



## Nation Building and Re-building ~ Supporting First Nations Governments' Capacity: Fall 2010 Planning and Dialogue Forum

### Report to the AFN December 2010 Special Chiefs Assembly

On November 8 & 9, 2010, the Assembly of First Nations gathered First Nation leaders, policy makers, and supportive partners for two days of focused dialogue on issues of critical importance to our governments. This summary report presents some highlights of the Forum and outlines next steps. Additional information and presentations are available on [www.afn.ca](http://www.afn.ca).

The Fall 2010 Planning and Dialogue Forum heard from First Nations on their experiences and reflections on how First Nation governments could be supported in exercising jurisdiction in key areas of government such as law making; institution building; land and resource management; public administration & community engagement; fiscal management and intergovernmental relationships.

Through presentation directly by those First Nations already engaged in some of this work, we began the important dialogue about how we can advance the rate and pace of change.

As Grand Chief Mike Mitchell from Akwesasne said in the opening plenary:

*"Each First Nation will have to carve out what they see will suit their purpose, has to reflect culture, history and tradition of your nation. For us that's a tall order."*

This work is not easy and all First Nations – regardless of their current situation and where they want to go – require tools and supports to get there.

The role of the Assembly of First Nations is to facilitate the conversation and sharing of experiences among First Nations, and to work with Canada and other governments to foster the conditions under which First Nations can further their goals. As well, AFN can advocate for the tools and support required by First Nations and work with leadership to build a framework that respects our rights and advances - as a central objective – our jurisdiction within Canada.

Panelists and participants at the Forum brought forward their unique experiences in a number of areas, and a number of common elements where capacity and support was critical emerged. A brief summary follows.

## Interdependent and Affirmed Institutions

Too often, First Nations do not have institutional support to implement laws as they have envisioned and are forced to rely on institutions that continue to promote Euro-western models of decision-making, and contain processes and remedies inconsistent with First Nations, which exercise remedies far outside of their control.

This is seen time and again where First Nations have attempted to move beyond the Indian Act framework and developed processes to reflect their own decision making – such as developing an elections code – only to have the resolution of disputes taken out of the community, through Federal Courts.

In areas of justice, non-First Nations courts apply Canadian laws to First Nation citizens – and often contain approaches and punishments which are inconsistent with how the Nation would choose to work with its citizens for restitution, rehabilitation and reintegration.

At the Forum, Chief Peter Johnson spoke about the Teslin Tlingit Administration of Justice Agreement – an agreement that establishes establishment of a traditional justice system based on Tlingit values and customs that provides for a Peacemaker Court, enforcement and corrections.

*“At the end of the day, it is not about shame and blame, but empowering them to make change, and allowing the people to see the good side of who we are as people and as Tlingit. It is not only our challenge, it is our responsibility.”* Chief Peter Johnson, Teslin Tlingit

Participants at the Forum also heard about the Treaty Four Governance Model, which has one of its principles that *“dispute resolution is a key component to all governance developments”*, and establishes that settling disputes in a respectful way that incorporates traditional principals and practices, improves the quality of life for Treaty Four citizens.

The Forum also heard from Peepeekinisis which follows a custom decision-making model where family heads and elders exercise consensus decision making. The community has been challenged by how disputes are resolved, and are struggling with precedence setting by Federal court and associated implications on community decision-making.

What participants expressed firmly – across the forum – is that while independence is necessary to resolving disputes, *interdependence* and trust of the community for any process or institution is critical to its success.

Also critical, is the embodying of First Nations approaches and principles within institutions. Merrell-Ann Phare of the Centre for Indigenous Environmental Resources spoke to the creation of a First Nations Water Commission, which would “*seek to harmonize laws, reduce duplicity in roles and responsibilities*” and bring greater clarity to the exercise of jurisdiction.

## Land and resource management

First Nations land tenure and property rights issues on reserves, and within First Nations traditional territories, are an important element of self-determination and economic development strategies for First Nations across Canada.

The respective roles of collective landholding and individual property regimes, and views on the relationship between “certainty” of tenure and the ability to maximize economic development opportunities within domestic and global economies, are a focus of some current debates.

The Forum had two panels that specifically focused on land tenure and a panel on resource management that focused on water. Strong support was expressed for collective title and exercising clear decision making over territories and resources, including the importance of securing resource revenue sharing.

Presenter Arthur Manuel underlined the importance of asserting economic interests in considering land management “... *we don't want to go to the Department of Indian Affairs to talk about this. We don't want to go to the provincial government to talk about this. We want to go to the economic sources that the Canadians and the [provincial] governments depend on. Push them on this issue. If you don't do it at that level, you're not going to address the economic consequences of land rights.*”

Different models for achieving this were explored – including proponents of a Private Property Ownership initiative and communities under the First Nations Land Management Act.

As Chief Austin Bear from the Muskoday First Nation said: ... *when the Elders spoke of the Framework Agreement and the consideration of the Muskoday land code, these were their words: It's about time that the Muskoday First Nation reclaimed jurisdiction and control over our lands and resources and removed the Minister of Indian Affairs as Indian agent and his decision making authority over us*”.

## Public Administration and Accountability

A competent and well functioning public administration is crucial to exercising jurisdiction – as this is the mechanism through which political direction is carried out through the development of policies and guidelines. Public administration is often the every day face of a government in communities and is the primary interface with citizens. As such, transparency, openness, consistency and fairness are critical to an effective public administration.

These principles are achieved through human resource development, and the development and application of standards for ensuring that administration staff function as competent and independent professionals. As presenter Christa Williams from the BC First Nations Public Service noted: “*First Nations are exercising their decision-making rights and responsibilities through governments and administrations that strive for excellence in community service.*”

The Forum heard from organizations currently involved in sharing, training, or setting standards for First Nations Public Administration, such as the Institute for Public Administration and the Aboriginal Financial Officers Association.

There was a clear call for support for First Nations governments in terms of outlining roles and responsibilities and providing tools to deliver excellence in public administration. Also, there was an admission that the *Indian Act* framework and funding within which most governments operate remains a hindrance to innovation and growth of public service standards.

The Forum heard from clear and well-established examples of First Nations governments pursuit of accountability, and how that has transformed their communities.

Jeff Slivocka from Membertou First Nation outlined the commitment required by community leaders to ensure that processes were adhered to in light of constant calls for improved efficiency and increased results.

Chief Paul Eshkagogan from Sagamok First Nation expressed: “*Most importantly, creating a system of accountability, transparency, representation and responsibility to the community was the most critical step we took in moving our nation forward*”.

## Community Engagement

Consistently expressed across panelists and participants was the clear need to ensure robust and consistent processes for community-based decision making. Dan Bellegarde from Treaty Four shared that *“the most important lesson learned in the Treaty Four Governance Institute is the need to engage communities, to inform and involve.”*

Fred Tolmie, CEO of the Nisga’a Lisims Government provided an outline of how the Nisga’a moved forward on its agreement: *“The leadership is confident - public debate happened 20 years ago and there was a clear mandate, which was confirmed every year leading up to the agreement. Throughout the negotiation, they reviewed the agreement with view to staying within mandate and implementing the will of people, with the single most important goal in: to improve the quality of life of the people”*

## Intergovernmental Relationships

Governments require capacity to interact with other governments – to discuss principles of trade and commerce, interaction of laws, movement of people between jurisdictions, among other matters. The Treaty relationship and the experience of Treaty making provides the principles of partnership, sharing and fair-dealings. This is not however how the relationship with Canada and Canadians has proceeded over time.

Promising practices emerging in intergovernmental relationships can be seen in through the development of strong First Nation protocols around consultation and accommodation, yet further capacity is required for enforcement of these protocols where they exist, and for First Nations without protocols to develop these.

The Forum heard from Chief Commissioner Saunders of the Cree Nasakpi Commission, who spoke about their experiences in ensuring negotiated terms were maintained, and challenges in working with other governments – including the high turnover of public servants and lack of corporate memory. He asserted that First Nations need to be “unrelenting” in their pursuit of adherence and respect for Aboriginal and Treaty rights – both historic and modern.

As Chief Robert Louie, Westbank First Nation reiterated: *“The government wanted us to get out of 91(24), but the bottom line was that we need to keep the government on the hook, and have the best of both worlds. You make laws, and the federal government is obligated to follow. That is what I encourage: keep them on the hook.”*

Education was explored as a case study of advancing jurisdiction through agreement, and similar challenges to ensuring follow-through on the part of governments were identified.

## Supporting and Strengthening Unity within and among Nations

One common theme that emerged and ran through all discussions at the Forum, was the need for unity in the face of challenge and opposition – while still maintaining deep respect for diversity.

Grand Chief Mike Mitchell, Akwesasne: “... *we have to think beyond divisions; the Indian Act was forced on our people, we were not waiting for it*”. This sentiment was echoed by Chief Gerard Julien of Paq'tnkek First Nation: “*The hardest thing to get around is our mandates as Indian Act chiefs. Working together is key, but the Government focuses on divide and conquer.*”

As Chief Peter Johnson added “*We need to come together as a people. There is the power of cohesiveness. In the Yukon we could be stronger if we had all 14 nations under a self-government agreement instead of just 10. Governments will put all kinds of roadblocks in our way. We need to put a cohesive vision in front of them.*”

### Next Steps

Consistent with our role of national advocacy and facilitation, AFN is advancing direction from First Nation leadership and confirming the path forward. This direction forms the basis of a framework of key elements to be advanced. These elements identify what is required to support and enhance First Nation governments in fulfilling the direction of their citizens.

We will work to enable, encourage and support success – including to identify and remove the barriers that inhibit initiative and innovation and facilitate access to the building blocks that support First Nations capacity.

As Chief Morley Googoo said at the Forum: *The leaders we're waiting for is every one of us*”.

The Fall 2010 Planning and Dialogue Forum is part of the broader discussion with First Nations on a series of efforts, facilitated at the national level, driven in many cases by regional and Treaty groups and, ultimately, approved by First Nations peoples themselves.

Change will require the full engagement of our peoples and this dialogue is not over.

An engagement paper was distributed for comment in Montreal, and we are seeking feedback on four questions to assist in the development of a framework. Please join us and let us know what you think:

- ❑ In your experience, what has been the most important resource required for Nation building?
- ❑ What are the key steps / activities for Nation building?
- ❑ In your experience, what resources were most important to the success of your endeavours?
- ❑ What is the appropriate role for other governments and/or private sector in supporting Nation building?

In this way, we hope to facilitate the exploration of options and assist with practical tools and analysis to enable and support First Nations to take the path they choose, and provide a supportive framework for consideration to leadership at the 2011 Annual General Assembly.

The following presentations are available on [www.afn.ca](http://www.afn.ca):

- The Treaty Four Justice System: Alternative Dispute Resolution Projects
- Nisga'a Lisims Government
- Nation Building and Rebuilding – Supporting First Nations Governance: Citizenship Models
- Noront and our Community Partners
- Six Nations of the Grand River MRP Law – Development of a Community Based Law, Our Experiences
- First Nation Human Rights Models, Southern First Nations Secretariat
- Westbank First Nation
- Framework Agreement on First Nations Land Management – Proven Results
- Effective Public Service: Developing a Strong First Nations Public Service (AFOA)
- First Nations Public Service Capacity Building
- Effective Public Administration: Developing a Strong First Nations Public Sector (IPAC)
- First Nations Governments Demonstrating Accountability – Sagamok Anishnawbek's Story
- Land and Property Rights: Scoping the Issues & Options
- New approaches to Aboriginal Rights in Treaties
- "As Long as the Rivers Flow" Governance: Water Rights and Resource Management
- First Nations Water Management
- Building a Better Election System for First Nations Holding Elections Under the Indian Act
- Gitksan Hereditary Chiefs
- First Nations Finance Authority
- Atlantic First Nations Government Finance Authority – A limited partnership
- Mi'kmaw Kinamatneway (MK)
- First Nations Education Jurisdiction in BC: *Negotiations and Update*