

FOREWORD FROM REGIONAL CHIEF JODY WILSON-RAYBOULD

All across Canada and particularly in BC, our Nations are implementing our inherent right of self-determination and are moving away from governance under the *Indian Act* and control by Canada. This is not simply a political or academic exercise in reclaiming power, but reflects our leaders' realization that strong and appropriate governance is truly necessary if our Nations are to reach their full potential and maximize our people's opportunities.

The *Governance Report* has been prepared by the BC Assembly of First Nations (BCAFN) as Part One of the *BCAFN Governance Toolkit*. It is a companion document to the *Governance Self-Assessment: "Module One — The Governing Body: Establishing Effective Governance"* and *"Module Two — The Administration: Establishing Effective Organization"* and the *Community Engagement Guide*. The Report provides essential information for the leadership of any BC First Nation that is developing its own "critical path" to implement governance reform and re-establish or establish governance for its peoples and lands, both existing First Nation lands and its traditional territory.

Governance has been defined as "establishing rules to coordinate our actions and achieve our goals." This Report poses key questions and presents options: What are the rules you need to coordinate your Nations' priorities and achieve your goals? What are the institutions your Nation requires to make these rules and enforce them? The appropriate answer to these questions for your Nation will, of course, depend on its priorities and particular circumstances.

The Report is written as a "guide" and covers the range of options currently open to our Nations in undertaking or approaching governance reform. These options for moving beyond the *Indian Act* to re-establish strong and appropriate governance are the result of advances our Nations have made individually or collectively in the courts, through negotiations or by simply exercising our rights on the ground. This guide would not have been possible 20 years ago, since many of the options discussed in it were not available. The options include governance reform under the *Indian Act*; reform as part of sectoral governance initiatives; and comprehensive reform through governance arrangements with Canada and, where appropriate, the government of British Columbia. Other options to implement First Nations' governance beyond the *Indian Act* that are being contemplated or under development are also addressed in the Report. Some of these options are relatively new and many First Nations may not be aware of them.

It is important that our Nations have choices, share information and build on the experience and work of other Nations. I hope this Report will assist your Nation in sorting through the options and developing your own "critical path" to move beyond the *Indian Act* in your own time and based on your governance priorities.

In compiling this Report, the authors have made a number of assumptions that have guided the drafting and tone. First, the Report has been written from the perspective that First Nations have the right of self-determination. This is a fundamental right among all Indigenous Peoples throughout the world and is recognized in the *United Nations Declaration on the Rights of Indigenous Peoples*, which has now been endorsed by the government of Canada. Moreover, the right of self-government is an Aboriginal right that is recognized and affirmed by s.35 of the *Constitution Act, 1982*. This right was hard-won by our peoples and is still evolving in modern times.

Second, the Report is written from the premise that the primary building block of governance for our peoples is the "Nation" (not regional or national or necessarily *Indian Act* band governance), as determined by each of our Nations in whatever expression appropriate. For the most part, the term "Nation" in this Report is used interchangeably with the term "First Nation," but care should be taken to consider the appropriate political unit of governance in your particular situation as well as the context in which the term is used. This is important, because the right of self-determination, and by implication self-government, rests with the Nation that has Aboriginal title (the "proper title holder") and with no other political entity, and the way in which the inherent right is being implemented is continually evolving.

Third, the Report is written from the perspective that the primary relationship between our Nations and the Crown is through the federal government in light of section 91(24) of the *Constitution Act, 1867*, which assigns to the federal government responsibility for “Indians, and Lands reserved for the Indians.” Subject to any governance arrangements negotiated with the Crown, or a court ordering that the *Indian Act* or parts of it are unconstitutional for infringing the inherent right of self-government, Canada governs our lands and our people through the *Indian Act* and other statutes and in doing so creates a “fiduciary” relationship with our Nations. Only if Canada, after considering our interests, has the political will to do so will it enact legislation to amend or repeal the *Indian Act* and alter its application to our lands and peoples. It is important not to let the federal fiduciary responsibility become a barrier to progress and to reconcile the fiduciary relationship with Nation building processes.

It is well established that good governance is a prerequisite to sustainable and long-term economic development. A key to success for both Canadian and US tribes has been effective self-determination, according to the Harvard Project on American Indian Economic Development. However, despite the need for governance reform and past efforts to effect change, some of our Nations and, indeed, some of our citizens are afraid of “self-government” and do not always support efforts leading to greater self-determination. This barrier needs to be acknowledged, understood and ultimately overcome if new opportunities are to be realized.

To re-establish appropriate institutions of governance and exercise jurisdiction over its lands, resources and peoples through institutions of government, every Nation will require an “exit strategy” for getting out from under the most debilitating aspects of the *Indian Act* and to reduce Canada’s control over our lives. It is necessary that our Nations have a plan to rebuild their own governance structures from the community up, a plan that begins by empowering our citizens. This is challenging work. It requires leadership as well as the dedication of resources and time to ensure the reforms, the new structures of government and the powers they exercise are viable. In all of this, community support is vital.

In many cases, to move forward negotiations with the Crown will be necessary, usually with Canada, sometimes with the government of BC. Simply navigating the bureaucracy and the evolving governance-related processes can be a significant part of the challenge. This Report considers the requirements of the various processes established to facilitate moving out from under the *Indian Act*. In some cases, processes are led, designed and mainly controlled by First Nations, while in others the process is managed by Canada through the Department of Indian and Northern Affairs. The Report identifies where there are currently policy gaps and issues still to be resolved between Canada and our Nations: in other words, where further work, political and legal, is required to establish the legal basis or framework to implement governance beyond the *Indian Act*.

We have come a long way. This journey is reflected in the fact that this guide could not exist if the options for governance reform did not exist. We still have a lot of work to do to create the legal and political space within Canada to fully implement the inherent right of self-government and realize our collective vision, which is ultimately to make the lives of our people better. We are still in the early stages of re-establishing our governance. There are, after all, only five comprehensive governance arrangements in BC and there are many subject areas of governance for which no sectoral initiatives have been instituted. Much work remains to be done, but there are also opportunities that can be seized right now.

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June 2011