

**The First Nations Governance Act:  
Implications of Research Findings  
from the United States and Canada**

**EXECUTIVE SUMMARY**

In the spring of 2002, the Office of the British Columbia Regional Vice-Chief of the Assembly of First Nations (AFN) asked the Native Nations Institute for Leadership, Management, and Policy at The University of Arizona to provide that office with an analysis of the First Nations Governance Act (Bill C-7). In particular, AFN asked us to evaluate the proposed legislation from the point of view of the research findings of the Harvard Project on American Indian Economic Development. From that viewpoint, what appear to be the strengths and weaknesses of the proposed legislation?

Harvard Project research indicates that sustainable economic development on indigenous lands depends on, among other things, three factors:

*Practical sovereignty* (genuine decision-making power over internal affairs, governance, resources, institutions, development strategies, etc.);

*Capable governing institutions* (governing institutions capable of exercising power effectively, responsibly, reliably);

*Cultural match* (a fit between the formal institutions of government and indigenous conceptions of how authority should be organized and exercised).

Also important to sustainable development are *strategic thinking* and *leadership*.

The First Nations Governance Act (FNGA) addresses a number of legitimate matters involving accountability, transparency, effectiveness, and other aspects of governance. However, with the above findings in mind, our review of the FNGA leads us to the following conclusions.

- Despite the stated concern with self-governance and with helping First Nations develop effective tools of self-governance, what is most striking to us is the degree to which matters of governance in the FNGA are *not* left to First Nations' discretion. The provisions of the FNGA make us question the extent of the federal government's commitment to indigenous *self*-governance.
- We also are concerned by the time frames set by this legislation. In effect, it asks a First Nation to produce a government in two years—a complex task for any society and one which involves not only the design of institutions but internal dialogue and the resolution of internal disputes. What impact will the timetable have on the quality and effectiveness of the resulting institutions and on the degree of support they win from indigenous communities?

- We believe the Canadian government is in danger of following a common but flawed approach to governmental decentralization: develop a template for government and then impose it on local communities. This process ignores diversity across local communities, ignores the fact that communities are more likely to support institutions that they help create, and often leads to governments local communities do not want and do not support.
- The Canadian government appears to have responded very favorably to Harvard Project findings on the need for good governance in indigenous communities but to have largely ignored Harvard Project findings on the need for indigenous communities to have real jurisdictional power. Unfortunately, good governance without sovereign powers is about as likely to be effective in improving the welfare of First Nations as sovereign powers are without good governance. Our research indicates that the two have to go together.
- The FNGA pays a great deal of attention to issues of accountability. However, decision-making and accountability are linked. If the federal government wants to hold indigenous nations accountable for what happens, then it has to vest those nations with genuine decision-making power. If, on the other hand, it wants to retain decision-making in its own hands, then it must bear primary responsibility for outcomes.
- We are concerned that the FNGA pays insufficient attention to diversity among First Nations. Research in the United States emphasizes that the legitimacy of governing institutions with their own peoples depends significantly on the fit between those institutions and indigenous political culture: that is, “cultural match.” But neither cultural match nor legitimacy receives significant attention in the FNGA. The legislation appears to believe that significant portions of First Nations government should be organized according to a single template, applied indiscriminately to all First Nations. Judging from the U.S. experience, this is not a successful recipe either for good governance or for effectively responding to “the particular needs and aspirations” of diverse indigenous peoples.

To summarize: We see three general reasons to doubt that the FNGA will achieve its stated objectives. First, it largely ignores jurisdictional issues. Second, in specifying details of government structure and practice and compelling First Nations to adopt those details, the legislation undermines the very idea of self-governance, which—in our view—includes the task of designing effective governing institutions that fit community ideals. Third, the one-size-fits-all approach that characterizes much of the legislation neglects diversity of cultures and circumstances and raises serious issues of legitimacy.

Despite the stated purposes of the FNGA, we find we are a little uncertain what the Canadian government’s objective really is. Does it wish simply to improve administrative and electoral practices among First Nations? Or does it wish to assist

those nations in moving out of dependency and poverty and creating viable, sustainable economies?

If the objective is the latter, then we believe two things are necessary. First, there will have to be a transfer of substantial constitutional authority and decision-making power to First Nations. Second, the government will have to invest in First Nations' own efforts to build capable governing institutions. This would mean providing First Nations with assistance in nation building, with useful (and diverse) models as sources of inspiration and ideas, and with the freedom—fully understanding what good governance means—to decide for themselves how to govern.

Effective governance is not simply a matter of establishing good government practices. It is a matter also of enlisting citizens as willing, active participants in the effort to build societies that work, empowering them to build those societies in their own ways, and making them feel that the future, to a significant degree, is in their hands.