. Probably, the policies would help Chief and Council as well. I think they would welcome the protection (#8, iv. 73, p. 19).

A former Chief provided further insight on how policies could protect leaders from clan politics and make their jobs easier:

And they don't have to, I guess, be dictated by certain members of the community or maybe even internally. For instance, if they have relatives in all the departments, then, you know, it's the band administrator that's going to enforce these policies, not Chief and Council. In that way, the council does not have to be involved in firing their favourite cousin or whatever (#7, iv. 62, 63, p. 22).

Band administrators, in addition to leadership, need to see the benefits of policy reforms if improved governance is to be sustainable. A participant Chief related that when his council first adopted policies, the band administrator resisted and was not quick to implement them. But over time, the administrator saw that policies made his work load easier and protected him from the demands of nation members. As related by the Chief, “not being experienced in band politics things kept coming back and biting him in the ass because of no policies. Now he can say we have policy” (#4, iv. 33, p. 9).

In an environment of clan politics, there can be situations where leaders who want to retain clan support attempt to circumvent hiring procedures and appoint family members to jobs. Thus, another way administrative staff benefit from policy is protection from political patronage. A CEO provided a good example of this:

Policies protect your administration too. If you have a policy saying I can't do something [pauses], instead of leaving our administration out in the open when they are getting demands to do something they don't feel is right. You can go back to your policy and use it to protect yourself. “Hire this person.” “Well, they don't have a degree in childcare and we're trying to hire a daycare director. Well, we have it in our HR policy that you have to have this degree” (#8, iv. 61 p. 15).

## **Economy**

Participants did not come right out and say, “This is how my nation maintained its economy.” They did, however, discuss the conditions needed and the actions leadership took that had a positive impact on their economies. These remarks are presented below.

**Successful economic development requires stable First Nations governments.**

One reason a CEO suggested First Nations had a difficult time securing funds for economic development was because their governments were unstable and investors were afraid to invest there (#17, iv. 203, p. 64). It was the opinion of this respondent that “if you want to get into business, you need to have a strong stable [pauses]. The biggest key is stable government” (#17, iv. 205, p. 65). A participant Chief also believed that good First Nations governance contributed to strong tribal economies. He remarked that “if things are functioning well and their businesses are running well, you can have a sense that these guys are pretty good government-wise” (#18, iv. 141, p. 36). Later in the interview, the Chief re-emphasized how important political stability was to the nation’s economy: “when there is a stronger government, there will be more growth” (#18, iv. 175, p. 45).

### **Relationships contribute to the success of economies.**

First Nation leaders need to be good at relationship building in order to develop and maintain nation economies. Referring to the office of Chief, a respondent said if community members elected a “tyrant” or “jerk,” that community would likely be a “have-not” nation. “You need to put in someone in that is a consummate statesman,” he said (#17, iv. 206, p. 65). The respondent then referred to the work of a Chief he had worked with who had negotiated with oil companies to drill on reserve lands. Since then, that nation had been making millions of dollars annually. “But all that was negotiated as a statesman and who they were” said the respondent (#17, iv. 208.2, p. 66). For this respondent, an important component in relationship building was the credibility of leadership. In his words,

Because they trusted that [*name of Chief removed*] and his council were someone they could work with and would stay by their word and allow them to do what they did. Like I said, those companies know there’s a risk that they’re going to hit a dry hole when they

do it. But, again, that became very much because they could work with him. He was known as one of the most influential and best Chiefs to work with, definitely in western Canada and probably in the country. So, it's building that sort of statesman thing. That brings some credibility (#17, iv. 210, p. 66).

### **Treaty and Aboriginal Rights**

Participants did not discuss how their nations maintained improvements associated with treaty and Aboriginal rights. Reflecting on why the maintenance on this subject was not discussed, I arrived at two conclusions. First, a review of the actions taken in the area of treaty and Aboriginal rights showed that nations worked to protect their lands and resources from extraction by government and industry. During the course of those conversations, it was noted that the Supreme Court of Canada recently affirmed that a First Nation in BC had title over its traditional territories. This ruling essentially meant that if federal and provincial governments wanted to extract natural resources from First Nations territories, they would have to obtain the consent of those First Nations (Miller, 2014). With this landmark court ruling, it may be that First Nation efforts to maintain their treaty and Aboriginal rights have relaxed somewhat as they knew their lands and resources were now legally protected.

Second, in support of their inherent right to self-government, participants also stated that their nations were at various stages of constitutional development. However, none of the participants' nations were actually in self-government. There could be a number of reasons for this, including apprehension of self-government to the slow pace of self-government negotiations. That the participants' nations were not self-governing was not unusual in that nationally, First Nations self-government has proceeded slowly. First Nations have "moved cautiously in accepting administrative responsibilities from the Government of Canada" and

have avoided taking “large and potentially risky steps toward local administration” (Coates, 2008, p. 24). Although a few of the participants’ nations were in various stages of self-government negotiations, it is likely that maintenance of the inherent right was not discussed since none of the participants’ nations were self-governing.

### **Cultures and Traditions**

Participants did not discuss how their nations maintained improvements associated with culture and tradition. As with treaty and Aboriginal rights, I pondered why participants had not delved into the maintenance of cultural and traditional changes to governance. Examination of actions in this category showed that one way participants’ nations incorporated culture and tradition into governance was through band custom election codes. Since codes are like law, their legal standing served to maintain band custom election codes. Thus, other than periodic revisions, there was not much to do in the maintenance of band custom election codes.

Moreover, in the quest for effective governance participants talked about how their leadership attempted to balance culture with governance. One way their leadership did this was by incorporating traditional protocols into policy. A Chief provided an example of how his council did this when he spoke about having to bend the federal housing policy of five people per household if relatives needed a place to stay. For this nation, the custom was not to turn family away. This balancing act was not written into the housing policy but just done. Since the incorporation of cultural protocols was often unwritten and something that was automatically done, participants may not have felt the need to discuss its maintenance. After all, it was second nature to adhere to cultural protocols, regardless of what the federal policy said.

To this point, the analysis has shown how government improvements unfolded in these First Nation communities. The data suggested that effective governance was not simply a goal to be attained. It was a journey motivated by concerns or dislikes of political situations, moved forward by visions of effective governance, realized by leaders brave enough to implement those visions, and continued through combined efforts to make governance improvements last. Historical demons and the political status quo, however, always lurked in the background and were often powerful enough to stop or undo change. The next chapter will reveal why resistance to change can be strong and the actions taken to protect the political status quo.

## CHAPTER SEVEN

### Central Category: The Legacy of Colonization

#### Lead Up to the Central Category

In Straussian grounded theory the selective coding process involves the location of a central category that represents the main theme of the research. Each of the major categories – identified and examined in the previous four chapters – are connected to the central category and together, they form a theoretical scheme that explains the phenomenon (Strauss and Corbin, 1998, p. 146); in this case, First Nations governance practices and reform efforts.

The selective coding process allowed me to see certain patterns in the interview data. First, the journey of good First Nations governance appeared to move at a slow pace with small steps taken along the way. Second, the journey proceeded on a winding and often contentious road. Third, governance improvements were made but were difficult to maintain. As a result, the journey could be delayed, regress or disrupted.

Based on these patterns, I suspected that something was holding First Nations back. Further examination of the data revealed what that might be. A common thread between the six actors (leadership, community members, governance instruments, economy, treaty and culture) appeared to be fear of loss. Curious about where this fear came from, I dug further into the data. Additional signs surfaced that led me to conclude that this fear was associated with the aftermath of colonization. For example, the colonization of First Nations involved the consistent extinguishment of their treaty and Aboriginal rights by government. In present-day, First Nations are aware that self-government could create conditions needed to support effective governance. Yet, many First Nations seem afraid to pursue their inherent right to self-government because

doing so, paradoxically, might result in the loss of their existing treaty and Aboriginal rights. Based on these findings, I determined that the central category was the “legacy of colonization.”

I then developed properties and dimensions of the central category according to the known effects of colonization. The properties and dimensions of the central category confirm that the four major categories (motivators, visions, actions, maintenance) and their sub-categories (the six actors: leadership, community members, governance instruments, economy, treaty and Aboriginal rights, culture and tradition) all connect to and are influenced by the legacy of colonization. To put another way, every stage in the journey of effective First Nations governance, as represented by the four major categories, is profoundly shaped by the legacy of colonization. The theoretical scheme representing this journey is illustrated in the following diagram.

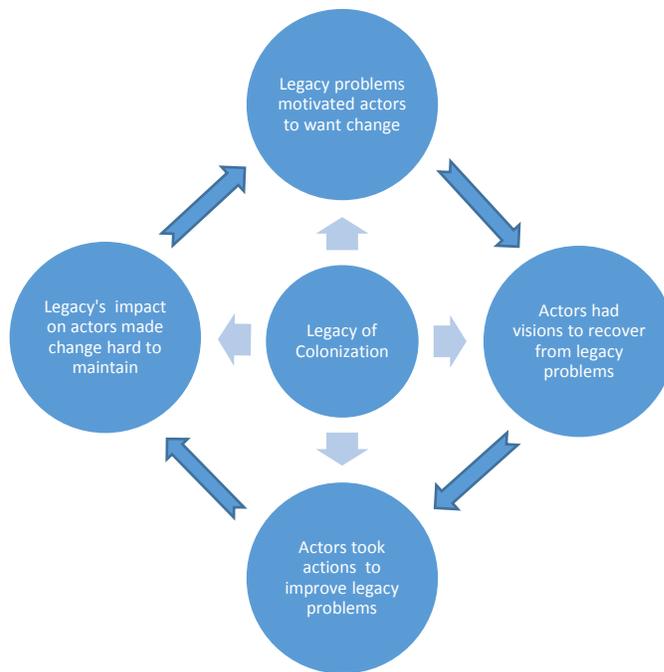


Figure 2. Theoretical scheme – The journey of effective First Nations governance

The discussion in this chapter provides details of the theoretical scheme, specifically, how the central category influences each of the major categories and its impact on the journey of effective First Nations governance.

### **Influence of Central Category on the Major Categories**

To keep the length of this dissertation manageable, I will discuss one example of how the legacy of colonization motivated the desire for political change for one actor, namely, First Nations leadership. That will be followed by a summarizing table that shows how legacy-related problems motivated the desire for political change for the remaining actors. This approach will be repeated for the major categories of visions and actions. Since the crux of the theory lies with maintenance, the summarizing table will be replaced by a full discussion of the interplay between the six actors and that major category.

#### **Motivators: Legacy-related governance problems motivated actors to want change.**

Chapter 4, dealing with motivation, noted that one issue which stirred participants to want effective governance was the self-interest of some of their leaders. Participants believed that self-interest was a result of the *Indian Act*, the legislation responsible for the legacy of colonization. An Elder, for instance, observed that a mentality had developed amongst band leaders where, “it means that they are not interested in the welfare of the people but more interested in their welfare. Ok, if I’m going back, where the problem started was with the *Indian Act*” (#12, iv. 6, p. 2). A CEO suggested the foreign *Indian Act* had made the moral fiduciary responsibility of First Nations go off track. As a result, the current thinking of some First Nations leaders was, “I’m Chief. What can I get for me, my family and those that supported me?” (#20, iv. 28, p. 10). A community member compared tradition with current political realities when he

said, “In the *Indian Act* system, the Chiefs, they can favour their family. They can persuade a decision for themselves. But in our traditional way, it wasn’t just for themselves. It was for the people” (#1, iv. 102, p. 26). A participant Chief also observed the shift from traditional collectivism to individualism in some First Nations leaders and stated, “I notice that leadership has evolved and changed. You know, like, even the focus in leadership has become more about me. How can I benefit?” (#13, iv. 15.2, p. 4).

Like the respondents above, Professor Taiiaki Alfred underscores the customary principle of collectivism when he writes that traditional First Nations leadership was about advancing the common good (1999, p. 46). Unfortunately, collectivism was degraded by the *Indian Act* where assimilation methods included the individualization of First Nations. In her review of the *Indian Act*, Professor Frances Abele found that many of the *Indian Act*’s provisions applied to individuals rather than collectives and established individually-based relationships with band members (2007). Another researcher, Joan Holmes, found that the federal government’s assimilation of First Nations was contingent on individualism and wrote, “A hallmark of their advancement would be their rejection of communal land holding and all vestiges of collective life in favour of individualism” (2002, p. 15). Hence, Indian Affairs, the department responsible for implementing the *Indian Act*, was evaluated by the degree it had advanced individualism amongst First Nations (Holmes, 2002, p. 15). Taking this into consideration, it can be concluded that self-interest was borne by the *Indian Act*’s promotion of individualism. Since the *Indian Act* and the legacy of colonization are one in the same, it can be said that legacy-related problems like self-interest motivated the desire for political change.

The same argument holds true for the remaining actors. Examples of how the legacy-related problems motivated actors’ desire for change are depicted in the table below.

Table 4

*How the legacy motivated the desire for political change*

<i>Actors</i>	<i>Motivator of change</i>	<i>Relation to Legacy</i>
Community members	Council is not accountable to the community members.	Accountability to community members not required by the <i>Indian Act</i> .
Governance instruments	<i>Indian Act</i> is oppressive.	Oppression is a trait of assimilation.
Economy	Poverty	<i>Indian Act</i> obstructs economic self-reliance. FNs consistently underfunded.
Treaty & Aboriginal rights	Not recognized.	<i>Indian Act</i> extinguished treaty & Aboriginal rights.
Cultures & traditions	Not remembered, not practiced.	Cultural corrosion an effect of assimilation.

**Visions: Actors had visions to recover from legacy-related governance problems.**

In Chapter 5 on visions for bettering community governance, a participant vision was to allow opposition so that accountability of the band council would be strengthened and governance improved. Again, the lack of political opposition in band governance was connected to the *Indian Act*, the main source of the legacy of colonization for First Nations throughout the country. One respondent was well aware of this connection when he said, “First Nations are similar to municipal politics in the sense that there is no opposition, right? There’s nobody accountable” (#17, iv. 21, p. 7). The assessment of this participant is both apt and accurate since the original intent of the *Indian Act* was to set-up First Nations as municipal governments (Holmes, 2002; Leslie, 1982). Since municipal governments were not designed with systemized legislative opposition, it was not factored into band governance during the development of the *Indian Act*. This accountability deficit prompted participants to envision a future where

opposition to council was welcome and expected. The remaining actors' visions for effective governance were also incited by legacy-related problems and summarized in the table below.

Table 5

*Visions to recover from legacy-related problems*

<i>Actors</i>	<i>Visions of change</i>	<i>Relation to legacy</i>
Community members	To be viewed as the authority.	<i>Indian Act</i> removed participatory governance and power of the community members.
Governance instruments	Policies the stick and adhered to by council.	<i>Indian Act</i> and DIA policies not legitimate, not respected.
Economy	Economic independence.	FNs better controlled if poor and dependent on government funds.
Treaty & Aboriginal rights	Compensate FNs for lands and resources.	Treaties deceptive. <i>Indian Act</i> ignored treaties.
Cultures & traditions	As the foundation of governance.	<i>Indian Act</i> ended traditional governance and replaced it with band governance which created governance problems.

**Actions: Actors took actions to improve legacy-related governance problems.**

In Chapter 6, that discussed the major category of actions, First Nation band councils acted to increase the capacity of leadership in anticipation that it would contribute to effective governance. Attempts to increase leadership capacity were done informally, through peer coaching, and formally through leadership training. Once more, low capacity amongst First Nations leaders and community members can be traced to the legacy of colonization. For one, the *Indian Act* contains few standards for leadership candidacy. As one respondent pointed out anybody could be elected or become a Chief because there were no qualifications in the *Indian Act*, other than having to be 18 years old or older, to run for office (#14, iv. 14, p. 5).

Second, the *Indian Act* makes the federal government responsible for the education of First Nations (*Indian Act*, 1985, Section 114). The federal government carried out its responsibility through the Indian residential school system. It has become common knowledge that the Indian residential school experience, where education was used to assimilate First Nations and where atrocious abuses occurred in an educational setting, resulted in inter-generational trauma among First Nations. It is likely that this dark history of education caused the upcoming generations of First Nations to develop an aversion to education and contributed to the current low levels of capacity in many First Nations communities.

Third, following Indian residential schools, the federal government continued its responsibility to educate First Nations through federally controlled on-reserve schools. Though First Nations were eventually allowed to manage on-reserve schools, the problems that originated from federally-controlled schools persisted. One of these was a lack of quality education. The standard of on-reserve education was lower than provincial education (Anderson and Richards, 2016). Many of today's First Nations leaders attended federal on-reserve schools where they were exposed to an inferior standard of education. It can be reasonably concluded, therefore, that use of education to assimilate First Nations, along with sub-standard education in federal on-reserve schools, contributed to the low levels of capacity in First Nations communities. Aware of this legacy-related problem and its impact on governance, band councils are taking action to increase their capacity in the area of leadership. Table 6 is a depiction of how the remaining actors took action to mitigate legacy-related political problems.

Table 6

*Actions to improve legacy-related problems*

<i>Actors</i>	<i>Actions</i>	<i>Relation to legacy</i>
Community members	Voted out unethical leaders.	<i>Indian Act</i> band governance provided opportunities for unethical behaviour.
Governance instruments	Developed conflict of interest policies.	<i>Indian Act</i> created self-interest which led to favouritism.
Economy	Worked to access trust funds to invest in reserve economy.	<i>Indian Act</i> land restrictions prevent investment. Minister controls trust funds.
Treaty & Aboriginal rights	Protected land rights. Entered partnerships for natural resource development on traditional territories.	Under <i>Indian Act</i> , Crown has land title. Prior to court cases, FN land & resource rights disregarded.
Cultures & traditions	Made band policies culturally balanced.	<i>Indian Act</i> policies excluded culture.

**The Challenge of Maintaining Governance Improvements**

As was seen in Chapter 7 on maintenance, First Nation leaders worked hard to maintain governance improvements. They undertook a variety of approaches to maintain changes such as endeavouring to get the buy-in of council, administrative staff and community as well as communicating with nation members and involving them in political decision-making, having administration and community experience the benefits of change and supporting the development and sustainability of the economy through stable governance and relationship building. Despite these efforts, the legacy of colonization was always at play and made it challenging to maintain changes. It was during the examination of maintenance that the theory began to reveal itself. The manner in which the legacy of colonization contributed the actor obstruction of political change is discussed below.

## **Leadership.**

### *Leaders feared the loss of power and privilege.*

Oftentimes, it was other leaders, including Chiefs and councillors that resisted change and worked to keep the political status quo intact. Participants thought that fear caused some leaders to resist political change. This indication was given by an Elder who said, “I have been saying to the leaders that they are cowardly because they are very fearful of change. I’ve said to them they don’t want to face changes like a man” (#9, iv. 15.2, p. 4).

The fear of political change revolved around personal insecurity and the loss of power and privilege. Participants felt that one reason some leaders were afraid of political change was because they had little education or training. Minimal education and training caused some leaders to be unsupportive of governance changes. The reason why was best illustrated by a university-educated former Chief. This participant imparted that effective governance required a leader to be strong enough to say no when required. “You’re not going to be popular,” she said, “and you’re cutting into people’s profits” (#7, iv. 168.2, p. 60). When she was Chief, the participant recalled it was not hard for her to say no. However:

I think that for a lot of council who may not be educated, who may not have opportunities outside of council, perhaps it would be hard for them to say no. A lot of times, they have to say yes because they know once their Chief role is up and they are not re-elected, they’re just like the next guy on the reserve (#7, iv. 169, 170, p. 61).

Another former Chief offered an identical comment to the Chief above. In reference to council, he stated that “The majority of the people are less educated and those people are the ones that have been in power for so many years. They don’t want to lose that power” (#18, iv.

12, p. 3). An Elder suggested that low levels of education and training exacerbated the fear that some leaders had about losing elections because they worried about how they would support themselves afterwards. This insecurity prompted some leaders to “hold onto power until they die of old age. They think, ‘If I lose, then what do I do?’” (#12, iv. 39.2, p. 13).

Judging from these remarks, leadership who had low education or training were insecure because they had few options at making a decent living should they be voted out of office.

*Some ways leaders protected the political status quo.*

Leaders fearful of losing power and privilege protected the political status quo in a number of ways including favouritism, micro-management and not allowing opposition.

*Favouritism.*

Prior to colonization, First Nations’ political culture was centered on family (Helin, 2006; RCAP, 1996). Extended families participated in governance including traditional leadership selection processes (Long, 1990). Not until the *Indian Act* did First Nations begin selecting their leaders through elections (Holmes, 2002; Milloy, 2008). However, the federal government failed to erase all remnants of traditional governance. Despite elections, family-based leadership selection remained. But the elective system transformed family-based leadership selection from consensus-based to one where the largest families formed the majority and had the deciding vote.

Respondents claimed that some leaders engaged in favouritism by giving their supporters, who were mostly relatives, rewards and preferential treatment in the interest of being re-elected. Participants discussed two ways in which leaders carried out favouritism. First was through the allocation of jobs and contracts. A former Chief noticed on her reserve that “the Chief’s relatives are the ones hired, whether they are educated or not, or they qualify for the positions” (#14, iv.

13.2, p. 4). The politicization of employment was also witnessed by a senior administrator who commented, “if you look at the situation on our reserve, right down to the janitor has ties to the Chief” (#19, iv. 92, p.23). Shortly thereafter, the same respondent reaffirmed political patronage when she complained that, “within our own band, the positions are appointed” (#19, iv. 138, p. 36). Also claiming political favouritism, another participant observed that her fellow nation members would become excited at the prospect of jobs when resource development contracts were secured by the nation. But they were soon disappointed because the Chief and Council would hire their own crews which usually consisted of their relatives (#7, iv. 73.3, p. 25).

The second way favouritism was seen to be executed was through the distribution of housing on reserve. Bothered by this practice, a CEO complained that, “Well, when you have money, you can buy a lot of people off. You can provide houses” (#8, iv. 9.2, p. 3). This CEO provided more detail about this practice when he said of Chief and Council: “It shouldn’t be any of their business who gets what house. It should be on need. Right now, it’s their decision. And it’s a political tool now. You’ve got a bunch of single guys getting houses and families getting nothing” (#8, iv. 170.2, p. 48). Within an environment of kin-based leadership selection, the single men being allocated houses were undoubtedly members of the large extended families that supported ruling leaders.

First Nation writer, Calvin Helin, highlighted the political benefaction of housing when he referred to the “infamous band housing list.” As Helin explained, on-reserve housing began as a federal program that was intended to prioritize housing distribution based on need. Over time, the housing list became politicized as “patronage payments take precedence for those persons or families that supported newly elected Chiefs and Council” (2006, p. 123). But not all leaders were comfortable with this practice as a respondent Chief expressed concern about rewarding

voters or securing votes through the distribution of houses. In his words, “I keep saying, ‘Let’s stop using housing for campaigning.’ I keep saying that only when we quit that will things run well” (#11, iv. 162, p. 56)

*Micro-management.*

A participant CEO was frustrated because “In First Nations, we make a huge mistake. Politics gets involved with administration all over the friggin place” (#17, iv. 67, p. 19). The CEO acknowledged that political interference was not limited to First Nations, “but it’s more exposed in First Nations of having politicians involved in administration. It happens way too much” (#17, iv. 69, p. 19).

Examples of micro-management given by participants included the direct supervision of staff and over-riding the authority of senior management. In the former, a band councillor said, “right now, the council is the boss of pretty much everyone who works at the band office, the way its set up now. Really, their bosses should be their immediate supervisors and their executive director” (#2, iv. 145, p. 39). With respect to overriding the authority of senior management, a respondent CEO described a Chief that authorized every single expenditure. “And I have never seen a Chief that would sign cheque reqs like (*name of Chief removed*) would sign. Why the heck do you have to sign every darn dinky little thing? Don’t you have better things to do?” (#8, iv. 155, p. 42). This CEO had worked under the previous tribal government where the Chief’s signature was only required if the requisition exceeded the senior administrator’s spending authority. “But you didn’t sign every little thing!” he exclaimed (#8, iv. 155.2, p. 42).

There are several reasons why band councils micro-managed. First, micromanagement was a behavior that First Nations learned from government. The *Indian Act* was literally a tool of micro-management that allowed government to control every aspect of Indian administration and community. Moreover, First Nations were shown micro-management by Indian Agents; the officials the federal government dispatched to reserves to implement Indian policy and to directly manage all their affairs (Graham, 2006). Speaking to learnt micro-management, a researcher that examined the relationship between First Nations politicians and their staff found that:

Many leaders and staff today still remember the era of the Indian agent. There is some argument to be made that both leaders and staff, particularly of an older generation, may have developed learned behaviours that either emulate or view as “normal” a strongly interventionist and directive role on the part of persons holding positions of authority and real power in the community (Graham, 2006, p. 8).

Another reason participants thought some band councils micro-managed was because leaders were unaware of their role as council members. A fairly new band councillor reported that once in office, she felt confused about the process of band governance (#2, iv. 77.2, p. 21). It did not help that “we don’t even really get a job description or duties” (#2, iv. 175, p. 48). Obviously, the lack of orientation for new council members contributes to a lack of knowledge about their roles and responsibilities. Newly elected council members face a steep learning curve and frequently micro-manage as a way to learn their roles and responsibilities. New council members are particularly concerned about their responsibilities to the federal government:

Leaders often take on a direct and interventionist role in matters more properly left to staff as a way to gain understanding of how things work, to ensure First Nation

compliance, and to gain peace of mind that the First Nation has fulfilled its obligations and will not be penalized (Graham, 2006, p. 7).

In addition to role confusion and the fear of being punished by their colonizer, it appears there is another reason why some leaders micromanage. A respondent provides insight to this:

What's wrong with government is the lack of understanding of the role of Chief and Council. It's the higher level strategic thinking. What they mix it up with is the separation, I guess, the authority of power. Their focus is on administration. "Go fix this guy's house, my cousin's house." That's not their role. And that's what's wrong. They are policy makers. Or, compared to off-reserve, the law makers (#20, iv. 57-60, p. 18).

The reference of leaders instructing administrative staff to repair their cousin's house related micromanagement to favouritism. While discussing role unfamiliarity, another CEO also linked micromanagement to favouritism:

They also don't understand what the difference is between a board [pauses]. And this goes back to the Chief and Council thing, what a board does, which effectively becomes like a political [pauses], and what your administration does. Your board gives your CEO, or whatever your position is, it gives them some direction. But it has nothing to do with, "Do I fire them? You've got to hire them, you've got to do this and you've got to do that" (#17, iv. 256, 257, p. 84).

The staff the council member wanted fired were likely non-supporters while the people he wanted hired were supporters. The linkage to favouritism implies that some leaders micromanage to ensure that their supporters, usually relatives, are taken care of. Again, this goes

back to the elective system in the *Indian Act* where leaders that wished to be re-elected had to maintain the support of the majority which was typically made up of extended families.

*Opposition of Chief and Council was not allowed.*

Earlier, a participant councillor shared a story about a group of band members that had complained about their nation's audit. In response, the council issued a letter to the complainants that explained the audit (#2, iv. 23, p. 6). The nation members remained dissatisfied and were unhappy with council's refusal to speak with them directly (#2, iv. 24, p. 7). Continuing the story, the participant councillor shared that she had received a message to meet with the complainants. But found herself in a catch-22: "The challenge is that if you meet with them on your own, it looks like you're not supporting leadership" (#2, iv. 30, p. 8). In the end, the band councillor decided against meeting with the complainants. "I didn't follow through," she said, "because we got kind of a talking to from our leadership about, 'Are we together in this, or are we not?'" (#2, iv. 30.2, p. 8). She understood the need for council unity, but, "I'm like, how do we address this? Because letters were sent. It's not ending" (#2, iv. 30.3, p. 8).

As part of her commitment to accountability, the same band councillor also participated in the development of a blog that allowed communication between council and nation members. In the aftermath of the audit controversy, leadership wanted the blog deleted because nation members had been using it to criticize council. The participant councillor protested that its removal would be unfair since it was a tool for communication. But the Chief insisted, instructing her to "Just delete it. It's not the truth and I don't support people who are trying to sabotage leadership" (#2, iv. 30.4, p. 9). Onward in the interview, the same band councillor addressed the suppression of nation members when they challenged leadership at open meetings. "And everyone just wants to be heard. Sometimes I've seen at meetings, 'You can't ask that.

You can't ask that here.' Well, where do you ask it then?" (#2, iv. 129.2, p. 35). With not even council self-evaluations taking place, the participant concluded "there is no opportunity to give Chief and Council feedback nowhere" (#2, iv. 172.2, p. 47).

In some cases, nation members that criticized Chief and Council faced repercussions. One respondent observed that opponents became frustrated because families would elect their relatives and then exploit the system for their own benefit. When opponents accused council members of nepotism, sometimes calling on their leaders to resign, these nation members "felt the repercussions of their actions" (#6, iv. 17, p. 7). The fear of repercussions often silenced community members. As a former Chief said, "There are areas you know, sometimes people are fearful to say anything because there's retaliation, repercussions" (#13, iv. 13, p. 4). Without any opposition, the likelihood of unethical behaviour by some leadership was sure to increase as "A government without political competition is potentially an undemocratic government" (Aucoin and Jarvis, 2005, p. 13).

### **Community members.**

#### ***Forces against political change.***

Certain forces contributed to the fear of change by community members and caused them to protect the political status quo. The two most powerful of these forces were dependency and colonization, both of which directly relate to the legacy of colonization.

#### ***Dependency.***

Dependency is and has been a significant problem in many First Nations communities. Reflecting on the transition of First Nations from self-reliance in traditional times to the dependency of today, a CEO wondered, "What happened to us to be where we are now where

really the work ethic and ethical behavior has changed, has gone to dependency. What happened to us?’ (#20, iv. 7, p. 3). What happened to First Nations can be traced back to the 19<sup>th</sup> century when the government creation of First Nations’ dependency began. From that time onward, attacks on First Nations’ independence included the mass slaughter of buffalo, introduction of government rations, legislation to inhibit self-sufficiency, removing First Nations from their territories onto reserves where they could no longer live off the land, pushing First Nations to farm but then blocking their ability to farm when they outperformed white farmers, and the introduction of welfare on reserves (“A slow death,” 2001; Duschuk, 2013; Helin, 2006, Holmes, 2002; Milloy, 2008).

Why the federal government would promote their dependency is explained in Harold Cardinal’s book, *Unjust Society*: government could better control First Nations if they were dependent on the state. In that book, a Chief reflected on how his people went from being self-reliant trappers to welfare recipients and was quoted as saying, “the government had laid a trap for us, for they knew once we accepted welfare they would have us where they wanted us” (Cardinal, 1996, p. 53).

On the First Nations political front, it appears that the federal government’s agenda of control through dependency had now been assumed by band councils. The transference of control through dependency was illustrated by a senior administrator who observed that “somewhere, the people need to learn responsibility. The white man has created dependency through the *Indian Act* and our council just continues that” (#19, iv. 96, p. 24). A participant Chief also talked about how dependency was used in First Nations communities as a means of political control when he lamented, “We were told long ago not to take it, but we took it

anyways. That is called welfare money. We took it and still live on it today. We live on welfare and control each other with it” (#11, p. 68, p. 23).

The way in which control through dependency helps keep the political status quo intact was elucidated by a former Chief. She discussed the pattern on reserves where big families use their voting power to keep status quo Chiefs in power. Even if individual family members were unhappy with political issues, dependency made it difficult to go against clan voting because band resources would not be available to them unless their candidate won.

And again, you’re from that family, their council. So not too many people walk away. They’re usually, I guess, forced in some way to stay in that situation, because, again, lack of education. They are dependent on the band administration for, uh, either SA [social assistance] or work or housing or something. So they pretty much have to go with that (#7, iv. 10, 11, p. 4).

Not only were there benefits to be gained by being loyal to the clan vote, dependency often prevented community members from openly expressing their dissatisfaction with governance issues. Once more, First Nation author, Calvin Helin, reveals why:

It is not wise to criticize the Band Council if you are reliant upon them for welfare, employment, economic development grants, housing or whatever. While there are many Band Councils that temper the powers they exercise over community members, there are some that rule by out-and-out intimidation (2006, p. 153).

Punishment in the form of being cut-off from band resources would be detrimental to dependent nation members, particularly if they were uneducated and had few options to obtain employment off-reserve and become self-reliant. Dependency was a key reason why many

nation members stayed silent about unsatisfactory governance practices and preferred to vote with their clans that re-elected status quo leaders.

*Colonized.*

Participants believed that a colonized First Nations population also helped keep the political status quo in place. In a discussion about why some nation members seemed unresponsive to dialog about political change, an Elder reasoned, “Even if we keep telling them, they will never hear us because they’ve been indoctrinated. The indoctrination to the system, of the philosophy, has destroyed us but we don’t even know it” (#9, iv. 25, p. 6). Comparably, a band councillor expressed frustration that until recently, her band council had not addressed the effects of colonization with nation members. “We have to say, ‘Here’s where we are because of colonization. Where do you want to be? And where is your place in that? Or do you want to be stuck with the status quo?’ Are people happy with this?” (#2, iv. 146.4, p. 40).

Indian residential school, a fundamental tool of colonization, is something still not widely or easily discussed in some First Nations communities. This was the suggestion given by another Elder who said, “To this day [pauses], only when government forced us to talk about it we talk about it a little. But will still don’t talk about it” (#12, iv. 81, p. 30).<sup>25</sup> According to respondents, an end-product of colonization that helped to maintain the political status quo was fear. The origin of fear was attributed to the church-run Indian residential schools. In this regard, an Elder remarked, “We have been indoctrinated using Christianity. We have been made to be very fearful of changes” (#9, iv. 13, p. 4). How the Christian officials that ran Indian residential

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<sup>25</sup> This comment was in reference to the 2006 Indian Residential School Settlement Agreement between Canada and former Indian residential school students that resulted from a class action lawsuit. Those applying for settlement had to disclose information about their Indian residential school experiences (INAC, 2016a).

schools used religion to drill fear into First Nations was described by other participants. An Elder from different nation said that in his adulthood, he established a safe relationship with God through native spirituality. The reason he did this was “because in school [Indian residential school], I was told, ‘God is going to punish you’” (#16, iv. 88, p. 27). The Elder emerged from Indian residential school very fearful of God. During a conversation about why many nation members resisted political change, a Chief from a different nation also brought up religion-based fear:

We have been taught to be afraid of everything in the white man’s house of teaching [Indian residential school]. That’s what they did to us...If you are not afraid, they will tell you if you don’t do what they say, the devil will take you. You will be told you won’t be able to get into heaven. Who has seen heaven? Where is heaven? (#11, iv. 19, 20, p. 7).

Fear was believed to immobilize community members and cause them not to take a chance on change, including political reforms. Expounding this was a CEO who said, “You get comfortable, you get stuck in a rut, you don’t know any different, and there’s that fear of the unknown” (#17, iv. 99, p. 29). An Elder added, “we can’t get anywhere because of fear. There’s too much fear” (#12, iv. 138, p. 55). A Chief concluded that in order to deal with resistance to change, “Yes, you have to have the people let go of fear” (#11, iv. 21, p. 8).

***Some ways community members protected the political status quo.***

*They engaged in lateral violence.*

Anyone who was raised on-reserve or has spent considerable time there would have heard about the phenomenon known to First Nations citizens as “crabs in the bucket.” While there are several variations to this phenomenon, the basic scenario consists of a bucket of native

crabs. Any native crabs that tried to escape were pulled down back into the bucket by the other native crabs (Helin, 2006, p. 124). The crabs-in-the-bucket phenomenon is meant to demonstrate the lack of cooperation amongst First Nations people and thought to be a form lateral violence that resulted from colonization. Put another way, the seeds of lateral violence took root when First Nations people were planted at the bottom of society through colonization. Because of their disadvantaged position in society, First Nations were virtually powerless to confront their government colonizers above them. Thus, the alternative course of action was to engage in lateral attacks against fellow First Nations (Helin, 2006, p. 125).

A respondent band councillor saw the crab phenomenon at play within her nation when the newly elected Chief attempted to separate politics from administration. Apparently, nation members were used to the old leadership style of micro-management and resisted the new Chief's attempts at separation. "I think that's where the push back is because I think the new way of leadership which, our Chief is younger, he's quite educated, and he's moving us away from that" (#2, iv. 55, 56, p. 16). Recollecting the resistance her Chief faced as he tried to make political changes, the band councillor added:

He's very educated and very smart. And I think that also creates fear. When our people see people who are really smart, it's like crabs in a bucket. That's the challenge. We want him to be the best Chief he can be. But those resistors can really put a dent in to your wanting and your will to work hard (#2, iv. 67, p. 19).

The band councillor was saddened because "so much pain and lateral violence has happened in our communities." Given its destructiveness, her council had started to address gossip and lateral violence in their community (#2, iv. 70.2, p. 20). This council was wise to address lateral violence as it was often used as a way to resist change and could sometimes stop

change all together. Speaking about this, an Elder recounted how the previous leader in his community had been accessible to the people, was ethical and did a good job governing. The Elder became disenchanted because lateral violence by community members led to the departure of a good leader and return of the status quo leader. “A lot of people picked on him. So he stepped back and resigned. And this Chief got in,” he said (#16, iv. 81, p. 26).

*They tried to stop the implementation of policy.*

In addition to lateral violence, community members resisted political change in other ways. A participant Chief provided an example when he discussed community members’ resistance to the policy development efforts of his administration. Policies had been sent to community members in advance so they would have a chance to review them and make an informed decision. When the time came to have the community members adopt the policies at a general meeting, the Chief experienced frustration:

But it’s the same old story where you have band meetings and, “Well, I didn’t receive it.” “Well, it was delivered to your door and somebody signed for it.” And it’s usually the ones that don’t want to see change. They get up and fight and talk against it (#4, iv. 44, p. 12).

*They ousted leaders that tried to make change.*

Sometimes, community member resistance to change led to the ejection of visionary leaders. This caused visionary leaders to reconsider change all together. A respondent shared what happened when her husband became Chief and tried to make changes. Believing that increased capacity and healing from the legacy of colonization would lay the groundwork for successful change; this administration promoted education and implemented healing programs

for nation members. The respondent was taken aback because “people resisted change. It appeared they liked the programs that were running. But obviously there were many people that didn’t want that because [my husband] was voted out as Chief” (#19, iv. 40, p. 9). When her husband was overthrown, “we had to reflect back on what we went through. What we did, was it a good thing? Was it a bad thing?” (#19, iv. 43, p. 10). Later in the conversation, the respondent recounted how that experience had taught the couple a great deal about the strength of the status quo. “When my husband became Chief, we thought we would make changes,” she said. “We did make changes but the people taught us that it’s not what they want” (#19, iv. 152, p. 38).

*Large clans re-elected status quo leaders.*

Notwithstanding the *Indian Act* attempts to destroy all facets of traditional First Nations governance, as noted earlier, clan leadership selection remained. Regrettably, *Indian Act* elections created inequality in that the largest clans became the majority and had more political power than the smaller clans. The paradoxical effect of super-imposing elections and majority rule on traditional clan-based political systems was articulated by a CEO:

Quite often, you can have clan voting. Now, then that’s sort of instilled on by the patriarch of that clan, or head of that clan. And they say, “You guys are all going to vote for Joe Blow.” Not necessarily the way a democratic system should work. So now, we are trying to combine a democratic system, which is what we have entrenched in Canadians, with groups that aren’t necessarily accepting it that way (#17, iv. 15, 16, p. 5).

It was also mentioned previously how the *Indian Act* actively tried to replace the traditional First Nations principle of collectivism with individualism (Holmes, 2002). While it might have not succeeded in its efforts to terminate all features of traditional First Nations

governance, the *Indian Act* appeared to have made some advances in its promotion of individualism. Community member transition from collectivism to individualism was noticed by a former Chief who saw that the attitude of nation members was no longer “What are my obligations to the nation,” but “What can my Chief and Council give me?” (#14, iv. 137.2, p. 32).

A respondent community member saw that large clans used their voting power to advance their self-interest in the First Nation communities he had worked for. “Those families that exploited the system for the benefit of their own families or themselves became very powerful within the communities. That is obvious in any of the communities that you go in,” he said (#6, iv. 16, p.7). By electing their candidates into council, large clans were assured that the nation’s scarce resources, be they jobs, houses, renovations and other benefits, would be distributed to family members. Confirming this was a Chief who said, “People get together to elect a Chief to keep their jobs” (#11, iv. 135, p. 46). An Elder said much the same thing when he recalled that “Back in the old days, at least the people put in a leader they felt could think. But today, it’s not that way. Today, the people choose on who will help them. Unfortunately, this is how they elect leaders” (#9, iv. 88, p. 23).

Participants understood that block voting by large clans frequently prevented improvements to governance. Large clans had the power to keep the existing state of political affairs in place by re-electing the same leaders, usually their relatives, into council. An Elder who wanted political change was frustrated because, “You know, it’s tough because there’s too much relationship in one family. You know, like we have [*surname removed*], it’s a big family. And we keep putting the same guy in” (#16, iv. 78, p. 25). A band councillor from a nation that was traditionally hereditary preferred democratic elections but acknowledged the impact of

majority rule in clan-oriented First Nations communities. “And so, there are a lot of cons to that because communities can continue to have the same Chief and Council because their families are the biggest. That happens where I’m from” (#2, iv. 164, p. 45). Discouraged by the maintenance of the political status quo by large clans, an Elder complained that “once the election is done, whoever wins, it is back to what it was. It’s just different families helping themselves out. That is what it has become. There is no governance” (#12, iv. 28, p. 9).

### **Governance instruments.**

#### ***First Nations have become dependent on the Indian Act.***

Despite the political problems and underdevelopment it has caused over more than a century, First Nations became accustomed to the *Indian Act*. Not only were First Nations used to the *Indian Act*, a respondent band councillor said “We have a dependency on it,” (#5, iv. 3, p. 2). “Even this whole getting rid of the *Indian Act*, that’s all people know,” added a different band councillor. “And they like being called ‘Indian’. They feel there are certain benefits to it, the status and the cigarettes, whatever” (#2, iv. 38, p. 11). This statement suggested that some First Nations had become dependent on Indian status, a designation of the *Indian Act* which affords certain benefits like on-reserve tax exemption for goods and services. A former Chief thought the dependency of the *Indian Act* was also financial. “That’s why,” she commented, “a lot of our people don’t want to get rid of the *Indian Act*. It’s because that is their only source of revenue” (#14, iv. 125, p. 30)

For the former Chief above, dependency on the *Indian Act* was a result of colonization. Her years in leadership had provided this respondent the opportunity to observe First Nations people. As a result, she learned that “The biggest fear, I find, because the people are so colonized

and that's all they know is the *Indian Act*" (#14, iv. 51, p. 12). A community member had a similar conclusion. He explained that since the cultural foundation of First Nations had been "destroyed," they had no choice but to accept whatever was in front of them, in this case, the *Indian Act* (#6, iv. 26, p. 10). As a result, "it's hard to look at anything new because we've been using the *Indian Act* system for so long" (#6, iv. 81, p. 33).

***First Nations were apprehensive to part with the Indian Act.***

A CEO rationalized that First Nations were apprehensive to part with the *Indian Act* because "the fear of the unknown is way too great [pauses]. What is going to replace it? God only knows" (#17, iv. 44, p. 13). Speaking about the future of the *Indian Act*, the same CEO reckoned that "I don't think the federal government has the wherewithal to get rid of it because I don't think the First Nations will let them." (#17, iv. 43, p. 13). A look at history confirmed this respondent's statement as most attempts to rescind the *Indian Act* failed as a result of First Nations resistance.<sup>26</sup> The grounds for First Nations' resistance were that:

- They were not consulted. The federal government continued its paternalism through unilateral initiatives.
- The *Indian Act* protected Indian status and maintained government's fiduciary responsibility to First Nations.
- Repealing or reforming the *Indian Act* was a threat to treaty and Aboriginal rights (INAC, 2013a).

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<sup>26</sup> Failed attempts to reform or repeal the *Indian Act* include, among others, the White Paper of 1969, the Manitoba Framework Agreement of 1994, The *Indian Act* Optional Modification Act of 1996 and the *First Nations Governance Act* of 2002 (INAC, 2013a).

The inclination to protect the *Indian Act* was evident in some of the participant interviews. A respondent that had been Chief for many years recounted how he used to rebel against the *Indian Act* and federal control during his time in office. He did so because he wanted to correct the *Indian Act's* appropriation of First Nations' authority, responsibility and jurisdiction. But this Chief was told by fellow First Nations, "Well, we shouldn't mess with the *Indian Act*" (#15, iv. 45.2, p. 12). During this study's interviews, some respondents appeared to instinctively guard the *Indian Act*. To illustrate, in a discussion about whether First Nations should bid farewell to the *Indian Act*, a participant Elder cautioned, "You've got to be careful with that" (#16, iv. 47, p. 14).

The position of a former Chief from a different nation was similar to the Elder that just spoke. The topic of conversation was the future of the *Indian Act* and the fact that the AFN National Chief at the time had proposed that First Nations revisit the *Indian Act*. The reaction of the participant Chief was, "he is not a treaty Indian, right?" (#18, iv. 104, p. 26). After I answered the National Chief was from British Columbia and his nation did not have a treaty, the respondent Chief remarked, "They operate from a different government. And we operate from a different government from them" (#18, iv. 105, p. 27). He then added, "we are treaty...we've got land" (#18, iv. 106, p. 27). The mention of treaty rights within the context of moving away from the *Indian Act* signified that some First Nations believed the act protected treaty and Aboriginal rights, such as common reserve lands, and should therefore be retained.

***Policies were unwritten, easily changed or not followed.***

First Nations also relied on policies to operate their governments. A number of policy problems help keep the political status quo in place. For one, some band policies that participants had been acquainted with were unwritten. It was possible that because First Nations were

historically orally-based, that unwritten policies were viewed as consistent with oral traditions. Then again, because they were unwritten, policies could be simply changed to suit the leadership of the day. “Right now, there is not a lot of written policy that I’ve come across,” said a newly elected band councillor. “Depending on who’s in power, there’s different rules” (#2, iv. 54, p. 16). In a different community, a CEO believed that policies were the most important thing. However, some of his nation’s policies were unwritten and this had become problematic. The CEO reasoned, “you need something in writing that is entrenched because there are too many competing interests that can change things too easily with the band via BCR [band council resolution]” (#8, iv. 38, p. 8).

The nation above also had other policies that were written. Nevertheless, even the written policies were not followed. “Because the reality is that our policies are not being followed,” said the CEO. “They are not a tribal-wide, BCR initiated adopted policy” (#8, 64, p. 16). This participant felt that to fix the problem of non-compliance, policies should be passed by referendum. If they were passed by popular vote, council would be more inclined to follow policies and could not easily alter policies as membership would have to be informed of alterations. This CEO concluded it would be necessary to “have the membership say, ‘these are the policies and they will be followed.’ Then Chief and Council cannot undo it just by BCR” (#8, iv. 66, p. 17).

For another nation, council had developed policies but faced resistance from the senior band administrator when it tried to implement them. The Chief of this nation recounted what unfolded:

Well, first we tried to introduce policies and procedures. Because it was the administrator we were giving directive to, he kept stonewalling it because he would lose power. He could do things he wanted to without policies and procedures (#4, iv. 27, p. 7).

When it became clear that Chief and Council were not going to relent on the development and implementation of written policy, this nation's administration took another tactic:

For a while there, we were adopting some procedures, some policies. Again, administration was trying to get their idea of policies and procedures which was leaning more to protecting them so they could do what they wanted to do instead of just stand up straight policies and procedures (#4, iv. 38, p. 11).

In other cases, councils developed and incorporated practical policies, only to have them dismantled by succeeding councils. The aforementioned Chief talked about what often happened when a visionary leader that made change lost an election to the previous status quo Chief: "If they are gone and they get the old one back in, it don't take long for policies and procedures to go out the window. It takes four years to introduce and try and breathe life into policies and procedures. It takes about four years. It only takes six months to destroy it" (#4, iv. 67, p. 20).

A participant that was formerly a Chief had a similar experience and found it difficult to understand why successive councils would dishonour good policy decisions:

A lot of times, though, the problem with a new council is that, based on whatever reason, nothing that I can think of that is rational, they would take what the last council did and either completely dissolve whatever they were doing or stop whatever action they were working on, even though it's going to benefit the band as a whole. And that's a problem

too. There's got to be a mechanism where each succeeding council carries on (#7, iv. 46, p. 16).

A Chief from a different province answered the quandary of why some new councils discontinued previous political decisions and implements when he said, "a new Chief and Council, they are going to say, 'Well, that was put there by the old Chief and Council. I don't like it because I'm jealous of how they did it'" (#15, iv. 84, p. 22). In the mind of this Chief, continuity could be secured if governance implements were sanctioned by the tribe through referendum. That way, "for the next Chief and Council to change that, they have to go back to the people and seek their permission (#15, iv. 85, p. 22).

### **Economy.**

#### ***The Indian Act had negative impacts on First Nations economies.***

#### ***Indian Act land restrictions obstructed economic growth on reserves.***

Though the reserve system had begun to take shape as early as 1637, it did not become official government policy until 1829 (UBC, 2009b; Holmes, 2002).<sup>27</sup> Establishment of reserves had three purposes. One was to make more land available for settlers. The second was to accelerate assimilation through the sale, leasing and farming of reserve lands (Holmes, 2002). Third, government believed that reserves were necessary because First Nations had to be segregated until they were ready to assimilate (Coates, 2008, p. 2). The plan was to dissolve reserves once First Nations had been civilized and integrated into Canadian society (Holmes, 2002, p. 15).

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<sup>27</sup> The reserve system was part of the government's Indian Civilization Program, which was approved in 1829 (Holmes, 2002, p. 13).

As a brief reminder, the *Royal Proclamation* of 1763 established a fiduciary relationship by giving the government the responsibility to protect First Nations and their lands (Holmes, 2002; Leslie, 2002; Milloy, 2008). The *Indian Act* moved to uphold the government's fiduciary responsibility by designating reserve lands as common and granting title to the Crown. In addition, the *Indian Act* did not allow on-reserve property to be subject "to charge, pledge, mortgage, attachment, levy, seizure, distress or execution" (*Indian Act*, 1985, section 89).

While the original intention may have been protection, land restrictions within the *Indian Act* made economic development difficult for First Nations. Land restrictions precluded First Nations from using reserve lands to secure financing for economic development. Addressing the effects of land restrictions on economic independence, Dr. Raybould explained that the *Indian Act* made First Nations wards of the state and prevented them from generating capital on reserve. This was done, he said, by taking "reserve lands out the market" and replacing First Nations economy "with a system of wardship that led to an unhealthy degree of dependency on the federal state" (2006, p. 10). Though economic development under Indian Affairs was an option, it was time consuming and costly (Raybould, 2006). Indian Affairs acknowledged that in addition to "cumbersome bureaucratic processes" for economic development and the "under-sourcing" of First Nations, the *Indian Act* prevented First Nations from "leveraging a secure land base, accessing capital and attracting private sector investments" (INAC, 2013b, p. 5, 7). Having witnessed its effects on economic development, a participant Chief criticized land restrictions within the *Indian Act*:

I think with that system in place, it's very hard for First Nations to really become successful in terms of economic development. Because again, under the *Indian Act*, the lands are held in trust by the Crown, Her Majesty, and in this case, the federal

government. You're restricted by what you can do with that land. As a result, outside entities, business and banks don't loan money to businesses on reserve because there are restrictions (#7, iv. 5, p. 2).

Elaborating further, the former Chief continued, "They can't go in and seize if something goes wrong. So, therefore, the banks will not loan" (#7, iv. 7.2, p. 3).

Because crown title and *Indian Act* land restrictions made economic development difficult for First Nations, some critics believed that the privatization of reserve lands would lead their economic self-reliance. The Stephen Harper government also believed this and in 2012, announced its intention to introduce the *First Nations Private Property Ownership Act*. This act would allow amenable First Nations to convert reserve lands into private property. With title transferred from the Crown to them, First Nations would have full authority to manage their lands and could use reserve lands as collateral to attract investment. Furthermore, since the pending legislation included fee simple property ownership, individual members could use their reserve property as collateral to obtain mortgages and loans for the purpose of starting small businesses (Alcantara, 2012; Curry, 2011a; First Nations Tax Commission, 2012).

First Nations' opposition to the privatization of reserve lands was widespread. Nearly all Chiefs of the Assembly of First Nations voted against on-reserve private property "with only three dissenting votes" (Curry, 2011b, para.8). Chief Robert Louie of the Westbank First Nation called the pending legislation "ridiculous" and argued that its purported benefits could be achieved through the *First Nations Land Management Act* without privatizing reserve lands (Narine, 2012). He attributed the economic success of his nation to the *First Nations Land Management Act* and said that investors were comfortable with the leasing arrangements made possible by this law (Curry, 2011b).

Stewart Phillip, the Grand Chief of the Union of BC Indian Chiefs, explained the apprehension of First Nations to privatization. “The fear is that it would completely erode the communal land base, because it would give the ability of individual property owners within a particular community the ability to sell their property” (Ferrerias, 2012, para. 23). First Nation lawyer and academic Pamela Palmater was concerned that poverty could cause the loss of entire reserves because poor families would likely sell their plots of reserve land just to afford basic needs (2010, para. 24). A respondent Chief had similar worries about privatization, saying, “That means they can end up selling pieces of the reserve. What’s going to happen there? How are they going to get that back?” she said (#7, iv. 87, p. 29).

First Nations feared that the *First Nations Private Property Ownership Act* would have the same effect as the *1887 Dawes Act* in the United States. The intent of this act was to assimilate Native Americans by turning collective reserve lands into private property. Native American families became the owners of their plots of reserve land:

The act was premised on the so-called “civilizing power” of private property, but within 30 years, all it had done was shatter traditional governance structures and help hand more than two-thirds of all American native land – an area the size of Germany – to white settlers. Today, the Dawes Act is seen as a social catastrophe in league with Canada’s Indian Residential Schools (Hopper, 2013, para. 19, 20).

A participant former Chief was concerned that what happened with the *Dawes Act* would happen in Canada. She was aware that because individual nation members had sold their plots of reserve land, reserves in the United States now looked like “checker boards” (#14, iv. 167, p. 40). Anxious about the pending legislation in Canada, this respondent’s council had met with the Blackfeet Nation in Browning, Montana to discuss the privatization of reserve lands:

We met with the Browning people and they told us, “You have to be careful. This is what’s happening to us on our reserves because we kept our people, our members, and their non-member spouses came in. They passed those on and our lands were sold. So, it’s like a checker board. Now we are in the process of trying to buy them all back to get back our collectivity” (#14, iv. 168, 169, p. 41).

This respondent concluded “that’s what is going to happen to us if people don’t wake up. If our leadership doesn’t wake up” (#14, iv. 170).

Pam Palmater saw little difference between the *Dawes Act* and the *First Nations Private Property Ownership Act*. She was convinced that privatization would dismantle First Nation lands and “...ultimately lead toward full cultural and political assimilation” (2010, para 26). Given the fear and widespread opposition to the privatization of reserve lands, many First Nations were undoubtedly relieved when the Harper government’s 2015 election defeat drastically reduced the likelihood that the proposed *First Nations Private Property Ownership Act* would become law.

*The Indian Act designated reserve lands as common but promoted individual ownership.*

Traditionally, First Nations viewed land collectively. According to the Royal Commission on Aboriginal Peoples, “Tribal or band territories – often thousands of square kilometers – were communal property to which every member had unquestioned rights of access” (RCAP, 1996, Volume 2, Part Two, Chapter 4). Colonists believed that individual property ownership would advance the assimilation of First Nations and pressured them to privatize their territories. But First Nations resisted “since it ran counter to tribal custom of communal ownership of reserve land” (Leslie, 1982, p. 49). Nevertheless, the colonial belief that

private property was necessary for advancement was unwavering. The belief subsequently made its way into the *Indian Act* and its predecessors which designated reserve lands as common but pushed First Nations to individualize reserve lands (Holmes, 2002). For example, Indian legislation of the 1850s protected Indian land but also allowed First Nation individuals who had enfranchised to assume plots of reserve land and turn them into fee simple lands (Holmes, 2002, p. 17). Though title remained with the Crown, the *Indian Act* also permitted individual First Nations to legally possess allotments of reserve lands through certificates of possession (INAC, 2013e). In addition, individual First Nation families could occupy, without title, plots of reserve land for the purpose of improvement (Leslie, 1982, p. 43).

Today, most reserve lands in Canada remain common. That said, the push by government to individualize seems to have impacted the First Nation collective view of land. On many reserves, plots of reserve lands are considered to be owned by the extended families that lived there. As the presumed owners, those plots of reserve land have been kept in the family for generations and handed down to other family members. Speaking about this practice, a respondent Chief said, “And in a way, that is a form of an ownership, you know? Especially if it’s handed down from father to child to child” (#15, iv. 68.2, p. 19). Another participant said that under the *Indian Act*, his people owned all reserve land in common. “But the practice started to be occupancy. So there’s occupants,” he said. “So the misconception [pauses]. But it is practiced so it almost is this way, individuals own the land” (#20, iv. 93, p. 26).

Indian Affairs was aware of this practice and explained, “Some First Nations allow use of lands to families and individuals through custom or traditional holding, sometimes referred to as informal holdings” (INAC, 2013e, paragraph 9). A few participants disagreed that informal holding was cultural or traditional. “Our culture is collective,” said a respondent. “That’s a

collective culture. The land belongs to everybody. No individual owns it” (#14, iv. 187, p. 45). Participants were also concerned that First Nations believed they owned reserve lands but were unaware of the truth: that reserve lands were owned by the federal government. “We still do not even own the land,” said one respondent, “We think we own it, but the title is still under the Crown” (#8, iv. 3, p. 1).

The informal holding of reserve lands by families often obstructed economic development because band councils had a difficult time accessing those lands for economic use. “We now have the minds of white people, private property,” remarked a participant Chief, “but in reality, we cannot find a way to make that work” (#11, iv. 139, p. 48). The Chief proceeded to share details of the difficulties that informal land holdings caused to economic development on his reserve. There had been an area on the reserve that band council had slated for economic development. However, during a period when this Chief was not in office, the extended family that believed it owned that plot of reserve land had the houses of family members built there and fenced the land, essentially cutting that plot off from economic development (#11, iv. 142, 143, p. 49). A participant Chief from a different nation had identical problems with informal land holdings on his reserve:

And so, when you are raised with the belief where it’s sort of like we all own the land. Nobody owns the land. The land owns us and we are just living there. But now, it’s “I want to fence this off. This is mine. Nobody is going to come on it and use it.” And that’s not the way (#13, iv. 16, p. 4).

Even though reserve lands were common and individual ownership did not exist in Canadian law, it would be difficult for a band council to recover informally held lands, even if there were needed for economic development. This was because recovery attempts would cause

family land holders to become defensive and could lead to intense conflict. Reflecting on these types of experiences when he was Chief, a participant learned that “land disputes are a tough one” (#15, iv. 67, p. 18). In reference to informal land holdings, another respondent said within his tribe, “The biggest dispute that could lead to violence is the land tenure system” (#20, iv. 89, p. 26). He continued that upon election, Chief and Council were faced with highly charged nation member conflicts over reserve lands. He stated that “They are confronted with that. And these are 50, 60 year old issues that people feel haven’t been resolved” (#20, iv. 94, p. 26).

In addition to the threat of violence, there is the risk that leaders trying to recover informally held reserve lands could be ejected from office. In an environment of majority rule and kin-based leadership selection, large families carry considerable political clout. Leadership would be hesitant to attempt recovery because the families that informally held lands needed for economic development would likely be political supporters. Thus, leaders that attempt to recoup informally held lands could very well see their defeat in the next election.

Some Chiefs undertook to resolve the informal land holding issue so that a degree of economic development could occur on needed plots. This was mainly done by compensating families for use of informally held reserve lands. One respondent Chief appeared to suggest that common ownership made those families owners and therefore entitled to partial compensation. The Chief discussed a plot of land that was sometimes subject to dispute because council leased it to motion picture companies. The Chief shared how this dispute was resolved: “I say it doesn’t matter if people are fighting for individual tracks of land. If we own it in common, let’s give them compensation. We did that too. When there are movies, we pay a little bit of money to the people that claim that land. But we take the rest” (#11, iv. 158, p. 55).

A different Chief shared that his band council had actually developed a compensation policy for use of informally held reserve lands. “Like, when we used to mine sand and gravel from somebody’s area or place of habitat, their family. We did disturbances to the land or noise. Should we pay this amount for the compensation or this amount? And so, they set a standard for compensation” (#13, iv. 44, p. 11).

***Internal politics impeded economic development.***

Participants pointed out internal politics also hindered economic growth within their nations. First was the outright blockage of business by band council. A respondent said that when nation members wanted to develop their own small businesses and become self-sufficient, band council would use its power to block small business start-ups. “And let the people go on their own to make their own businesses,” said the respondent. “Here, we can’t. People that want to make their own businesses get road blocks everywhere they go” (#8, iv. 17, p. 4). The respondent’s nation was also part of a larger tribal council that consisted of a number of member nations. If one member nation wanted to start a business, it required the support of the other member nations. Blockage of business also occurred at that level in that member nations were often unsupportive of a fellow nation’s business proposal. This participant was frustrated because his nation needed additional income but was stopped by the other nations when it wanted to start a business:

And the other bands are like, “Oh, no, I don’t want [pauses], those guys can’t build that. Don’t let them build that.” Sheesh. At least there will be jobs that aren’t dependent on the band or government. You’ll be selling services and keeping money in the community. And hopefully, you’ll be tapping into the outside” (#8, iv. 173-175, p. 49).

A second problem was that some on-reserve businesses made money but were unable to grow any further because band council used profits for other purposes and did not re-invest in business. A respondent shared that businesses on her reserve suffered. “Even our gas station, the gas station makes a lot of money. But because leadership takes that money, it never grows,” she said (#19, iv. 115, p. 29). This respondent added: “If Chief and Council were business-minded, they would create motels somewhere. They could create apartments somewhere. It would bring in more money to create more things. If you do those things on the reserve, it has a very difficult time growing” (#19, iv. 116, p. 29).

Another respondent was suspicious that band council was not re-investing because it was using that money to get re-elected. A sure way to get re-elected was to give out free money to nation members. “So let’s not invest in the development corporation and grow more businesses and re-invest that,” said this respondent. “Let’s do distributions and give it out” (#20, iv. 55, p. 16). An Elder from a different nation also implied that reserve businesses were not growing because profits were being used for political reasons. “The separate band-run businesses inside the reserve, just to keep the status quo, they can probably still function. But that won’t work if they want to expand. It is inevitable that leaders have insecurity” (#12, iv. 37.2, p. 12). This insecurity stemmed from the fear of not being re-elected and thought to contribute to the political use of business profits.

Third, the lack of separation between politics and business interfered with successful economic development. One respondent’s nation had a casino on its reserve that consistently underperformed. The respondent complained that although the casino had a board structure, “it’s still the Chief and Council on there” (#18, iv. 118, p. 30). It was the opinion of this respondent that if reserve businesses were going to be successful, politics had to be separated from business:

If it's going to be true economic development, it needs to be under a corporate structure. But the corporate structure needs to have a different way of appointing people to the board. If the Chief and Council have influence again in that structure, it won't work (#18, iv. 120, p. 31).

A participant from another nation echoed the need to separate politics from business:

You've got to have a separate independent business corporation, development corporation, away from politics. You need to do that because business is to make money. Governance, however, whatever is wrong with it, has a different purpose. And if you mix the two, your ec-dev projects are going to go haywire (#20, iv. 54, 55, p. 16).

The fourth problem pertained to the credibility of some First Nation leaders and its impact on economic development. Conveying this was the participant CEO who said that band councils needed to learn about the "capitalist chicken" if they wanted to see successful economic development in their communities. Describing the effect as the "certainty of costs of doing business," the respondent offered a scenario where an investor knew and trusted a neighbouring Chief because he was good for his word. On the other side was the Chief who the investor did not know or trust because "you said you were going to do this, you didn't do it. You took a whole bunch of money. If it becomes a decision between the two of those, the capitalist chicken will always go where it's [money is] less likely to get lost: (#17, iv. 199-201, p. 63). "That's why you don't get investment onto your reserves," he explained (#17, iv. 203, p. 64). According to this CEO, once the trust was broken, investors would never touch that First Nation again (#17, iv. 212, p. 67).

Finally, the same CEO also suggested that leaders who were difficult to work with could thwart economic development. “And that’s why you’ve got some pipelines in this province that run straight, go around a nation, and go straight because it wasn’t worth going through there,” he said (#17, iv. 220, p. 69). Lamenting on lost economic opportunities, the respondent added, “That nation could have been [pauses]. The nation that it goes around in northern Alberta could have been reaping the benefits” (#17, iv. 221, p. 70). This CEO often reminded the member Chiefs of his tribal council that petroleum companies were allowed five miles of directional drilling:

It’s like a lake that you take a straw [pauses]. If you’re not somebody they can work with, what they’ll do is, and you’ll see this on lots of reserves [pauses], you’ll see all sorts of pump jacks around the parameter of a reserve. Where do you think they’re pulling it from? It’s the same one that’s underneath your lands, right? Because the reservoir under the reserve is either bigger than the land, or whatever. But they can drill under.

Remember, you have surface rights. You don’t have mineral rights. So the thing is, all the resources are getting drained and the First Nations are getting no benefit whatsoever because they are so difficult to work with that the companies won’t work with them (#17, iv. 222-224, p. 72).<sup>28</sup>

The respondent suggested that by being combative, First Nations did a disservice to themselves:

You can say, “Oh, well, I’m standing up for myself. And that’s great to be principled. But at the same time, where is that balance point? A good leader has to know where that

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<sup>28</sup> The title to on-reserve sub surface rights, including oil and gas, is held by the Crown and managed in trust for the First Nation (Indian Oil and Gas, 2014).

balance point between being principled and providing for your nation (#17, iv. 226, p. 71).

### **Treaty and Aboriginal rights.**

#### ***Treaty and Aboriginal rights were not protected.***

A few respondents expressed concern that First Nation leaders were not protecting treaty and Aboriginal rights. Two examples provided by the respondents were failure to defend traditional sustenance rights and residency rights.

The former Chief who had strived to maintain balance between resource development and treaty rights shared that in the years since she vacated the office of Chief, she saw that her nation was not protecting treaty rights. On the surface, it appeared the nation was doing well as it had been engaged in natural resource development and was fairly wealthy. Nevertheless:

I can't say they are protecting treaty rights. At least, I'm pretty sure they're not if they are cutting down trees, drilling wells and making roads and all of that into all the trap lines. But I think that they're just not making good decisions (#7, iv. 70.2, p. 24).

Another respondent was disappointed that the right of First Nations to decide who resides on their reserve lands was not defended. He thought band leadership ought to challenge provincial and federal governments for infringement of the nation's residency policy. The respondent provided an example of provincial courts ordering non-nation members to house-arrest on his reserve. He was concerned that band leadership had done nothing to protect its rights or policy and remarked, "and nobody takes that up as anything. It's just accepted. So you're letting people erode your rights" (#8, iv. 135-138, p. 37).

When infringement occurred, one way First Nations defended their treaty and Aboriginal rights was through the legal system. There have been high profile cases, usually about Aboriginal title, where First Nations triumphed through the Canadian legal system. Yet, other First Nations had not prevailed through the court system. In addition to astronomical legal costs and lengthy legal processes, the lack of success through the courts partly explained the inaction of some band councils when their treaty and Aboriginal rights were violated. Moreover, First Nations often did not trust the Canadian court system because it was a foreign institution that originated from colonial authority and was likely loyal to interests that did not align with First Nations' interests. This was the indication given by a respondent when she stated:

And a lot of our people don't like to take the treaty to court because it's the Canadian court system, not ours. And they're governed by the Constitution Act, you know. So we don't want our [*pauses*]. There are some that tried and they never got justice in the court system. (#14, iv. 115, p. 28).

From the statement above, it appeared that the fear of not getting a fair trial prevented many First Nations from defending their treaty and Aboriginal rights through the Canadian legal system.

***Some First Nations people feared self-government.***

Participants reported fear of self-government in some of their communities. Indications of fear sometimes surfaced through the BC treaty process, the main avenue through which modern-day self-government could be implemented in that province. A respondent whose nation was involved in the BC treaty process wondered if her fellow nation members wanted to be in control of their own systems or, for that matter, even wanted change. She disclosed that her nation

struggled with treaty because nation members seemed to be satisfied with the status quo and were afraid of change (#2, iv. 148, p. 40). Elsewhere, a band administrator revealed that the community she worked had a referendum on whether the nation should remain in the BC treaty process. “80% said no. I was shocked,” she said (#3, iv. 39, p. 14).

Apprehension about self-government was not exclusive to BC. First Nations from Alberta reportedly kept a close eye on the progress of the BC nations that had implemented modern day treaties. A respondent from Alberta disclosed that self-government in BC had been given mixed reviews by Alberta First Nations. He commented that “some of the guys in BC have done great. But not all of them. Unfortunately, there are ugly stories coming out” (#17, iv. 45, p. 14). It was the view of this participant that ugly stories exacerbated the fear other nations had about self-government. Part of the fear related to funding because at the conclusion of a modern self-government agreement, settlement money was issued and the continuation of government funding became conditional.<sup>29</sup> The respondent revealed that apprehensive nations speculated on what would happen if the self-governing nation spent its settlement money in the first eight months. “So, who’s going to bail us out? There’s a huge fear of that happening,” he said (#17, iv. 49, p. 15).

Still within the province of Alberta, a participant Elder talked about the fear his fellow nations members had about self-government. “If you say ‘self-government, the people are very afraid,” he said (#9, iv. 33, p. 8). One reason some community members were cautious about

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<sup>29</sup> For example, the Tsawwassen First Nation (TFN) self-government agreement was finalized in 2007. The TFN website states that under self-government, the nation will continue to receive funding transfers from federal and provincial governments for the operation of programs and services, but funding transfers are subject to the TFN own source revenue agreement ([www.tsawwassenfirstnation.com/general-info/reports](http://www.tsawwassenfirstnation.com/general-info/reports)). Section 13.1 of that agreement states that TFN own source revenue will be taken into consideration when calculating federal block transfer amounts (INAC, 2010b).

self-government was they were afraid it meant assimilation. Conversing about how governance might be improved, the above Elder stated that a constitution was fundamentally important. But, “whenever I say that, the response is, ‘Oh, we are being turned into white people.’ They understand it in that way. That is their perception,” he said (#9, iv. 37, p. 9). That First Nations feared assimilation was understandable given that government had spent centuries trying to assimilate First Nations into Canadian society through various means. The constant pressure to assimilate continues to present day and contributed to the mistrust of government.<sup>30</sup> That mistrust could block the road to autonomy if First Nations were suspicious that government may be trying to assimilate them under the guise of self-government.

***Some First Nations people feared the loss of treaty and Aboriginal rights.***

The other reason participants gave as to why First Nations people feared self-government or other political change was the loss of treaty and Aboriginal rights. An Elder revealed that when his community faced change, “the Elders say we are going to lose our treaty rights. Those are scare tactics. That’s what maintains status quo” (#9, iv. 14, p. 4). The fear that any political change might result in the loss of treaty and Aboriginal rights was inadvertently revealed by a former Chief. Governance in his community had not been functional. When he was Chief, there had been discussions by tribal council about revamping the entire governance structure. “We talked about a constitution,” he said, “A mandate that was blessed or agreed upon by the people” (#18, iv. 207, p. 53). He contemplated a riding system through which all families would be equally represented at the political level but then concluded, “But we have to make sure we don’t

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<sup>30</sup> The proposed 2012 *First Nations Private Property Ownership Act*, which called on First Nations to desert their traditional collective land rights in favor of western individual land rights, was considered by many First Nations as another government attempt at assimilation.

lose the signatures [on the treaty]” (#18, iv. 225, p. 56). These statements indicate that fear about the loss of treaty and Aboriginal rights was strong and helped maintain the political status quo.

### **Cultures and traditions.**

#### ***Some leaders used band custom election codes to their advantage.***

In 2009, a memo internal to Indian Affairs came to the attention of media that stated of the 333 First Nations that had adopted band custom election codes, 60 were unwritten and based on oral traditions while others lacked clarity and were outdated (Curry, 2009, para. 11). Respondents brought up this issue and felt that unwritten or ambiguous rules left the door open for some leaders to use band custom election codes to their own advantage. An Elder explained that when the band custom election system was first introduced to his nation, tribal leadership failed to research the rules of authentic traditional selection procedures and nobody within the nation knew what tribal custom meant (#9, iv. 4, p. 1). The Elder added: “I think that’s where the problem started. When we were ready to run it by band custom, the Chief failed to inform the membership about rules that we would follow. That’s how it came about. Band custom was interpreted according to what suited the Chiefs” (#9, iv. 5, 5.2, p. 2).

A respondent Chief had learned the practice of band custom elections was contingent on the Chief-of-the-day. With respect to this, the Chief remarked, “If you ask what is meant by custom, it means that half is done by written document and the other half is done by whoever can speak the most eloquently (#11, iv. 43, p. 14). A CEO suggested that unclear and fluid band custom election rules could be misused for political purposes. “Our election system is [pauses], I think it’s a [pauses], it’s a custom election system,” he said. “But it is so open to

misinterpretation and manipulation. If it can be changed by BCR. It's not really a solid system" (#8, iv. 36, 37, p. 8).<sup>31</sup>

Some respondents shared examples of how band custom election codes were used by tribal politicians to advance their agendas. The most extraordinary case was where a Chief manipulated his nation's band custom election code in an effort to stay in power. The Chief and his supporters were said to misinterpret traditional leadership selection practices by arguing it was customary for nation Elders to have authority over leadership selection and decide who was eligible to run for office. As told by a respondent, "They used an Elders' committee that would be established, that would hold more power, working in conjunction with a sitting Chief, than the rest of council. The Elders' committee would approve, in the future, who would ever get to run (#8, iv. 41, 42, p. 9). Reinforcing the point, the respondent added, "they tried to implement a policy on a custom election where the Chief could put his own Elders' committee together that would verify whoever would get to run in the future" (#8, iv. 45, p. 10).

In addition to having Elders control candidate eligibility, the Chief proposed that the term of office be extended from two years to four years. Though the proposal to extend the term was objectionable, most worrisome for this respondent was the amount of power a small group would have to decide the fate of the entire nation: "It wasn't even the four year part that was scary. It was the amount of power that would be directed by one person through his own hand-picked relatives controlling who even gets to run in the future. That was the scary part" (#8, iv. 45.2, p. 11). In lieu of a referendum, a survey was proposed that would serve as the mandate for the band custom election code revision.<sup>32</sup> Indian Affairs provided funds to a former Indian Affairs

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<sup>31</sup> BCR stands for band council resolution.

<sup>32</sup> For a nation to convert to a band custom election code it must be approved by the community through majority vote or another manner the nation or Indian Affairs has agreed upon (INAC, 2015a).

employee to develop the survey for this Chief. “It’s crazy how it happened,” said the respondent. “And the Government of Canada provides the resources, provides the person to do it in conjunction with the Chief” (#8, iv. 45.3, p. 11). Apparently, the Chief circulated a survey of the proposed changes to a specific group of nation members. Based on the affirmative results of the survey, the Chief cancelled the upcoming election and extended he and his council’s term to four years.

Outraged, opposing nation members raised funds, hired legal counsel and took their Chief and Council to court. The court ruled in favour of the dissenting band members, forced the Chief and his council to step down immediately and ordered an election held within 30 days. Speaking about the vulnerability of oral history and how time could weaken people’s memory of authentic traditional leadership selection practices, the respondent observed that:

A lot of our stuff is not written. And now, I think we’re getting to the point where people have different views on the past. It’s kind of now, it’s almost unreliable what people [pauses]. Over time, things get forgotten or changed. A lot of the evidence given even in this federal court case was contradictory. Different Elders and different viewpoints. But I think it ended up being a good decision because it cut down to the realities that our membership was manipulated by a group. It became obvious through the court proceedings. You could see what was happening. It became obvious to the court that it was not being done in fairness to the band membership. Even when there were examples of other bands doing it a little differently, they chose not to follow that example. They chose to go a different way and impose an extra two years onto an existing term, which I don’t think in Canada you can do that. Or even in the world, unless you’re an Arab ruler somewhere (#8, iv. 51-54, p. 13).

The above scenario was a prime example of how culture and tradition could sometimes be used for insincere political reasons. In fact, a Chief from another community indicated that First Nation leaders must be vigilant in their use of culture and tradition in governance because to do otherwise could be damaging. In his words, “if you don’t use that wisely, if you don’t have somebody in there that will use it wisely, it can hurt your people. That’s the cultural aspect, the traditions we’ve been talking about” (#13, iv. 114, p. 32).

A second concern participants had about band custom elections was that election disputes were heard by the newly elected council. This presented an obvious conflict of interest situation because many of the candidates subject to election disputes had become members of the newly elected council. A CEO acknowledged there were big differences with band custom election codes across the country. But some codes were problematic because protesting band members had to appeal to the sitting council. The CEO felt “there’s a fundamental flaw with that, right?” (#17, iv. 24, p. 8). To illustrate the conflict of interest, an Elder from a different nation shared a story about a recent band custom election in his community where a sitting Chief had not allowed the nomination of his rival to stand. The reason for dismissing the nomination was that the rival’s nominator had been released from incarceration several months earlier. Although he had returned to the reserve immediately upon his release, the nominator was deemed not to qualify because he did not reside on the reserve. The rival candidate appealed the dismissal of his nomination which was promptly rejected by the Chief and his council:

The election regulation was constructed by the council. There is a conflict of interest there. If there is someone you are afraid of involved in the conflict, you won’t allow their appeal. This is what happened. They were afraid that [*name of rival removed*] would win again. The seconder had been in jail, so that’s the excuse they used (#9, iv. 76, p. 20).

The Elder continued that had the rival candidate decided to take the matter to court, he would have likely won because the nation's band custom election code conflicted with human rights legislation (#9, iv. 77, p. 20). Certainly, the Indian Affairs Conversion to Community Election Policy required band custom election codes to be consistent with the Canadian Charter of Rights and Freedoms which included the rights of off-reserve band members to participate in elections (INAC, 2015a, section 2). Taking this into account, the Elder appeared to be suggesting that it should not have mattered if the seceder resided on or off reserve.

Human rights legislation has been a controversial issue for First Nations because it protects individual rights first and foremost. The crux of the controversy is that traditionally, First Nation societies were collectively-based. Because of this, western individual rights should not supersede their cultural collective rights (Moss, 1990). Interestingly, the Chief that tried to control leadership selection through kin-Elders and extend his term to four years based his legal arguments on the principle of collectivism. He argued that Elders traditionally had the right to decide for the collective. Having gone through that experience, the respondent who shared the story about this Chief did not agree that collective rights should outweigh individual rights. He was of the opinion that fairness and equality should override tradition in certain areas. As one of the plaintiffs of the court proceedings, the respondent disclosed, "we argued that the people, as band members, have rights that were stepped on" (#8, iv. 104, p. 30). The respondent preferred to see equality for each band member. "As long as our traditions can be worked in somehow, then that would be good policy," he said. "But if tradition is going to be overriding somebody's rights, I don't think we should be entrenching that" (#8, iv. 105, 106, p. 30).

Perhaps it was problems like the ones described above that led an Elder from a different nation to declare, "Then came band custom. A dictatorship was put in place at that time" (#12,

iv. 24, p. 8). When asked for clarification, the Elder replied, “When band custom was put in place, it became a dictatorship. From that point on, they [the federal government] said the only person they would listen to was the Chief” (#12, iv. 26, p. 8). The latter comment alluded to the fact that once nation adopted a band custom election code, Indian Affairs no longer had jurisdiction and ceased to be an appeal body. With no external body to turn for help, nation members with election grievances had few options but to resort to expensive court processes. This was true for the nation members who had to take their Chief and Council to court because Indian Affairs would not assist them. With situations like these, it is little wonder the Elder felt like band custom election codes had created dictatorships.

*Other ways culture and tradition were used to control the political agenda.*

As well as the manipulation of band custom elections, some leaders used culture and tradition in other ways to control the political agenda. One way involved the use of Elders by leadership. A former Chief recounted past councils of her nation had used Elders, “But to me, they used them in the wrong way” (#7, iv. 147, p. 52). When I asked how they used Elders in the wrong way, the respondent answered:

And they would use them against industry too. I saw that. I just thought, well. And industry, again, they know that Elders are to be respected and so on. And rightly so. So industry would be sitting there tight lipped and couldn't do anything. So, they would use Elders, to some extent, like that. It did work for them. But I never did that because to me, that's really abusing and making Elders do something” (#7, iv. 148.2, p. 52).

In another community, a respondent Chief reported that a nation member was trying to control the political agenda according to his interpretation of culture. Because this individual had

been admitted to the nation's spiritual society, he viewed himself as superior to the sitting council and therefore had ultimate authority over political decision-making. As recounted by the respondent Chief, "Well, he was initiated into one of our sacred things and he was using it as culture, 'You have to listen to me because I am'" (#4, iv. 113.2, p. 33). In this case, the nation's Elders intervened by talking to the individual and reminding him of his rightful place in that community (#4, iv. 113.3, p. 34).

Finally, a CEO was frustrated by how some First Nation leaders silenced their opponents by labelling their criticism as untraditional or culturally inappropriate:

So the whole answers of, "Oh, it's the Indian way," or "You're thinking too white," I just hate those frigging arguments...As soon as a person makes a statement questioning what may be the status quo, automatically, you're a racist. Automatically, you're a white thinker. It's the crab mentality" (#17, iv. 28, 29, p. 9, 10).

### **The Emerging Theory**

The general question of this research was how First Nations achieved and maintained effective governance. The answer can be found in the above discussion about the impact of the legacy of colonization on the journey to good First Nations governance. This troubling impact was particularly evident at the maintenance stage of the journey where legacy-related influences stifled political change and helped keep the status quo in place. That observation led to the following hypothesis: *First Nations that wish to achieve and maintain effective governance must navigate the legacy of colonization.* Colonization has created obstacles that must be carefully navigated if effective First Nations governance is to be achieved. Such obstacles include obtaining the support of leaders that are fearful of change and need to keep their supporters

content if they are to remain in power, community members who are dependent and do not want to lose access to scarce reserve resources, fear that moving away from the *Indian Act* will result in the loss of existing rights and relieve the federal government of its fiduciary obligations, fear that opting out of *Indian Act* land restrictions for the purpose of economic development will lead to the permanent loss of reserve lands, fear that self-government will lead to assimilation, and finally, confusion about cultural practices that might help improve governance.

Participants indicated that the band council Chief was in the best position to initiate and lead political change. Based on participant experiences, below are examples of how a Chief with a vision for effective governance must navigate legacy the colonization.

### **Leadership.**

Unless a nation has reverted back to a hereditary system through a band custom election code or self-government agreement, a Chief cannot make decisions alone. He or she must have a majority of council members agree to their governance improvement strategy. It has been learned that the legacy of colonization contributed to lower rates of education in First Nations communities. In addition, the *Indian Act* instituted an election system based on settler society practices. It also exacerbated self-interest through the promotion of individualism. A visionary Chief trying to get council to approve his or her governance improvement plan will probably face opposition from councillors interested in remaining in power. They will be reluctant to agree to any proposal that makes it difficult for their supporters to access band resources. If council members upset their supporters and were thrown out of office, their lack of education and training would make it difficult for them to make a decent living. To get approval for his or her political change strategy, the Chief will have to figure out a way to reduce the fear that council members had about losing the next election.

### **Community members.**

Even if council was to move in favour, political change would be impossible without the support of the community members. In addition to minimal education, colonization has resulted in high rates of dependency among the community members. With little means to be self-sufficient and dependent on band resources, community members will be fearful of any change that may cause them even more hardship. Likewise, it is doubtful that extended families would support political change that jeopardized their access to scarce band resources. Thus, a Chief with a vision for change must navigate dependency and tread carefully on community members' means of support for if the Chief is not re-elected, he will be of no good to anyone.

### **Governance instruments.**

Earlier it was revealed that many First Nations dislike the *Indian Act* but do not wish to part with it. First Nations fear that departure from the *Indian Act* would end the federal government's fiduciary obligations to them. By staying under the *Indian Act*, fiduciary responsibilities would continue and existing rights protected (Coates, 2008, p. 8). Fear that fiduciary obligations and rights would be lost has contributed to most First Nations staying under this highly problematic legislation. With this reality, a visionary Chief must try to improve governance under the legal structure that created the nation's political problems in the first place.

### **Economy.**

The former regional Chief for the Assembly of First Nations, BC Region, articulated the interdependence between governance and finances when she wrote, "Despite the best intentions of our leaders, without access to adequate financial resources, the vision and hopes of our people will not be met. While effective governance is a prerequisite for stable and healthy societies, it

costs money” (Wilson-Raybould, 2011, p. 483). First Nations leaders understand this interdependence and have looked to reserve lands to develop their economies. *Indian Act* land restrictions have made it difficult for First Nations to develop their economies. At the same time, the *Indian Act* has protected reserve lands from being lost.

The *First Nations Land Management Act* has provided an opportunity for First Nations to opt out of *Indian Act* land restrictions and use reserve lands to attract investment without having to privatize. To adopt a land management framework agreement, a nation needs the approval of its community members through a referendum (First Nation Land Management Resource Centre, 2017). While more nations are moving in that direction, it seemed that some nation members were afraid that entering into the land management regime would relieve the federal government of its fiduciary responsibility to protect reserve lands.<sup>33</sup> This fear likely contributed to the defeat of a number of land management framework agreement referendums.<sup>34</sup> Consequently, many Chiefs with a vision for change would have to attempt economic development within the limitations of the deeply oppressive *Indian Act*.

### **Treaty and Aboriginal rights.**

Deliberating improvements to governance, a respondent Elder said “changes are very difficult to make under the *Indian Act*. It’s almost impossible to do it. But then, you can do it by self-government agreement” (#9, iv. 9, p. 3). For many years now, First Nations have known that implementing their inherent right to self-government would create the conditions needed for effective governance. Yet, out of the 600 plus First Nation communities in Canada, there are

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<sup>33</sup> As of January 2016, 36 First Nations had land codes under the First Nations Land Management Act while another 59 First Nations were in progress (INAC, 2016c).

<sup>34</sup> The First Nations Land Management Resource Center website, current to 2017, showed that several First Nations’ community referendums were defeated. (<https://labrc.com/membercommunities>.)

only 22 concluded self-government agreements that involve 36 communities (INAC, 2015b, para. 4). Once again, First Nations people fear that self-government would mean the loss of existing rights. Considering that the BC treaty process required First Nations to give up their Aboriginal rights in exchange for treaty, this fear was not farfetched (Alfred, 2000). Like any major agreement, a nation that wanted to enter into a self-government agreement would have to seek the approval of nation members. If a Chief's vision included self-government, he or she would have to traverse the fear that community members have about the extinguishment of their Aboriginal rights if a self-government referendum had any hope of passing.

### **Cultures and traditions.**

A central aspect of the federal government's mission to assimilate First Nations was to destroy their cultures (Holmes, 2002; Leslie, 2002; Milloy, 2008). Once they ceased being native, First Nations would be integrated into Canadian society as English speaking Christians, detached from their own languages, belief systems, and ways of being. Attacks on culture ranged from punishing Indian residential school students from practicing their cultures to the outright legislative ban of cultural practices. Prolonged attacks seemed to have caused the cultural memories of some First Nations to become interrupted or unclear. This has resulted in disagreements between community members about the definition of some cultural principles and practices including those that pertain to governance. Since community members expect their leadership to follow culture, a Chief's vision of effective governance would have to include cultural principles and practices. To achieve his vision of a governance structure complemented by culture and tradition, the Chief would have to steer her or his way through differing opinions and about the right way "to do culture" and avoid the potential for conflict.

### **The Moral of this Dissertation Story.**

The message and significance of this study is this: the legacy of colonization makes the pursuit, possible achievement and sustained maintenance of good First Nations governance extremely challenging. Through the process of colonization, First Nations have faced considerable loss in virtually every aspect of Indigenous life. First Nations have lost, among others, their autonomy, traditional governance, rights, lands, the ability to be self-sufficient and cultural practices. The magnitude of what First Nations have lost through colonization is enormous and profound, and has inevitably resulted in an institutionalized fear of more loss. This fear of loss makes political change in First Nations communities gruelling and has helped keep the status quo in place. A former Chief shared that he tried to run his government in a new direction but had a tough time “because right now, the status quo is very strong” (#18, iv. 5, p. 2). A councillor from another nation observed that First Nations communities “just get stuck.” Fatigued by the legacy of colonization, nation members “get tired and do the status quo” (#2, iv. 5, p. 1). Because of fear, change tends to be slow in many First Nations communities. A CEO, for example, was discouraged because change on his reserve, “on the inside, it seems so slow sometimes” (#3, iv. 157, p. 44). He continued that “it’s really hard to move anything. It’s such a slow [pauses]..... There’s too much money involved. There’s too much entrenched. It’s almost impossible to move things” (#8, iv. 159, p. 44).

When changes in governance did transpire, it was difficult to maintain because the effects of colonization often led to visionary leaders and their changes being tossed out. As a consequence, the journey of effective governance would be delayed, regress or disrupted. The aforementioned CEO alluded to the constant interruptions of change on his reserve when he said, “I think it’s part of the culture that we just keep spinning wheels in a lot of ways” (#8, iv. 87, p. 23).

Despite the culture of spinning wheels, participants had not lost hope that political change within their nations would happen. They recognized that if lasting change was to occur, First Nations needed to heal from the legacy of colonization. A former Chief believed that for change to endure, First Nations needed to “get away from residential school and learn back our ways, our traditional ways” (#14, iv. 24, p. 7). A band administrator added, “I think in First Nations communities, we’ve lost a lot historically. I think there was a lot of harm done to us as people, as individuals. Those things have to stop” (#3, iv, 127, p. 47). When I asked what she meant, she implied the need for healing by suggesting that First Nation people should not carry historical hurts their entire lives “because your whole life is affected by it. It’s the same thing with governance” (#3, iv. 129, p. 48). Finally, an Elder asked, “How can we heal ourselves?” He understood that since First Nations had been impacted by the legacy of colonization for so long, that healing would not happen quickly. The Elder continued, “If we want to see a positive result, it will take maybe ten years. We have to develop a long-range plan. We have been indoctrinated into the system for over 100 years” (#9, iv. 27, p. 6).

Of course, healing from the legacy of colonization will not be the only thing required for governance improvements in First Nations communities. Along with healing are a multitude of other factors that would contribute to effective First Nations governance including legislative reform, implementing treaty and Aboriginal rights including self-government, capacity building, cultural strengthening and strong economies. Nonetheless, lasting governance improvements would be repressed if the fear of loss remained. In the minds of participants, healing from the legacy of colonization was the first step in alleviating that fear, the first step on the journey to self-determination and effective governance.

## **CHAPTER EIGHT**

### **Conclusion: Theoretical Reflections**

#### **The Validity of My Research.**

For Strauss and Corbin, the purpose of a grounded theory study is to generate a valid grounded theory that speaks to the issues and concerns of research participants (1998, p. 265). To assess the validity of my research, I utilized validation strategies for qualitative studies suggested by John Creswell, an academic leader in qualitative research (2007). While there are eight proposed validation strategies, Creswell recommended that at least two be applied to the study (2007, p. 209). I used the following strategies to validate my study.

#### **Peer debriefing.**

In peer debriefing, the researcher shares the research process and findings with a peer. By asking questions about the methods and analysis and providing feedback, the peer helps the researcher keep on course and accurate. I was most fortunate to have a fellow First Nation PhD student as my peer. This person grew up on reserve and had direct experience and knowledge about First Nations governance. Throughout the research process, my peer and I had several in person and email discussions about my research. As a result, my peer was able to corroborate the experiences of the participants and confirm the findings of my study.

#### **Clarifying researcher bias.**

During the introduction of this project, I followed the lead of Indigenous research methodologies and located myself in the research. I revealed my First Nation ancestry, disclosed that I grew up on reserve, had attended Indian residential school and was impacted by the legacy

of colonization. I also revealed that my mother had been a long-time band councillor and that I had been directly exposed to band politics for most of my life.

In qualitative research, a researcher is expected to acknowledge her bias and be cognizant of its influence on the study (Creswell, 2007). Strauss and Corbin recognize that it is impossible for a researcher to be unbiased. A researcher is shaped by her culture, experiences and background and brings this into the research. However, a researcher should be careful not to let her “bias, assumptions or beliefs” intrude on the analysis (1998, p. 97). Indigenous research methodologists, on the other hand, believe that for Indigenous research to be ethical, a researcher must be positioned in and connected to the subject matter so the study accurately represents the participants. Thus, an Indigenous researcher should speak from her own position and in her own voice (Absolon & Willett, 2005, p. 104, 105). Because I utilized an Indigenous approach using a grounded theory methodology, I felt conflicted between Strauss and Corbin and the Indigenous research methodologists. The way I reconciled that conflict was to be careful not to let my judgements impose on the analysis. I simply went by what the participants said and let their voices guide the analysis. However, I was aware that because I was First Nation, I had an intimate understanding and appreciation of participant experiences. Having an insider perspective helped because I knew what the participants were talking about and was able to accurately portray their experiences. This, in turn, made the study more authentic.

### **Member checking.**

The purpose of member checking is to establish the credibility of the study by having participants verify the data, analysis and findings (Creswell, 2007). I engaged in member checking in three ways. First, I tested my interview questions with the first few participants to see if the questions flowed and got to the issues that mattered to them. Based on their feedback, I

modified my questions several times. Second, I sent each participant their interview transcript and asked them confirm that their comments were correct. Third, I reviewed my theoretical scheme and emerging theory with a participant Chief and asked for his thoughts. Based on his feedback, I made some modifications and felt confident the theoretical scheme and emergent theory accurately reflected participant experiences.

### **Criteria for Evaluation**

To help evaluate the empirical grounding of a grounded theory study, Strauss and Corbin recommended the study be assessed against a number of criteria (1998, p. 270). In the following discussion, I will evaluate the merit of my study using the suggested criteria.

#### **Criterion 1: Are the concepts generated from the research?**

All of the concepts that were generated in my study came directly from the data. The words expressed by participants were analyzed and then conceptualized.

#### **Criterion 2: Are the concepts systematically related?**

The concepts generated from the data were systematically linked according to their similarities and differences. These linkages resulted in the categorization of the concepts, which in turn, led to the development of the major categories and sub-categories.

#### **Criterion 3: Are the categories linked, well developed and have conceptual density?**

The results chapters of this dissertation showed in detail the linkages between the major categories (motivators, visions, actions and maintenance) and sub-categories (the six actors). Conceptual density was achieved by developing properties and dimensions of the categories and sub-categories. This density was reflected in the report's description of categories.

#### **Criterion 4: Is there variation built into the theory?**

There is substantial variation built into my theory. The theoretical scheme showed there were various conditions (motivators and visions), each with multiple stimuli (from the six actors). There were also multiple actions that took place that were perpetuated from various actors. These actions, in turn, produced different consequences that ranged from status quo to evolution.

#### **Criterion 5: Are the conditions of variations explained?**

Strauss and Corbin state that the phenomenon should include conditions under which it can be found. The conditions should be included in the analysis and explain how they affect actions. Conditions, they say, could include anything from economic factors, policies, laws, and culture (1998, p. 271). In my study, the core phenomenon was the legacy of colonization and its effect on good First Nations governance. I noted that the conditions that created this phenomenon included the *Indian Act*, Indian residential schools, and inter-generational trauma. Conditions related to the legacy, such as poverty and legislative oppression, were what motivated and led to political change. It was also legacy-related conditions, such as fear and self-interest that led to different outcomes of actions. I can say with confidence that conditions of variations were fully explained in my study.

#### **Criterion 6: Has process been taken into account?**

Strauss and Corbin explained that identifying process was important as it enabled readers to see how actions changed under certain conditions. They recommended that process be described in phases so that movements over time in response to conditions could be seen (1998, p. 271). My study accounted for process in response to conditions and determined that

achievement and maintenance of good First Nations governance was a journey influenced by many conditions that could steer governance towards improvements or the status quo.

**Criterion 7: Do the theoretical findings seem significant?**

Strauss and Corbin warn that it is possible to do a grounded theory study but not produce findings that are significant. To increase the likelihood that a theory will be significant, the researcher must gather quality data, possess good analytical skills, have theoretical sensitivity, and communicate the findings clearly (1998, p. 272). I followed all of the sampling, coding and theory-building procedures of Straussian grounded theory and believe that I communicated the theoretical scheme clearly through diagramming and explanation.

I do realize that the legacy of colonization and its impacts on First Nations people is not a new discovery. What I did not realize was how the legacy of colonization continues to impact every area of First Nations life. I came into this research not thinking about the legacy of colonization in relation to band council and community governance. Through my study, I learned that governance problems in First Nation are not a result of inherent corruption as the media would have us believe. Instead, *governance problems have historical roots that continue to affect the quality of governance in First Nations communities*. So for me, what I learned from this study was significant. I emerged from the study with a much deeper understanding about the complexity of First Nations governance and a greater appreciation for the honourable First Nation leaders that have to wade through the treacherous waters of colonization in an effort to get to more effective governance.

**Criterion 8: Does the theory stand the test of time. Are the theory's ideas discussed among relevant social and professional groups?**

The legacy of colonization theory does stand the test of time in the sense that it has gone on for 200 years and continues to impact First Nations. However, it is too early to determine if my theory about leadership having to navigate the legacy will stand the test of time. Moreover, the social group of First Nations continue to talk about the legacy's impacts and possible ways to recover. But professional groups have not discussed my theory's ideas for the simple reason that it has not been published.

### **Limitations to the Study.**

The participants in my study came from reserves in two provinces, were all governed by the *Indian Act*, represented a cross section of those involved in First Nations governance including leaders, senior managers, Elders and community members, and consisted of males and females that ranged in age from young adults to seniors. Participants came from 12 First Nations communities and political organizations in Alberta and BC. Despite a broad cross-section of participants, the findings of my study are not generalizable to all First Nations people and communities. While most live under the *Indian Act*, are affected by colonization and will have shared experiences with the participants, First Nations in Canada are diverse with unique experiences and approaches. Thus, the emergent theory is not representative of all First Nations in Canada. It only applies to the participants of my study.

The other limitations to this study concerned methods. For one, the idea behind grounded theory is to gather data, analyze the data and generate concepts, then go back into the field and gather more data based on these concepts. This was difficult for me to do because each interview was about 1.5 hours in length and took considerable time to manually transcribe and analyze. Adding to the problem was that sometimes, I had several interviews in one day or one week which did not give me enough time to transcribe and analyze between interviews. In these

situations, I had to do a quick analytical scan of the transcripts to get an idea of the concepts contained within them. I then used these concepts to guide the next interviews.

Second, most of the participants had busy schedules and were only available for one interview. Although they agreed to answer questions at a later date if I required further clarification, their busy schedules often did not allow for this. Fortunately, participants were quite clear in their interviews and for the most part, clarification was not needed. However, there were a few times where I was unclear about what a certain phrase meant. In these cases, I was able to obtain clarification from literature or other written materials on the subject. In a discussion about economic development on reserve lands, for example, a participant said it was important to remember that First Nations only had surface rights. Since the topic was about petroleum reservoirs on reserve lands, an electronic investigation eventually led me to a government agent website that confirmed the Crown had title to subsurface rights on reserve lands.<sup>35</sup>

Finally, through my research I discovered that First Nations governance is a vast and complex topic with many actors, responsibilities, influences and variables at play. Had I written about everything the participants said, the length of my dissertation could easily have been 500 pages or more. To keep my dissertation at a reasonable length, I had to be selective and include topics that seemed the most significant. I determined that the topics that were most important to participants were those they mentioned most frequently. Therefore, I only included the most mentioned topics in my study and, of course, do not represent everything there is to know about First Nations governance.

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<sup>35</sup> Indian Oil and Gas Canada [www.pgic-iogc.gc.ca](http://www.pgic-iogc.gc.ca).

## **Closing Remarks**

Visionary and courageous First Nations leaders wishing to move towards effective governance face tremendous obstacles. They must contend with fellow leaders and nation members that are colonized, dependent and fearful, a tribal economy that rivals the third world, a federal law that continues to oppress communities, a federal government that still believes in assimilation, treaty and Aboriginal rights that are not recognized and cultures that have been chipped away at by colonization. Given their enormity, it is amazing that many First Nations leaders have been able to manoeuvre their way through or around these obstacles and roadblocks and go some distance toward some measure of effective governance. These leaders are to be commended for their skills, strength and determination. But in the absence of decolonization, strong economies, self-government and the restoration of certain traditions, the efforts of these leaders will be lost. Some say the damage of colonization runs too deep and political problems are too big to fix. Nevertheless, just like those that participated in my study, I am optimistic that our nations will recover from colonization and I will see lasting governance improvements in my lifetime.

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## Appendix A

### General and Sub Interview Questions

1. What motivates First Nations to move from the status quo to effective governance?
  - 1.1 What do you think causes First Nations to move from the status quo to effective governance?
  - 1.2 What are the factors that contribute to change?
  - 1.3 Can you describe any incidents or circumstances that led to change?
  
2. How do First Nations achieve effective governance?
  - 2.1 How do First Nations know the type of political changes it needs to make?
  - 2.2 How is effective First Nations governance structured? What is the model?
  - 2.3 What are the steps for making governance improvements?
  - 2.4 What are some of the characteristics of effective First Nations governance?
  - 2.5 How are rules made in an effective governance system?
  - 2.6 How are decisions made in an effective governance system?
  - 2.7 How are disputes resolved in an effective governance system?
  - 2.8 How is accountability implemented in an effective governance system?
  - 2.9 What is the role of culture and tradition in an effective governance system?
  - 2.10 What are your thoughts on the Indian Act and Indian Affairs?
  - 2.11 What are your thoughts on a business model of governance?
  - 2.12 Is there a connection between governance and economy?
  
3. How do First Nations maintain effective governance?
  - 3.1 How do First Nations get community support for governance changes?
  - 3.2 How are leaders and community members that don't want change dealt with?
  - 3.3 How do you deal with the colonized mind and negative thinking about change?
  - 3.4 How do you ensure that future councils don't dismantle effective governance?
  - 3.5 How do you ensure that governance changes continue to meet the needs of the nation and nation members?

## Appendix B

### The Dissertation Research of Terry Fox – A Briefing

#### Who is Terry?

I am a member of the Stoney Tribe in Morley, Alberta. We are Sioux (Nakoda). I was born and raised on-reserve.

I am a PhD student with the School of Public Administration, University of Victoria

I left my reserve in 1995 and moved to BC for university.

I finished my bachelor's degree in 1998 (VIU), master's degree in 2001 (UVic), and then worked for 8 years as an Executive Director for Vancouver Island First Nations health.

I resigned my job and started the PhD program in 2009.

I completed all the course work, passed the comprehensive exams and designated a PhD candidate.

#### Why I Need to Do This Research

I am conducting this research as part of the requirements for a doctorate degree in public administration.

#### Title of My Research:

A Vision Realized: Effective First Nations Governance in Contemporary Times

#### The Purpose of My Research:

The purpose of my dissertation research is to understand and explain how today's First Nations achieve and maintain effective governance.

#### The Three Main Research Questions:

1. What factors motivate First Nations to move from the political status quo to effective governance?
2. How do First Nations achieve effective governance?
3. How do First Nations maintain effective governance?

*Note:* The interview will be conversational style. In the actual interview, the above questions will be asked, but there may also be other questions that arise as a result of the conversational nature of the interview.

#### Research Methodology:

I will be using a combination of Indigenous research methodologies and grounded theory methodology to guide this research.

#### Who I Plan to Interview:

I plan to conduct 30 interviews and want to interview community members, Elders, administrators and council members from various First Nations communities in BC and Alberta. I have chosen to interview in these provinces for reasons of access and convenience and will not be comparing First Nations provincially.

### The Interview Procedure:

- Overview of research
- Review and signature of Informed Consent
- The interview will take approximately 1.5 hours. I may call the participant afterwards if clarification is needed.
- The interview will be tape recorded and I may be taking notes.
- Participants will be provided with a copy of his/her transcript so they may check for accuracy.

### Confidentiality and Anonymity:

I am required by the Uvic Ethics Board to protect the confidentiality of participants.

I will do this by not using their names and identifying characteristics, and the names of nations, in my transcript, the research report and other publications.

There may be limits to the anonymity of participants if band/tribal council or supervisory permission is required to interview. Despite this, I will make every effort to protect participant anonymity by not disclosing the details of our interview with band/tribal councils or supervisors. I will also refrain from confirming whether participants agreed to participate and will not use their names, identifying characteristics, or the names of their communities in my transcripts, research report or other publications.

### Dissemination of Results:

The results of my study will be shared with others in the following ways:

- The research report will be read and approved by my Dissertation Committee.
- The research report will be available through the UVic Library.
- The research report, or parts of it, could be published in a journal article or chapter of a book if the opportunity presents itself.
- The data could be analyzed by me or others for purposes other than this dissertation.
- Upon request, the research report will be shared with participants and their band/tribal councils.
- I am also happy to present my findings in person to band/tribal councils of the participants upon request.

### Contact Information:

If you have any questions, I can be contacted at:

Phone: 250-618-3121

Email: [terryfox@uvic.ca](mailto:terryfox@uvic.ca)

**Appendix C**

**Form #1 – Participant confirmation of Chief & Council permission to be interviewed**

I, \_\_\_\_\_, confirm that I have obtained the permission of the  
\_\_\_\_\_ Chief and Council for me to be interviewed by Terry Fox  
from the School of Public Administration, University of Victoria for her dissertation research, *A Vision  
Realized: Effective First Nations Governance in Contemporary Times*.

\_\_\_\_\_  
Participant Signature

\_\_\_\_\_  
Date

**Form #2 – Chief & Council permission for participants(s) to be interviewed**

I, \_\_\_\_\_, Chief/Councillor of the \_\_\_\_\_  
First Nation, confirm that Council has provided permission to Terry Fox, a PhD student from the School  
of Public Administration, University of Victoria, to interview the following nation members for her  
dissertation research, *A Vision Realized: Effective First Nations Governance in Contemporary Times*.

*Names of Participants:*

- 1.
- 2.

\_\_\_\_\_  
Chief/Councillor Signature

\_\_\_\_\_  
Date

**Form #3 – Participant confirmation that permission from Chief & Council to be interviewed is not required**

I, \_\_\_\_\_, confirm that permission is not required from my Chief and Council of the \_\_\_\_\_ First Nation for me to be interviewed by Terry Fox from the School of Public Administration, University of Victoria for her dissertation research, *A Vision Realized: Effective First Nations Governance in Contemporary Times*.

\_\_\_\_\_  
Participant Signature

\_\_\_\_\_  
Date