BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

Supporting Leaders of Change

A USER'S GUIDE TO THE BCAFN GOVERNANCE TOOLKIT

SUPPORTING LEADERS OF CHANGE

A User's Guide to the BCAFN Governance Toolkit

"Strong and appropriate governance is necessary if our Nations are to reach our full potential and maximize our opportunities. This is a prerequisite to sustainable and long-term economic and social development."

— **REGIONAL CHIEF JODY WILSON-RAYBOULD** / BCAFN *Building on OUR Success*

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About the British Columbia Assembly of First Nations

The British Columbia Assembly of First Nations (BCAFN) is a provincial-territorial organization whose membership is made up of 203 First Nations in British Columbia. The BCAFN is one of the ten regional organizations affiliated with the national Assembly of First Nations whose members include over First Nations across Canada. The Regional Chief of the BC Region also serves as a member of the Executive of the national Assembly of First Nations. The Regional Chief represents the regional concerns of the BCAFN constituents on the Executive Committee to ensure that regional perspectives are included in National political discussions and decision-making. The Regional Chief holds specific portfolios that deal with national policy issues and concerns. The BCAFN is an incorporated society under the BC *Societies Act* (S-45919). This allows the BCAFN to operate with its own regionally specific mandates and to establish relationships with the Provincial government and other organizations. The BCAFN operates to create linkages between the regional and national political processes to ensure that these activities are communicated and represented at a First Nation level.

ACKNOWLEDGEMENTS

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Table of Contents

SUPPORTING LEADERS OF CHANGE — A USER'S GUIDE TO THE BCAFN GOVERNANCE TOOLKIT

WELCOME TO THE GOVERNANCE TOOLKIT 1
- The Governance Toolkit in Three Parts 2
- What is Governance? 3
- The Imposition of "Band" Governance under the *Indian Act* 3
- Transitioning Away from the *Indian Act* 4
- The Governance Toolkit Built by and for Leaders of Change 4
- The Challenges of Change — First Nations 5

LEADERS OF CHANGE 7
- What are Leaders of Change? 7
- Who are Leaders of Change? 7
- How is change triggered? 7
- Moving Beyond Protest and the Courts 9
- Overcoming the Colonial Legacy 9
- Concluding Thoughts before Using the Governance Toolkit 10

USING THE TOOLKIT 12
- Ways to Use the Toolkit 12

A USER'S GUIDE TO PART 1: *THE GOVERNANCE REPORT* 15
- Section 1 — Options for Governance Reform 15
- Section 2 — Core Institutions of Governance 15
- Section 3 — Powers (Jurisdictions) of the First Nation 15
- Section 4 — Financing First Nations Governance 16

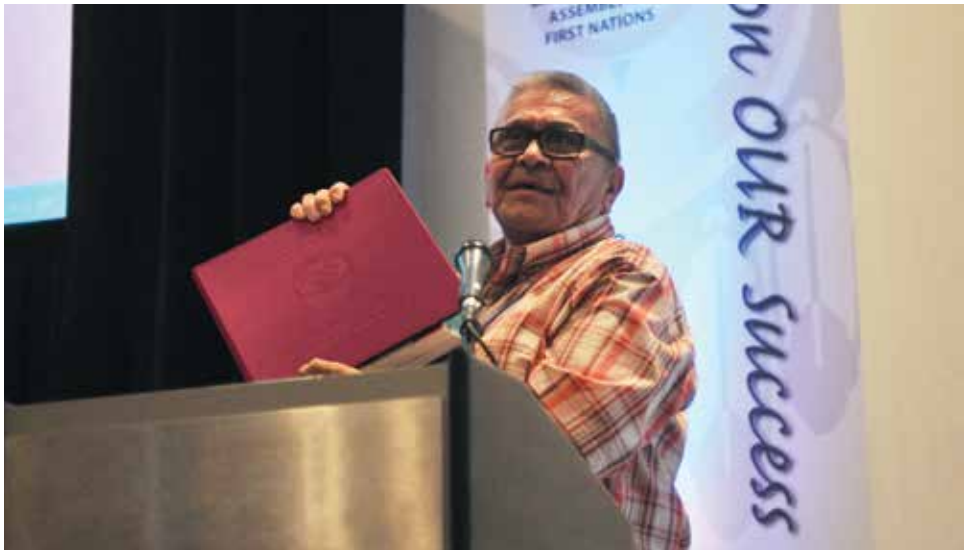
A USER'S GUIDE TO PART 2: *THE GOVERNANCE SELF-ASSESSMENT* 17
- Module 1: The Governing Body — Establishing Effective Governance 17
- Module 2: The Administration — Establishing Effective Organization 18

A USER'S GUIDE TO PART 3: *A GUIDE TO COMMUNITY ENGAGEMENT: NAVIGATING OUR WAY THROUGH THE POST-COLONIAL DOOR* 20
- Section 1 — Social Change and Governance Reform: Moving Towards the Door 20
- Section 2 — Community Engagement and Organizing for Change: Opening the Door 20
- Section 3 — Exploring Governance Options: Walking Through the Door 21
- The Tools Listed in Each Section 21

GOVERNANCE TOOLKIT — TABLE OF CONTENTS FOR ALL THREE PARTS 23

INTRODUCING THE BCAFN GOVERNANCE TOOLKIT: A GUIDE TO NATION BUILDING

WELCOME TO THE GOVERNANCE TOOLKIT



Thank you for using the *BCAFN Governance Toolkit: A Guide to Nation Building* (the "Governance Toolkit"). The Governance Toolkit is in three parts:

PART 1: *The Governance Report;*
PART 2: *The Governance Self-Assessment*; and,
PART 3: *A Guide to Community Engagement: Navigating Our Way through the Post-Colonial Door*

The purpose of this User's Guide is to introduce "leaders of change" to the Governance Toolkit and to assist them in determining how the Governance Toolkit can be employed to best meet the goals and objectives of First Nations in building strong and appropriate governance.

Leaders of change are visionaries, and any community member or citizen can be a leader of change. Leaders of change are continually scanning their environment. Shifts in the environment can include changes in the legal landscape and political or economic changes that impact on First Nations governments. These shifts are fully explored through Part 1, *The Governance Report* where they are discussed and further contextualized in four sections, including 33 chapters which speak to various jurisdictions (powers). Leaders of change recognize that shifts in the environment have happened and, rather than supporting the status quo, they want to be proactive in identifying and understanding the impacts of these shifts and supporting their Nation to create change. To create this change, leaders of change keep informed on key issues, are practitioners of self-reflection, propose and pursue solutions and inspire others to join their efforts.

The Governance Toolkit is a comprehensive guide intended to assist a First Nation in building or rebuilding governance and navigating its way out from under the *Indian Act* at its own pace and based on its own priorities. As such, the Governance Toolkit can be employed by leaders of change as a powerful resource to compliment and support their own work in meeting the First Nation's vision and undertaking essential planning activities. Since it was first conceived, this project has taken on a life of its own and continues to grow. The Governance Toolkit draws on the growing governance experiences of First Nations in BC, working together to improve the lives of their people.

THE GOVERNANCE TOOLKIT IN THREE PARTS

Part 1, *The Governance Report*, (the "Report") provides a unique and comprehensive examination of the options for governance reform and, as noted briefly above, includes historical, legal and political context, core institutions of evolving First Nations governance and considers, subject by subject, the powers (jurisdictions) that First Nations are or, may be governing. The Report is written from the perspective that First Nations have an "inherent right" to govern. The Report looks at how First Nations are moving forward along a continuum of governance options that is seeing the transformation from "band" governance under the *Indian Act* to more appropriate, forms of legitimate and recognized structures of government. The Report provides an overview of what First Nations in BC are actually doing on the ground in their communities.

Part 2 of the Governance Toolkit is ***The Governance Self-Assessment***, (the "Self-Assessment"). The Self-Assessment exists in two modules that can be used to evaluate the effectiveness of institutions of governance (namely the governing body) and the effectiveness of a First Nation's administration. The Self-Assessment is an important exercise that any First Nation can undertake to identify what is working well, what might not be working so well, where the institutional framework may be deficient and where there are gaps, both in terms of the institutions of governance and the powers that government is exercising or may need to be advanced.

Part 3, *A Guide to Community Engagement: Navigating Our Way through the Post-Colonial Door,* has been developed as a tool to assist First Nations and leaders of change when beginning or continuing discussions with their citizens about the importance of strong and appropriate governance and options for governance reform, including moving beyond the *Indian Act*. Community engagement is one of the most challenging aspects of governance reform due to the colonial legacy that must be overcome to create a solid foundation of governance to support

economic and social development moving forward. Leaders of change are often motivated by a strong desire to engage community or the "grass roots" and to inspire citizens to do better and to take back control of their lives. Engaging community is often where the greatest personal reward can be had and what lies at the heart of true leaders of change.

Peer groups, comprised of First Nations leaders and governance practitioners with hands-on experience of governance reform, reviewed drafts of Part 1, *The Governance Report*, as well as the modules in Part 2, *The Governance Self-Assessment*. In addition, *The Governance Self-Assessment* was piloted in a number of communities and revised extensively following insightful dialogue in community meetings. Part 3, *A Guide to Community Engagement* takes a basic "community development" approach to rebuilding governance. All three parts of the Governance Toolkit are available online, where there are also links to most of the primary documents that are referenced in *The Governance Report*. The Governance Toolkit is also available electronically upon request.

WHAT IS GOVERNANCE?

Simply defined, "Governance" means "establishing rules to coordinate our actions and achieve our goals." As societies, the institutions we create to make rules and then enforce them, we call "government." Governance and government come in many forms but are always needed. They can, of course, be done well or poorly. Research and experts tell us that the quality of governance, much more than its specific form, has a huge impact on the well-being of any given society. First Nation governments are no exception. Societies that govern well and are transparent and accountable, simply do better economically, socially and politically than those that do not. Strong and appropriate governance increases a society's chances of effectively meeting the needs of its people.

In many diverse ways, based on the different cultures and traditions, this is exactly what indigenous peoples did for centuries before the arrival of newcomers. The reality that indigenous peoples lived in productive, sustainable and viable societies is a testament to the fact that these governing systems worked.

THE IMPOSITION OF "BAND" GOVERNANCE UNDER THE *INDIAN ACT*

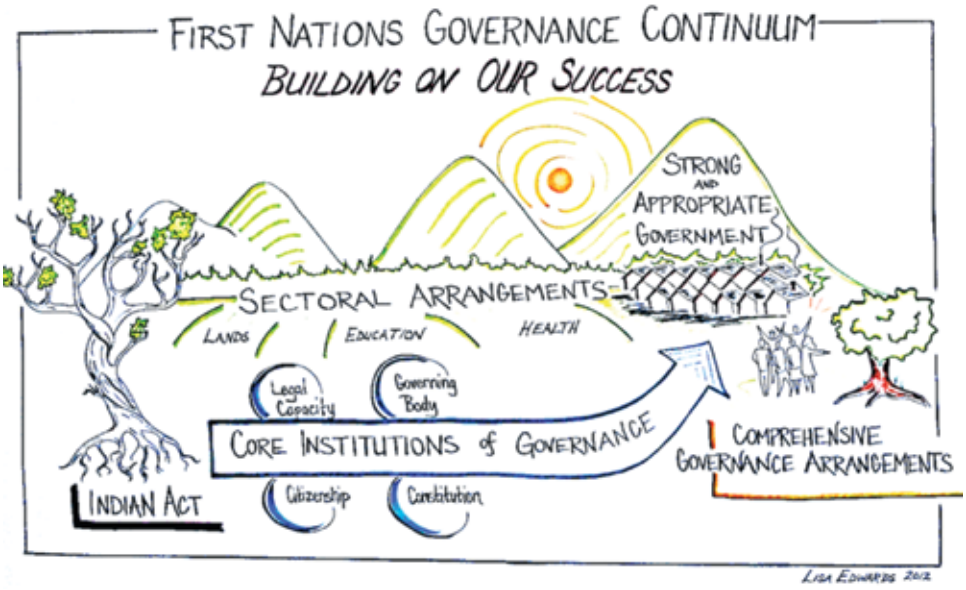
With the arrival of the newcomers to what is now Canada, governance with respect to indigenous peoples changed. The *Indian Act* system promoted an impoverished concept of government for First Nations. While the "band" created under the *Indian Act* and the "chief and council" is a form of government, First Nations were, for the most part, denied the powers (jurisdictions) needed to govern and the governing institutions that could exercise power effectively.

During the colonial period, band government was based on models developed by the federal government to deliver its programs and services. The powers of bands were very limited and accountability was not to the citizens of First Nations but to the Crown. Under "band government" for the legally defined category of "Indian" under the *Indian Act*, First Nation government became little more than managing programs (education, health, housing, social assistance, etc.) and distributing limited resources (money, jobs, influence and services). The concept of government as being about making laws, resolving disputes and generating the means to pursue a collective vision was smothered by the need for federal programs and services and the fact that the local "band office" was the instrument to deliver them.

TRANSITIONING AWAY FROM THE *INDIAN ACT*

Thankfully, First Nations are transitioning away from the *Indian Act* system of governance, and a more robust concept of governance based on indigenous legal traditions is re-emerging as First Nations rebuild strong and appropriate governance. This is happening for many reasons. One reason is the advancement of the right to self-determination, both domestically through section 35 of the *Constitution Act, 1982* and internationally through the *United Nations Declaration on the Rights of Indigenous Peoples*. It is also a result of legal victories including the first declaration of Aboriginal title in the 2014 Supreme Court of Canada decision in *Tsilhqot'in*. Equally important is the growing political realization — not just among Aboriginal peoples but also among others — that for First Nations to succeed and also for Canada to succeed, First Nations truly need strong and appropriate governance. Finally, this is happening because First Nations are increasingly raising more of their own revenues to provide strong governance.

First Nations in BC are leading the way. Among them, they have made over 2,500 contemporary bylaws and laws, and they are the leaders in numerous "sectoral" and "comprehensive" governance initiatives in Canada along a continuum of governance reform. Governance is being exercised not only on "lands reserved for the Indians" under the *Indian Act* but over treaty settlement lands and Aboriginal title lands, as well as on ancestral lands that transcend all other categories of First Nation lands.



THE GOVERNANCE TOOLKIT BUILT BY AND FOR LEADERS OF CHANGE

The Governance Toolkit was developed with the support and contributions of many individuals and organizations. It has been designed, researched and written by leaders of change that have worked on the ground in BC, as well as with other First Nation communities across Canada, in rebuilding governance. The Governance Toolkit draws on all of the post-colonial governance work that First Nations in BC have been involved in and brings it together in one place. Much of this work has, in truth, only taken place in the last twenty-five years as First Nations have translated legal and political victories into actual governance change in communities.

THE CHALLENGES OF CHANGE — FIRST NATIONS

Transforming governance under the *Indian Act* is no small task. There are many challenges. After more than a century of living under the *Indian Act*, it can be very difficult for some Nations, as indeed it has been for the federal government, to shed the routine of colonialism and tackle the seemingly overwhelming task of Nation rebuilding.

Some First Nations see the status quo as working and they do not perceive any need to change it. For some, unfortunately, it serves their self-interest; for others, it may be hard to shed the old ways. Many more will simply be afraid of change, preferring to "live with the devil they know rather than with the one they do not." At times, there will be tensions between current and traditional practices, and it will be a challenge to reconcile them and decide how to govern moving forward. There may be debates about what constitutes democracy – essentially how we make fundamental decisions about governing and the future for a community. Leaders of change will be challenged by the diversity of attitudes and the questions and tensions that they create.

What is encouraging, though, is that despite the challenges, many First Nations have already walked through, or are walking through, the "post-colonial door," and are reconciling their governance with that of the Crown. They are establishing strong and appropriate governance with their own institutions of governance and are considering the range of powers, including law-making powers, they will need to effectively govern.

Where the citizens of First Nations, however organized, want to move beyond the *Indian Act* there may not be the mechanisms in place or the federal or provincial machinery necessary to support the desired reform and leaders of change need to be supported in navigating the political and legal context in which they work.

THE CHALLENGES OF CHANGE — FEDERAL & PROVINCIAL GOVERNMENTS

In the past, for non-Aboriginal governments there has never been much political incentive for going out of their way to support First Nation aspirations for governance reform despite the efforts that have been made and which are discussed in *The Governance Report*. Often where there have been attempts at this much-needed reform, the inability of Aboriginal peoples to present a unified approach has created an excuse for the inaction of Crown governments and has made it easier for the Crown to simply punt the issue of First Nations governance reform to another day. However, First Nations political influence has been increasing as a result of court victories, the changing nature of Canadian federalism and the place of multi-level governance. Without strong leaders of change advocating at the local or community level, supported by leaders of change at the regional and national levels, the status quo would be destined to continue.

In BC, the crystallization of Aboriginal title on the ground combined with the Crown's duty to consult and accommodate has focused attention on the need for strong and appropriate First Nations governance that is both legitimate and recognized. This is true, not just with respect to governance on-reserve but within Aboriginal title lands and the ancestral lands that transcend all other categories of land. Ironically, the very *Indian Act* system that was designed to keep "Indians" separate and apart from other Canadians living on-reserves and all the problems associated with that system of governance, has now become a problem for all governments in a post-*Tsilhqot'in* world. This is discussed extensively in *The Governance Report*.

LEADERS OF CHANGE

WHAT ARE LEADERS OF CHANGE?

Leaders of change have vision. They inspire and lead others to develop and strengthen a vision that collectively the community will follow. As described earlier, what distinguishes a leader of change from others is the recognition that the status quo is not acceptable, that there is a better way. Leaders of change are prepared to play a role and develop and implement a plan to see that change happen. They are committed to their vision and are often the drivers of substantive governance reform, even when it means some personal sacrifice or risk.

For leaders of change, being able to navigate and effectively use the Governance Toolkit will be important in carrying out the activities of governance reform and in developing the momentum or a movement to support change, including developing *Indian Act* "exit" strategies and associated work plans. In a community, without momentum or a movement for change it is very difficult, if not impossible, to achieve substantive governance reform. Ultimately, for governance reform to be legitimate there must be a substantive plan that has been developed by and is supported within the community. Reform should not, and in most cases cannot, be imposed. The citizens must be fully engaged in any movement that leads to governance reform as those citizens will eventually be those "voting the colonizer out". Those that might not be as directly involved in the movement must also be informed.

Leaders of change understand that while powerful rhetoric and speeches can inspire, it does not rebuild government. There is always a lot of hard work and sacrifice that needs to follow inspirational words to realize a vision.

WHO ARE LEADERS OF CHANGE?

All of us can become leaders of change and all have a role to play in change. As First Nations rebuild and establish contemporary institutions of governance, leadership in community will come in many different forms and from different people. For example, leadership may come from within the current political leadership selected under the *Indian Act* (i.e., the chief and council), from key staff working in the band office/administration, from youth representatives, from elders, from community activists, or from business leadership. Leaders of change are often volunteers. They often put their credibility and their friendships at risk, particularly where they are proposing ideas or stimulating conversations that might not be popular. Where leaders of change may be elected leaders or staff, it is often the case, and clear to outsiders, that for these individuals building strong and appropriate governance is "more than a job."

Support for governance reform may also come from friends of the community that are not citizens or employees of the First Nation. These supporters can in some circumstances act as agents of change but more often than not are simply allies in a movement for change. Allies can be from other First Nations or First Nation organizations (both regional and national), business partners, special interest groups, church groups, colleges and universities, local political offices and political parties, and so on.

HOW IS CHANGE TRIGGERED?

Triggers of change are many and can come from any number of places. There is no simple or universal explanation for why some First Nation communities have successfully shed their "*Indian Act*" reality in whole or in part, while others have not.

The trigger of change might be a crisis in the community. It might also be a crisis outside of the community where the issues nonetheless resonate or have impact within the community. For instance, a natural disaster like a flood or fire could be the trigger for change, where a First Nation's citizens come to the stark realization that there is limited institutional support to adequately address the disaster. Change could also be triggered as a result of increased suicide or youth disaffection which has become intolerable. The crisis breaking point could occur due to overcrowded or moldy housing. The actions of other governments (municipal, provincial or federal) can also act as triggers for change.

Commonly, a crisis may be as a result of issues within the core institutions of First Nation government itself. Namely, problems, real or perceived, with the way the First Nation is governed under the *Indian Act* and how decisions are being made. This could include allegations of perceived conflict of interest under the inappropriate and impoverished *Indian Act* systems of government, something that is discussed at length in Part 2, *The Governance Self-Assessment*. It might be with regard to how budgets are developed and financial expenditure decisions are being made and particularly with respect to own source revenues. In some cases the momentum or movement for change might follow a community response to direct action or going to court. In all of these and other situations, potential leaders of change are often thrust into a period of transformation and transition due to the crisis or conflict and will make a conscious decision to "do something about it," encouraging others to join them.

In some cases, the trigger of change is quite clearly economic, for instance, lost economic opportunities due to the structure of government and applicable laws under the *Indian Act* system. It was coming to this realization that has led many First Nations to develop the sectoral governance initiatives discussed in the Governance Toolkit as well as other initiatives to demand the conclusion of comprehensive self-government arrangements with the Crown.

Leaders of change can, in their own right, be the trigger of change. In many cases the momentum for change does not arise out of an immediate crisis, direct action or litigation. As noted above, change can come from an informed realization over time that the status quo is simply not good enough and there is a better way to govern and conduct the business of the First Nation. Often leaders of change will see another community doing well and ask "how did they do that?" Perhaps the community members seem happier, have better housing, there is more transparency and accountability and so on. Success begets success and people want to emulate that success. If emulating the success of another Nation will result in positive change, citizens will often support it.

Leaders of change should build on the success of others and typically do not look to reinvent the wheel. In many areas of governance there are precedents or initiatives where others have already trodden the path to reform. In such instances, a First Nation no longer needs to be the first or as some leaders have ruefully said "on the bleeding edge" of change. Leaders of change can learn from these experiences, both good and bad. Today, this is often the case with leaders supporting successful governance initiatives that have been implemented in other communities. In this regard the Governance Toolkit is invaluable in sharing First Nation stories and advancement in governance. Conducting the self-assessments under Part 2, *The Governance Self-Assessment*, is a great way for leaders of change and a community to begin to have a conversation about what is out there, what some of the options for governance reform are, and what mechanisms and processes are available to achieve them and what work still needs to be done.

Finally, while the triggers may be different, it is safe to say there have been no successful First Nations governance initiatives in the absence of there being leaders of change. Any opportunity created for momentum will be lost without commitment, hard work and follow up. This is particularly the case where momentum may have been created by protest action or going to court.

MOVING BEYOND PROTEST AND THE COURTS

There is no question, that in the struggle to rebuild First Nations governance, creating the political and legal space to move beyond the *Indian Act* through direct action and litigation has been critical for governance reform and creating a movement to self-government. While leaders of change often recognize the need and place for protest and litigation, they quite often advocate that simply going to court or demonstrating is not, in itself, going to rebuild a First Nation community or design and implement governance reform. While creating public awareness and pressure through public demonstrations and rallies is important in that it brings people together with a common purpose and can create a movement, to be successful, there must be a plan and next steps that moves beyond protest. This is key where protests or litigation is successful in creating legal and political space for change, as was the case with the Idle No More movement and the Supreme Court of Canada decisions in *Delgamuukw* and *Tsilhqot'in*.

Leaders of change can build on the momentum for reform created by protest action and legal victories, whether or not they led the protest or litigation, and should work in the community to develop a plan to rebuild the First Nation and its institutions of strong and appropriate governance within the legal and political space created by the action or litigation. Leaders of change will often look to avoid fighting the same battle over and over again but rather build on momentum and capitalize on opportunities for change. Hard work and difficult decisions will need to be made once the protests have stopped or the judge has ruled. Leaders of change should anticipate that this work will often be much more difficult and challenging than "fighting the good fight" by organizing protests or instructing lawyers to advocate on the First Nation's behalf.

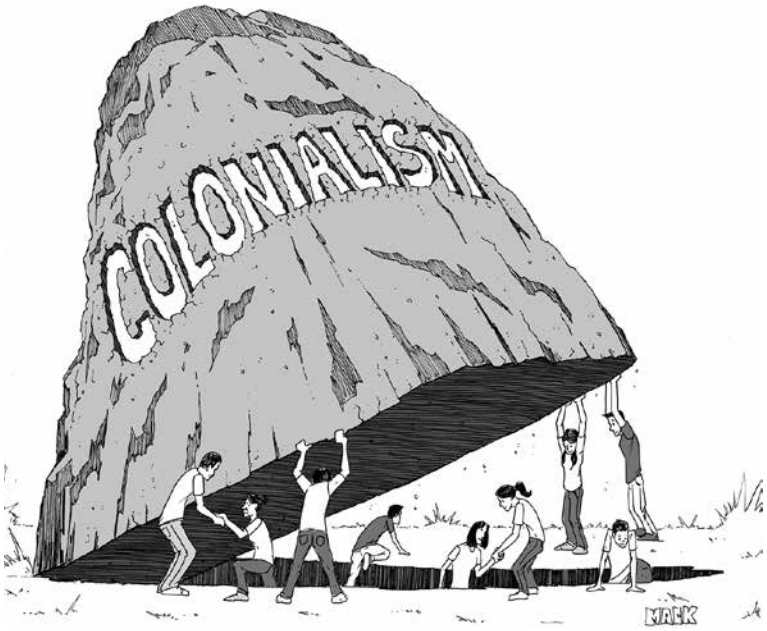
OVERCOMING THE COLONIAL LEGACY

Part of the reason why governance reform and rebuilding is so challenging in First Nations communities, is directly attributable to colonization. Many First Nations citizens are still struggling with the colonial legacy – the impacts of racism, residential schools and institutionalized wardship. There is a lot of anger and bitterness, which can manifest in acts of lateral violence.

While the negative colonial legacy exists, at the same time, among First Nations citizens, there is great resilience and a sense of hope. Collectively bringing a community beyond the *Indian Act* and reforming governance requires citizens to be engaged. Achieving this is not easy nor always successful. Leaders of change with respect to governance reform should look to address this reality head on. Citizens may not immediately support leaders of change or trust them. In some

cases, leaders of change might not have been propelled by the "grassroots" or themselves be viewed as "grassroots"(sometimes even when they live in community). These leaders of change must earn trust and overcome the barriers to building that trust — barriers that have been developed through years of living under the *Indian Act* system. There will be false starts and disappointments. Many of the communities that have made great progress in governance reform did, in fact, fail to vote in favour or otherwise ratify the change the first time around.

Part 3, *A Guide to Community Engagement: Navigating our way through the Post Colonial Door* goes into detail about the reality of the colonial legacy with some ideas about how to address it. There are a number of tried and tested tools that can be adapted to an individual First Nation's circumstance. However, there are no silver bullets, no easy answer of what to do, other than it takes a lot of hard work and a lot of meetings where leaders of change ensure, as best they can, safe places for dialogue. Leaders of change themselves must often demonstrate considerable resilience to personal criticism and abuse as the dysfunction that is the *Indian Act* system is deconstructed. Acting with integrity, for leaders of change the end result is always worth it.



CONCLUDING THOUGHTS BEFORE USING THE GOVERNANCE TOOLKIT

In order to find and develop governance solutions, there first must be a common understanding of where First Nations have come from as historically self-governing peoples and where they are today under the *Indian Act*. This needs to be done so First Nations can actually begin to address the challenge of deconstructing the colonial reality and moving past the *Indian Act*. This process must be part of building a collective vision for the future and of creating a movement for social change in our communities to support the implementation of that vision. A vision must ultimately include an improved quality of life for First Nations peoples, with practicing and thriving cultures.

Leaders of change are committed to empowering the citizens of First Nations and work to facilitate social change in community so that more First Nations are ready and able to move beyond the *Indian Act*. While Aboriginal rights are protected under section 35 of the *Constitution Act, 1982* and ensured through the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the current challenge is to translate the promise of section 35 and the UNDRIP into practical benefits on the ground in communities, so First Nations citizens can enjoy their title and their rights.

It is critical to appreciate that before there can be any significant social change on the ground in implementing Aboriginal title and rights, the citizens have to support it. And not just verbally and politically by electing leaders who share the same vision, but in many cases by actually exercising their franchise and voting in favour of social change. Together there is a need to "vote the colonizer out." This is because Canada has a fiduciary relationship to Aboriginal peoples and is reluctant to simply legislate the *Indian Act* away until their "wards" tell them it is okay to do so. Perverse but true, and change resultantly requires the full engagement of the citizens.

At some point every First Nation in BC and across Canada will be voting to walk through the post-colonial door and to do that each will need to develop their own "exit" strategy for moving beyond the *Indian Act*. Influenced by the leaders of change, for some this will happen in the short term, and for others it may take a generation or more.

In preparing the Governance Toolkit the authors travelled throughout BC introducing our Governance Toolkit to various chiefs and councils, their staff and citizens. At one session, a chief used an analogy of the *Indian Act* being like a balloon. He reflected, if we stick a pin into the *Indian Act* balloon, it will burst and the *Indian Act* will be gone. He then added the problem is our citizens are afraid of popping the balloon, and are asking "What comes next?" and "Are we ready?" Taking his analogy further, what we are doing through numerous governance initiatives, as discussed in *The Governance Report* (Part 1 of the Governance Toolkit), is actually not "popping the *Indian Act* balloon" but rather letting the air out slowly, and replacing the balloon with a First Nation's own strong and appropriate governance.

No other segment of Canadian society has had to decolonize and therefore go through this process to establish basic institutions and structures of governance or create the tools for economic and social development. The legal framework and institutional structure for strong and appropriate governance is in place for the rest of Canada, but not for First Nations unless there is a "yes" vote for change. This process of change has to be led by First Nations.

The authors have been privileged to meet with and receive the support of many leaders of change who have taken on the challenge in their own communities and are either fighting to walk through or have already walked through the post-colonial door to take their rightful place in confederation and capitalize on their title and rights, including treaty rights. We have also heard the concerns of the leadership that despite the fact that the door is now opening, too few people and communities are passing through it. To open that door fully and for all First Nations to be able to walk through it, there is a need to continue to work together and ensure that our citizens are fully engaged. For change to occur, each community must go through its own processes of empowerment and local transformation. Through healing, rebuilding, capacity development — call it what you may — the colonial period must officially end. As a leader of change, you can help make this a reality.

Building on OUR Success:
Navigating Our Way through the Post-Colonial Door

USING THE TOOLKIT

WAYS TO USE THE TOOLKIT

As leaders of change, whether you are an elected leader, employed in the band office, a concerned citizen, student, elder, or are interested in pursuing change from any number of other positions, the Governance Toolkit will help you sort through the issues and opportunities for governance reform as they arise in a First Nations context.

Community Engagement: For community leaders looking for ideas and approaches to community engagement, Part 3 of the Governance Toolkit is a very useful resource. Part 3 is available online for community members to conduct their own investigation into ideas and approaches to governance reform. Many leaders of change find it useful to reproduce sections of the Governance Toolkit for community distribution. For example, if the community is discussing the development of a citizenship code or an election code, the relevant sections of Part 1 of the Governance Toolkit, *The Governance Report* are easy to find through the table of contents in Part 1 and easy to reproduce. Part 3, *A Guide to Community Engagement* has an accompanying disk where all of the community engagement tools are housed. The tools on this disk were designed so that they can be adapted by a leader of change for use in their own community or context.

Research and Development: The Governance Toolkit, and particularly *The Governance Report*, can be used as a comprehensive reference resource for all researchers and, in particular, by those individuals working for or with First Nations. The various sections in *The Governance Report* have been drafted or reviewed by current leaders of change or experts most familiar with those areas of governance being discussed. Researchers, for example, when tasked to prepare briefing notes on governance related matters for their chief and council or broader community, will find *The Governance Report* a valuable resource with considerable background research, including information about existing First Nations' laws, bylaws, and policies, already having been done for them.

The Governance Report also contains many links to other sources of information if further research is required or if a community wants to take the next steps to instigate reform in a particular area of governance being considered. Finally, it is often necessary and beneficial to understand how municipal, federal and provincial governance works in order to appreciate any issues that may need to be reconciled with the exercise of First Nations' powers of government. *The Governance Report* can be used as a primer with respect to governance generally within Canada and BC as it specifically discusses the laws and policy approaches taken by other governments in particular jurisdictions.

Negotiation Support: For many First Nations, after a decision for change has been made, whether following the momentum created by an event (e.g., direct action, or a legal victory) or not, leaders of change, whether they are chief and council or employed by a First Nation, will often find themselves face-to-face with provincial or federal officials at some form of "reconciliation" table. The Governance Toolkit can be an invaluable tool for these individuals in their negotiations.

Part of the inspiration for the development of the Governance Toolkit was indeed the fact that in the past those persons responsible for negotiating self-government agreements for First Nations did not have a resource such as the Governance Toolkit to assist them when negotiating self-government agreements. The absence of such a resource put negotiators for First Nations at a disadvantage, as in many cases federal or provincial officials were provided with a confidential "Negotiators Handbook" that typically included information about other self-government agreements or arrangements and the various options that might be considered. These handbooks also included government mandates; some of which were confidential, and others public.

The Governance Report, being available to all, aids in leveling the playing field when it comes to the information available to negotiators. *The Governance Report* includes, where known, the nature of negotiating mandates and identifies some of the problems and limitations with those mandates. *The Governance Report* also sets out where further policy work might be required by any or all of the parties to a governance negotiation table, including developing a new fiscal relationship between the Crown and First Nations to support governance reform and to take on the responsibilities of governing.

Dispute Resolution: Where there is a dispute and especially those that may culminate in direct action taking place, there is almost always some form of subsequent dispute resolution process. Typically, there will be a meeting between the First Nation(s) and whomever the dispute is with and towards whom any action is directed. This initial meeting often leads to other talks. In working to resolve a dispute, there is typically an "ask" by the First Nations and a plan/strategy for moving forward. Those who meet and who are purporting to represent a First Nation need to know what their options are including having an understanding of what other First Nations or groups of First Nations may have asked, agreed to or accomplished when involved in a similar dispute. Where disputes involve questions of governance or jurisdiction, as many invariably do, it is critical that First Nations are adequately prepared to engage on these matters.

No representative of a First Nation would knowingly want to agree or propose a solution to a dispute that sets the bar lower than what might have been achieved elsewhere unless it was deliberate or strategic. Accordingly, the Governance Toolkit can be of great use strategically in sorting through the governance options and considering the issues to raise or how to respond to issues raised by other parties. For example, if the dispute is with regard to natural resource development (e.g., a proposed forestry or mine development), *The Governance Report* provides information regarding shared decision-making on natural resource development and what Nations have already agreed to in this regard, including links to helpful sources for more information. While First Nations will often engage third parties to assist them in this work (e.g., legal counsel or other advisors), being able to consult *The Governance Report* can be timelier, as well as more cost effective.

In some cases, a dispute will not involve a third party but rather is internal to the First Nation, for instance a direct action such as an occupation of a band office. This occupation might, for example, be due to allegations of the band administration's financial mismanagement. In this example, leaders of change, either from within the group occupying the office or those inside the office, can benefit from the Governance Toolkit as it sets out options and tools to assist in establishing or re-establishing appropriate financial administration systems and accountability.

Finally, in some circumstances while litigation is on-going and the legal counsel for both the First Nation and the Crown and any other third party are preparing to go to court, there may be an opportunity for negotiating an out of court settlement. Negotiators in such a setting need to know what the options are and the Governance Toolkit can assist in this regard.

Being Informed and Understanding First Nations' Needs and Perspectives: In addition to leaders of change within First Nations, the Governance Toolkit is a useful resource for advisors and consultants to First Nations, for political territorial and other First Nation organizations, and for other governments. The Governance Toolkit is a comprehensive overview of options available to First Nations for governance reform and provides important examples of where First Nations have achieved success.

Advisors and consultants, including legal counsel, for First Nations that are engaged in governance reform with First Nations will also have use for the Governance Toolkit. Advisors and consultants can have significant influence on their client's choices and the direction taken and with this influence comes a responsibility to provide accurate and timely information. Leaders of change need to be able to test the advice given. Poor advice based on inaccurate or even biased information can set a First Nation back by years and perpetuate even more fear and mistrust within a community. If consultants and advisors are aware of the Governance Toolkit and employ it in their own work, it can help them to tailor their advice to their client's needs, making their services more cost effective.

Another one of the motivating factors behind the development of the Governance Toolkit was to stop the practice by some consultants or advisors of essentially "selling" the same policy, bylaw, law, plan or agreement to multiple First Nation communities. These individuals typically discouraged their client First Nations from sharing documents with other First Nations, suggesting they were "proprietary". Thankfully, this practice is now often contested by First Nations who are interested in sharing information. Indeed, the Governance Toolkit is evidence of First Nations' increasing desire and willingness to do so. Further, as First Nation governance reform has become real and efforts to implement First Nations governance increase on the ground (e.g., where policies, bylaws and laws, or plans of the governing body are followed and enforced and are not simply "make work" projects for consultants that end up siting on a shelf collecting dust), information is, by default, public and accessible.

In BC, there are three First Nations Provincial/Territorial Organizations (PTOs) and many other regional or national institutions or organizations dealing with First Nation issues that have a governance component. These institutions and organizations are identified and discussed in the Governance Toolkit. The Governance Toolkit can be useful for those individuals that are involved in these institutions or organizations, themselves often leaders of change, in knowing what other groups are doing, operating and how they are structured. Components of Part 2, *the Governance Self-Assessment* are also relevant to First Nations organizations that have both political and administrative governance bodies and are interested in self-reflection and reform.

For federal and provincial politicians and civil servants that want to understand the process of decolonization and the Nation rebuilding activities that are on-going in First Nation communities, the Governance Toolkit can also be of great assistance. This is particularly so because the Governance Toolkit is written from a perspective that in many ways is markedly different than that of the Crown.

The Governance Toolkit makes an assumption about First Nations governance and the direction it is heading. An underlying assumption in the Governance Toolkit is that eventually all First Nations will undertake governance reform, move away from governance under the *Indian Act*, and move through the post-colonial door and that any other option is not acceptable. From this perspective, the Governance Toolkit contextualizes the various federally or provincially supported governance initiatives and in particular those that have been First Nation led and that have been successful, within a broader framework of reconciliation with the Crown. While ultimately it is First Nations that need to rebuild, and there is an important role for the Crown to support this activity, the Crown is not determinative of that activity or the arbiter of its outcome. Federal and provincial public servants will benefit from a review of the content of *The Governance Report* and will be challenged by the assumptions in *The Governance Report*, which essentially ask them to consider issues from a different and in many cases unfamiliar perspective.

A USER'S GUIDE TO PART 1: *THE GOVERNANCE REPORT*

The Governance Report is a companion document to Parts 2 and 3 of the BCAFN Governance Toolkit and is divided into four sections.

SECTION 1 — OPTIONS FOR GOVERNANCE REFORM

Section 1 – Options for Governance Reform is in five chapters. The first chapter provides a brief history of First Nations governance within Canada. The next three chapters set out the broad options currently available for First Nations to exercise governance over their lands, waters and peoples. These options are: incremental jurisdiction under the *Indian Act*; sectoral governance initiatives; and comprehensive governance arrangements. Where appropriate, the options set out in this section consider governance over lands reserved for Indians, treaty settlement lands, Aboriginal title lands or the broader ancestral lands. Consideration is also given to the exercise of self-government in the absence of agreement or recognition. Finally, we have also provided four useful reference maps showing First Nation language groups in BC, First Nations in BC, groups negotiating modern treaties under the BC treaty-making process, and self-governing First Nations across Canada.

SECTION 2 — CORE INSTITUTIONS OF GOVERNANCE

Section 2 – Core Institutions of Governance is in four chapters, plus an introduction, and considers the institutions that are central to governance, including the structures of a First Nation's government, the governing body and the citizens. It also considers questions of legal capacity to govern, and the development of a First Nation's constitution.

SECTION 3 — POWERS (JURISDICTIONS) OF THE FIRST NATION

Section 3 – Powers (Jurisdiction) of the First Nation is the largest and most comprehensive section in *The Governance Report* and addresses the range of law-making powers (jurisdictions) by subject matter. This includes situations where First Nations governments are already exercising law-making powers or may be considering exercising law-making powers. The introduction to this section describes how we came to determine the title for each chapter and how a Nation might go about considering its powers. It also discusses issues concerning the relationship of laws between governments. While each chapter has been written so that it can be read independently of the rest of *The Governance Report*, we recommend that the introduction to this section be read first.

The 33 subject matters are arranged alphabetically and are tabbed for ease of reference. Each chapter has been structured in the same way, using the same main headings, and has a detailed table of contents that includes any sub-headings. The main headings are as follows:

- **Background:** Provides context and basic information for each subject matter, including the constitutional division of powers, a description of any relevant First Nation organization/ institutions, the legal and political environment (including matters to consider in any negotiations with the Crown), and any geographical considerations (e.g., on- or off-reserve) and so on. The background in some of the chapters may be substantially longer than in others, given the complexity of the subject matter and the issue involved.

- ***Indian Act* Governance:** Considers "*Indian Act* options" for incremental governance for the subject matter. In some cases, there are no options under the *Indian Act*.

- **Sectoral Governance Initiatives:** Considers the subject matter from the perspective of sectoral governance initiatives that First Nations are involved in or are developing. In some chapters, consideration is also given to other initiatives that do not strictly involve the exercise of law-making powers but that are sectoral in nature and relate to activities that in time may have jurisdictional implications. Sectoral governance options are considered in the context of governance over both reserve lands as well as with respect to ancestral lands.

- **Comprehensive Governance Arrangements:** Discusses how the subject matter has been addressed in comprehensive governance arrangements and how self-governing Nations are governing. Comprehensive governance arrangements in BC (both inside and outside of modern treaty-making) are examined, namely those of Sechelt, Westbank, Nisga'a, Tsawwassen and Maa-nulth. We have also included the Yale and Tla'amin final agreements, both of which at the time of writing had been ratified but not yet implemented.

- **Tables:** Provides pertinent information specific to the subject matter. The first table of each chapter describes the treatment of the subject matter in each of the comprehensive governance arrangements, setting out the provisions in the arrangements that address the particular subject matter. This table also considers the priority of laws. The second table provides information about which First Nations have exercised jurisdiction over the subject matter. It shows which BC First Nations have made laws or bylaws under the *Indian Act* or through sectoral governance arrangements or comprehensive governance arrangements. This table is quite long, given the number of laws/bylaws BC First Nations have made. While we have endeavoured to be as accurate as possible in compiling this table, this information should not be considered definitive and does not constitute a "gazette." Finally, we have sometimes included other tables that provide information concerning related activities referred to in the chapter or that we have found to be relevant to the discussion of the subject matter.

- **Resources:** A list of additional resources available to assist First Nations in considering the subject matter further. These are generally divided into three categories: First Nations, provincial and federal. We include addresses of governmental and non-governmental bodies/institutions and associations, along with links to sources of information that readers can access online. Where applicable, each chapter contains citations of federal and/or provincial legislation and court decisions that are relevant to the subject matter.

SECTION 4 — FINANCING FIRST NATIONS GOVERNANCE

Section 4 – Financing First Nations Governance considers one of the most challenging aspects of rebuilding First Nations governance – namely, the fiscal relationship with the Crown. This section looks at how to calculate the cost of governance, how it will be paid for, and the need to expand revenue options. It looks at the sources of revenues that First Nations have available and broader questions concerning fiscal relations with Canada and British Columbia, including the treatment of own-source revenues in transfer calculations. The section is divided into four chapters and an introduction.

A USER'S GUIDE TO PART 2: *THE GOVERNANCE SELF-ASSESSMENT*

The Governance Self-Assessment is in two modules:

- **Module 1:** The Governing Body — Establishing Effective Governance
- **Module 2:** The Administration — Establishing Effective Organization

Modules 1 and 2 have been designed to assist communities in being self-reflective and to guide the community through a confidential and internal self-assessment of both the governing body and the administration. The governance self-assessment can be undertaken by any Nation, regardless of where it may fall along the continuum of governance reform, moving away from the *Indian Act*.

Each module contains a guide to conducting the survey, the survey itself, a questionnaire and worksheets to tabulate the results and develop work plans. The governance self-assessment will take three to four hours for the governing body and six to seven hours for the administration. Taking the survey will help to identify, through the questions and resulting dialogue, governance priorities and opportunities within both the governing body and administration, and can lead to the development of internal work plans for governance-related initiatives that meet the specific needs of the First Nation.

While the guide to the survey provides context for the questions, it is intended to be used in conjunction with the other parts of the Governance Toolkit.

MODULE 1: THE GOVERNING BODY — ESTABLISHING EFFECTIVE GOVERNANCE

Module 1 has been designed to assist a First Nation in assessing the effectiveness of its governing body. The self-assessment consists of a guide, a survey, a questionnaire and a planning workbook. Completing Module 1 will take approximately three to four hours.

The module's guide will help the members of the governing body understand the survey questions and the choice of responses provided. The survey is undertaken by the members of the governing body as a group effort. The members read the guide first, before tackling the survey questions. The questionnaire is completed by individual members of the governing body. The planning workbook is a simple tool used while completing the assessment to record identified needs or follow-up activity that may be required.

When completing the self-assessment, the members of the governing body are encouraged to think critically about their Nation's governance practices, bearing in mind the legal framework that they are currently operating within. By referring back to *The Governance Report* (Part 1 of the Governance Toolkit) the governing body can explore ways to strengthen their Nation's institutions of governance and find resources that might be available to help them do so.

Components of effective governance

The guide, the survey and the planning workbook are divided into six areas. Each area addresses a key component of effective governance. The six areas are:

1. Developing a clear direction/vision: This component speaks to questions about a First Nation's long-term direction, its values and most importantly the vision of the First Nation. It considers

issues of strategic planning, whether a strategic plan has been developed, and if so, what strategic goals and objectives make up the plan.

2. Working together effectively: This component considers the structures and procedures of the governing body. It takes into account how the governing body is selected and how it makes decisions, including the making of laws. It raises issues regarding the roles and responsibilities of members of the governing body and considers how well the governing body is working together as a group. This component also includes the questionnaire that each member of the governing body is asked to complete independently.

3. Information to support quality decision-making: This component concerns the information that is received by the governing body and that is relied upon to make informed decisions. Consideration is given to what kinds of information the governing body reviews and whether it is useful in making decisions for the First Nation.

4. Overseeing and supporting the administration: This component considers how the governing body oversees the administration to support the delivery of programs and services. There is a focus on the recruitment, selection and monitoring of the administrator, the relationship between the governing body and management and their roles in resource allocation.

5. Maintaining positive relations with the citizens and stakeholders: This component concerns the governing body's relationship with the citizens and stakeholders, and how to better understand their priorities. Consideration is given to how the governing body communicates with the citizens and stakeholders and how the governing body is involved in the activities of the Nation when seeking input from the citizens. Does the governing body know the priorities of the Nation, the citizens and stakeholders?

6. Being accountable and realizing the vision: This component addresses the governing body's role in demonstrating transparency and accountability to the citizens and stakeholders and supporting ongoing improvements in good governance and the quality of programs and services delivered by the government.

Completing the governing body self-assessment survey

Completing the survey is the central activity to be undertaken by the Nation's governing body when a First Nation commits to undertake a governance self-assessment. The survey poses a series of questions with respect to each of the six areas described above. The questions in the survey are tied to the measurements and the guidelines used in the guide. These measurements and guidelines are based on best practices in developing First Nations governance. For each survey question, the corresponding reference to the statements about governance in the guide is used (1.1, 1.2, 1.3, etc.).

MODULE 2: THE ADMINISTRATION — ESTABLISHING EFFECTIVE ORGANIZATION

Module 2 has been designed to assist the First Nation in assessing the effectiveness of its administration, regardless of the legal framework under which it is currently governing. As with Module 1, the self-assessment in Module 2 consists of a guide, a survey, a questionnaire and a planning workbook. The survey is to be undertaken by the members of the senior management, again as a group exercise. Completing Module 2 will take approximately six to seven hours. The guide is designed to assist the staff in completing the self-assessment to help them meet the growing demand for excellence in management practices. This is particularly important as First

Nations move away from governance under the *Indian Act* and are re-establishing their own institutions of governance with expanded powers (jurisdictions).

Components of effective organization

Structurally similar to Module 1, the guide, the survey and the planning workbook for Module 2 are divided into five areas. Each area addresses a key management responsibility that First Nations through their leadership group should have in place to ensure a well-run administration. The approach taken, however, will vary according to a First Nation's size, structure and the extent to which it has already assumed jurisdiction or responsibility for program and service delivery. The five areas are:

1. Building a strong administration: Addresses the structure and management systems needed to build a strong administration. This includes the human resources and performance management systems and the physical and information-system infrastructure required to support the governing body in performing its functions and meeting its goals and objectives.

2. Supporting an efficient law-making process: Addresses the systems and processes needed to support the governing body in exercising its law-making and decision-making functions.

3. Delivering quality programs and services: Addresses the systems and processes needed to design and deliver high- quality programs and services and achieve the community's vision and the governing body's goals and objectives.

4. Managing and allocating resources prudently: Addresses the effectiveness of the administration in managing and allocating resources to meet the needs and interests of the Nation.

5. Successfully managing change: Addresses the effectiveness of First Nation governments in responding to change both as led by the community or as a result of unforeseen or uncontrollable circumstances (e.g., reductions in funding, service cutbacks etc.). This area assesses the ability of Nations' administrations to respond to change, both positive and where negative to minimize adverse impacts on the communities. This is particularly important for Nations who are undergoing significant change in the way their offices operate as a result of taking on increasing program and service delivery on behalf of other governments (Canada and British Columbia) or as a result of efforts to expand their jurisdiction and design and deliver their own programs and services under this jurisdiction.

Completing the administration self-assessment survey

As with Module 1, completing the survey is the central activity to be undertaken by the Nation's administration when a First Nation commits to undertake a governance self-assessment. The survey poses a series of questions with respect to each of the five areas described above. The questions in the survey are tied to the measurements and the guidelines used in the guide. These measurements and guidelines are based on best practices in developing First Nations governance and administration. For each survey question, the corresponding reference to the statements about administration in the guide is used (1.1, 1.2, 2.2, 2.3, etc.).

A USER'S GUIDE TO PART 3: *A GUIDE TO COMMUNITY ENGAGEMENT: NAVIGATING OUR WAY THROUGH THE POST-COLONIAL DOOR*

Part 3 of the Governance Toolkit looks at ways to approach community engagement as a transformative process of empowerment as a community moves towards the post-colonial door, opens the door and, ultimately walks through the door and beyond. Part 3 is divided into three sections, and each of these sections includes additional tools that could be employed by leaders of change:

SECTION 1 — SOCIAL CHANGE AND GOVERNANCE REFORM: MOVING TOWARDS THE DOOR

This section considers ways to introduce and have dialogue around the concept of "governance" and "governance reform" in the First Nation community. The section acknowledges the current reality and the challenges to effecting governance reform by locating the experience as "Fourth World" peoples in the difficult process of decolonization. Accordingly, the approach to work on governance reform is considered as an aspect of broader community development.

Section 1 — Tools:

1.1 Re-Building First Nations' Governance — Our Challenges, Opportunities, Rights and Responsibilities / PowerPoint
1.2 Our *Indian Act* Reality / Handout
1.3 Most Frequently Asked Questions about Self-Government / Handout
1.4 Moving Beyond the *Indian Act* — The Pros and Cons / Handout
1.5 Governance Reform — Top 10 Lists / Handouts

SECTION 2 — COMMUNITY ENGAGEMENT AND ORGANIZING FOR CHANGE: OPENING THE DOOR

Section 2 looks at what community engagement is all about and why it is absolutely necessary. This section considers ways to overcome the challenges of community engagement by using approaches such as community development, as discussed in Section 1. This includes a discussion on the need for "safe spaces" in which to engage and developing group skills and trust. Basic but useful information about conducting and facilitating meetings and engagement activities, including using the Internet and social media, is also provided. Finally, this section considers how communities can mobilize resources, plan and organize for change and develop their own community engagement strategies.

Section 2 — Tools:

2.1 Community Engagement — Reflecting, Planning and Organizing for Change / PowerPoint
2.2 Facilitator's Checklist
2.3 Meeting Checklist
2.4 Citizen Governance Questionnaire / Handout
2.5 Resources

SECTION 3 — EXPLORING GOVERNANCE OPTIONS: WALKING THROUGH THE DOOR

In this section, the focus on community engagement shifts from simply having a conversation about change and the need for change to what it will actually look like and how a Nation might achieve that change. The section covers the development of core institutions of governance, including developing a constitution. It also considers the ratification process, communications, and monitoring and evaluating change.

Section 3 — Tools:

- 3.1 Community Governance Profile / Template
- 3.2 Exploring Governance Options — Identifying Priorities, Taking Action and Implementing Change / PowerPoint
- 3.3 Developing a Community Constitution / PowerPoint
- 3.4 Community Questions — Core Institutions of Governance / Handout
- 3.5 Communications Plan / Template

THE TOOLS LISTED IN EACH SECTION

As noted above, tools are included with each section of *A Guide to Community Engagement*. These include PowerPoint presentations, Q&As, charts, "top 10" lists, templates, questionnaires, surveys and other tools. Many can be used as is or modified to meet a First Nation's specific needs. For convenience, these documents are also available electronically. These tools, including any updated versions, will also be made available online.

BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

GOVERNANCE TOOLKIT:

A GUIDE TO NATION BUILDING

The following section is a complete Table of Contents for all three parts of the BCAFN Governance Toolkit.

Table of Contents

PART 1 — THE GOVERNANCE REPORT

Foreword to the Second Edition from Regional Chief Jody Wilson-Raybould
Using the Report

SECTION 1 — Options for Governance Reform

1.1 A Brief History of Evolving First Nations Governance within Canada
- Introduction
- Differing Legal Traditions
- The Colonial Legacy
- Self-Government in Modern Times
- Organizing for Change
- Developing New Mechanisms to Support Governance Reform
- The Governance Continuum

1.2 *Indian Act* Governance
- Background
- Governance Options
- Section 88 and The Priority of Laws

1.3 Sectoral Governance Initiatives
- What They Are
- What They Are Not

1.4 Comprehensive Governance Arrangements
- Background
- Advantages and Disadvantages
- Geographical Scope
- Canada's Inherent Right Policy
- Treaty Negotiations Under the British Columbia Treaty Process
- Nations that are Self-Governing in Accordance with Comprehensive Governance Arrangements

Resources
Maps

SECTION 2 — Core Institutions of Governance

2. 0 Introduction
- Background
- Traditional Governance
- Impact of Western Legal Traditions on Governance
- Principles of Good Governance

2. 1 Legal Status and Capacity
- Background
- Legal Status and Capacity and the *Indian Act*
- Legal Status and Capacity Under Sectoral and Comprehensive Governance Arrangements
- Legal Status and Capacity and Declared Aboriginal Title Lands

2.2 The Citizens
- Introduction
- The "Self" in Self-Determination
- Imposed Identity and Foreign Rules
- Determining Citizenship Today

2.3 The Governing Body
- Background
  - The Governing Body as an Aspect of the Inherent Right of Self-Government
  - Reconciling Different Governance Frameworks
  - The Governing Body with Respect to Aboriginal Title Lands
  - Designing the Governing Body
  - The Role of National and Regional Bodies
  - The Role of Non-Citizens
- The Governing Body Under the *Indian Act*
- The Governing Body Under Sectoral Governance Initiatives
- The Governing Body Under Comprehensive Governance Arrangements
- Questions a Community Will Likely Consider in Establishing Its Governing Body
  - Chief and Council
  - Meetings of the Governing Body
  - Procedures for Making Laws
  - Establishing Other Institutions of Governance

2.4 The Constitution
- Background
- Developing a Constitution
- Elements to Consider in a Constitution
- The American Indian Nations Experience
- Constitutions of Interest

Resources

SECTION 3 — Powers (Jurisdictions) of the First Nation

3.0 Introduction
3.1 Aboriginal Healers and Traditional Medicine
3.2 Administration of Justice
3.3 Adoption
3.4 Agriculture
3.5 Child and Family
3.6 Citizenship
3.7 Education
3.8 Elections
3.9 Emergency Preparedness
3.10 Environment
3.11 Financial Administration
3.12 Fish, Fisheries and Fish Habitat
3.13 Forests
3.14 Gaming
3.15 Health
3.16 Heritage and Culture
3.17 Intoxicants
3.18 Labour Relations
3.19 Land and Marine Use Planning
3.20 Lands and Land Management
3.21 Licensing, Regulation and Operation of Businesses
3.22 Matrimonial Property

3.23 Minerals and Precious Metals
3.24 Oil and Gas
3.25 Public Order, Safety and Security
3.26 Public Works
3.27 Social Services
3.28 Solemnization of Marriages
3.29 Taxation
3.30 Traffic and Transportation
3.31 Water
3.32 Wildlife
3.33 Wills and Estates

SECTION 4 — Financing First Nations Governance

4.0 Introduction
- Three Stages of Governance Reform

4.1 Costing First Nations Governance
- Setting Plans and Priorities
- Estimating the Costs of Governance

4.2 First Nations Revenues
- An Already Divided "Revenue-Source Pie"
- Growth and Diversity of Aboriginal Income
  - Geographical Scope
  - Thinking about OSR
- Types of First Nations Revenues
  - Revenues Raised under First Nation Jurisdiction/Authority
  - Public Debt Financing
  - Business Activities
  - Transfers from Other Governments

4.3 Own-Source Revenue Impact on Transfer Payments
- A Commitment to Cost-Sharing
- Canada's Approach to OSR
- Current OSR Arrangements
  - Self-Government Agreements
  - OSR Agreements and Fiscal Financing Agreements
- First Nations Issues Around OSR

4.4 Developing a New Fiscal Relationship
- The Relationship Challenge
- Efforts to Define the Relationship
- Equalization and Stabilization
- Fiscal Relationship — Guiding Principles
- Conclusion

Resources

NOTES ///

Table of Contents

PART 2 — THE GOVERNANCE SELF-ASSESSMENT

Foreword from Regional Chief Puglaas (Jody Wilson-Raybould)

MODULE 1 — The Governing Body — Establishing Effective Governance

1.1 Guide
- Using the Guide
- Developing a Clear Direction/Vision
- Working Together Effectively
- Information to Support Quality Decision-Making
- Overseeing and Supporting the Administration
- Maintaining Positive Relations with Citizens and Stakeholders
- Being Accountable and Realizing the Vision

1.2 Survey

1.3 Questionnaire

1.4 Planning Workbook

1.5 Tabulation Worksheet

MODULE 2 — The Administration — Establishing Effective Organization

2.1 Guide
- Using the Guide
- Building a Strong Administration
- Supporting an Efficient Law-Making Process
- Delivering Quality Programs and Services
- Managing and Allocating Resources
- Successfully Managing Change

2.2 Survey

2.3 Questionnaire

2.4 Planning Workbook

2.5 Tabulation Worksheet

NOTES

Table of Contents

PART 3 — A GUIDE TO COMMUNITY ENGAGEMENT

Foreword from Regional Chief Puglaas (Jody Wilson-Raybould)
Using the Guide

SECTION 1 — Social Change and Governance Reform — Moving Towards the Door

1.0 Social Change and Governance Reform — Moving Towards the Door

SECTION 1 — TOOLS

1.1 Re-Building First Nations' Governance — Our Challenges, Opportunities, Rights and Responsibilities / PowerPoint
1.2 Our *Indian Act* Reality / Handout
1.3 Most Frequently Asked Questions about Self-Government / Handout
1.4 Moving Beyond the *Indian Act* —The Pros and Cons / Handout
1.5 Governance Reform — Top 10 Lists / Handouts

SECTION 2 — Community Engagement and Organizing for Change — Opening the Door

2.0 Community Engagement and Organizing for Change — Opening the Door

SECTION 2 — TOOLS

2.1 Community Engagement — Reflecting, Planning and Organizing for Change / PowerPoint
2.2 Facilitator's Checklist
2.3 Meeting Checklist
2.4 Citizens' Governance Survey / Handout
2.5 Resources

SECTION 3 — Exploring Governance Options and Implementing Change — Walking Through the Door

3.0 Exploring Governance Options and Implementing Change — Walking Through the Door

References for Sections 1, 2 and 3

SECTION 3 — TOOLS

3.1 Community Governance Profile / Template
3.2 Exploring Governance Options — Identifying Priorities, Taking Action and Implementing Change / PowerPoint
3.3 Developing a Community Constitution / PowerPoint
3.4 Community Questions — Core Institutions of Governance / Handout
3.5 Communications Plan / Outline

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Building on OUR Success:

NAVIGATING OUR WAY THROUGH THE POST-COLONIAL DOOR