

Problems of governance



Problems of governance at the Kashechewan reserve. Problems at reserves like Kashechewan point to a system of governance that needs fixing. [Read more about this story.](#)

Kevin Libin, National Post Tuesday, Feb. 19, 2008

Six years ago, Robert Whitehead was without a doubt the loudest critic of the Yellow Quill First Nation government. A disgruntled band member, he had publicly chastised the band boss, Chief Hank Neapetung, complaining about band employees -- including teachers and social workers -- stumbling around the Saskatchewan reserve, drunk. He complained about the lack of housing for members and the terrible, rotting conditions of ones already built. The administration, he claimed, was hoarding \$29-million in treaty land settlements, rather than spending the much-needed money on member needs. In return for his advocacy, he was beaten up physically, sued by the chief, had his house shot at and his water cut off, and lost his job.

Today, Mr. Whitehead -- Chief Whitehead since 2002, after winning the position in a fluke election (Mr. Neapetung, who had ruled for 18 years, found himself disqualified from the race after failing to attend an all-candidates debate) -- is the one facing criticism. After two tiny sisters were found frozen to death on Tuesday, abandoned in the snow by an apparently drunken father in -50C temperatures, media attention has focused on the appalling conditions on Yellow Quill, located a short drive east of Rose Valley, Sask.

And things don't look much different than they did more than half a decade ago, when Mr. Whitehead took over. The housing shortage is still desperate. The mould problems in existing homes are still making residents sick. Officials continue to turn up drunk. The band-operated service station can usually be found without service but with a sign reading "no gas." And the community, which counts about 2,000 people as members, is "bankrupt," according to the chief.

Mr. Whitehead blames the chronic problems on a paralyzed, dysfunctional council, on intransigent trustees refusing to let him at the multi-million-dollar Yellow Quill nest egg, on band members spreading vicious rumours that he practices mystical "bad medicine" -- everyone, it seems, but himself.

It is common that First Nations politicians who come to office promising reforms end up failing to implement them once elected, says Don Sandberg, Aboriginal Policy Fellow at the Winnipeg-based Frontier Centre for Public Policy think-tank and a member of Manitoba's Norway House First Nation. "Over and over again, you see this happen. The chiefs come in and they see how things are done, and they pick up right where the last chief left off."

Chiefs refusing to take responsibility for troubles on reserves is just as standard. When members of the Piikani Nation were evacuated from their Alberta reserve in November after Health Canada condemned their mouldy, crumbling homes as "unfit" for human habitation, Chief Reg Crowshoe blamed the Indian Affairs department for failing to provide enough homes.

"They're saying they don't have enough money, but we can't wait any longer," he told reporters. What he didn't mention is that just five years earlier, the 1,500-member Piikani had been handed \$64-million by the province and Ottawa in a settlement over a dispute over a dam project. Ottawa sent another \$450,000 in housing assistance to the reserve in 2006. Today, there are 500 Piikani still waiting for such houses, and despite the fact that Indian Affairs routinely allows First Nations to use settlement money for necessities, the band insists it cannot afford to fix the ones it has.

Ottawa took the blame again when Ontario's Kashechewan reserve was evacuated in 2005 after E.Coli was found in the water system. Under immense pressure, the government dropped in hundreds of thousands of dollars in cases of bottled water into the community, sent a Canadian Forces deployment of over 40 engineers and soldiers to install and operate a 10-tonne reverse osmosis purifier, designed to filter water contaminated by chemical weapons, while the province arranged a mass airlift of 1,100 reserve residents.

At first, Kashechewan looked a heartbreaking tale of an aboriginal community left to suffer with rundown, underfunded infrastructure. Then it turned out that the water treatment plant was just 10 years old -- probably newer than the one connected to your kitchen faucet -- and the band had received \$800,000 for upgrades just a year before the crisis. When a water engineer from Red Lake arrived, he found the problem: a plugged chlorine injector. It was a \$30 part and took him all of six hours to make the water drinkable again. The plant managers had never been trained to operate the water treatment facility. When the automatic alarm system began annoyingly ringing years before, warning of contaminated water, they had simply unplugged it.

The failure of First Nations governments to manage the most basic of public services is, unfortunately, not uncommon. Canada's auditor general reports that roughly three-quarters of all First Nations were being run by inexperienced, untrained staff and that there exists a shortage of about 80,000 homes on reserves across the country. Were politicians so bungling in such critical areas in any other Canadian community, heads would roll. They certainly did in Walkerton where even Ontario's premier was made to answer, before an inquiry, for contaminated water. In Walkerton, however, politicians are answerable to those they govern. That is not how things work on the reserve.

It is understandable that chiefs are quick to deny accountability to their members when things go horribly wrong. In reality, they simply aren't accountable. Not to their citizens, anyway. Whether or not Canadians choose to recognize First Nations as a constitutionalized level of government (and it remains a matter of deep debate, particularly within the department of Indian Affairs itself), the reality is that Ottawa entrusts a huge amount of governmental responsibilities -- schooling, health, public services -- to chief and council. And it is to the federal government that the chiefs, in turn, report -- not their people. As a result, most First Nations are administered in ways unressembling even minimal standards of democratic governance.

Nearly all Canadians have an expectation that any public official in charge of urban planning, water systems or health administration has some kind of experience and training. Not so on reserves. Positions are frequently allotted to members wholly unqualified to hold them, either out of nepotism, patronage or simply because there are no properly trained or educated people to hire.

"In our talent pool, we don't have thousands of people to pick from," says Clarence Louie, chief of B.C.'s Osoyoos Indian Band, who created a human resources department to ensure hires made by his council are properly qualified.

Band jobs are sometimes the only ones available, and almost always the highest paid, which puts chiefs under a great deal of pressure to spread them to friends and family first. It is also not unusual to find chiefs securing power banana-republic-style, rigging elections, bribing voters with cash or other prizes. "The one with the most relatives usually wins, because he's the one who's going to hand out money to the relatives," says Mr. Sandberg.

Members of First Nations regularly complain of not being able to vote in band elections when they live off reserve, in violation of a Supreme Court ruling protecting their franchise. In 2000, the Mohawk band council of Kahnawake in Quebec evicted and revoked the voting rights of any members who were not able to verify they had the minimum amount of Indian "blood quantum" -- uncontaminated by racial mixing -- because, as one Mohawk official coldly put it, less-than-pureblood individuals were not "positively contributing to our community."

In advance of one Norway House election, Mr. Sandberg says that 392 voters were struck from the rolls, while the chief crammed a warehouse with refrigerators, stoves and other basic appliances, to hand out to those who would back him.

"Once the chief's in, they have total control of funding and when anyone runs against them they're running against millions of dollars," says Rod Sutherland, a former councilman from Peguis First Nation, in Manitoba, where long-time chief Louis Stevenson was recently accused of stacking the public service and boards with cronies, and entering into secret deals with lenders, without band approval (the allegations have not been proven in court).

Electoral officers, in charge of preserving the integrity of the voting process, aren't much use: They are appointed directly by the chief, leaving open the possibility of backroom deals (on Peguis, Mr. Sutherland says, the chief and his longtime electoral officer were, at one point, in business together).

When reports surfaced in 2005 that members of Saskatchewan's Red Pheasant First Nation had allegedly sold their mail-in ballots to a candidate for chief -- one member claimed to have received a three-bedroom trailer -- the chief electoral officer, who admitted she took unsealed ballot boxes home with her, refused to intervene, insisting it wasn't her job to monitor vote buying. The same officer was in charge of an election on the nearby Mosquito First Nation where "Individuals provided money to electors in exchange for votes and mail-in ballots, forged voter declaration forms and mail-in ballots, and intercepted and destroyed valid mail-in ballots," according to a federal investigation that same year.

On other reserves, members suspected of supporting opposition candidates have been threatened with losing assistance cheques, single mothers with having their kids taken away by social workers. Unscrupulous band governments will not only close meetings to the public, but will hold them off reserve entirely. Away from their members' eyes, they are free to manipulate finances for their own gain. In Saskatchewan, the council of one Saulteaux band, comprised of just 800 members, was recently found to have spent more on travel expenses in a single year than the entire cabinet of the province -- with the chief alone spending more than \$175,000. Not surprisingly, a 2003 Ekos research poll conducted for Indian and Northern Affairs Canada found that just 37% of on-reserve aboriginals considered the performance of their band's government to be "good" or better.

The reason is not hard to discern. While democratic government in non-native communities keeps politicians answerable to voters, on reserves, the chief and council report only to the department of Indian and Northern Affairs. Making matters worse, those local chiefs are the same ones who go on to elect the grand regional chiefs and national chief to the Assembly of First Nations. In other words, about 600 chiefs elect someone who claims to speak for 700,000 status Indians. Leaders have a strong incentive not to elect grand or national chiefs who might make their lives difficult by demanding reforms, leaving almost nothing to check the band council's typically unfettered power.

"If a grand chief were to come into a First Nation to try and solve all the [governance] problems, he would be fired so fast his head would be spinning," Mr. Sandberg says. In 2003, an Indian Affairs poll showed that then minister Robert Nault's Bill C-7, the First Nations Governance Act, designed to provide bands a codified system of elections and financial management, was backed by a majority of First Nations people. The AFN, however, was opposed to the legislation and eventually convinced then Prime Minister Paul Martin to dump it and create, instead, the Kelowna Accord, a deal that would have, had it not been cancelled by the incoming Tory government, sent billions more in cash to band chiefs in the name of improving education and health, but came with few strings attached.

Of course, having local chiefs elect a provincial or national leader makes no more sense than having all Manitoba's mayors, animated as they are by their own local political agendas, choose the premier. "Mostly what they [local chiefs] are looking for is more government money passing through their hands, basically, so a little bit of it sticks," says Calvin Helin, a Vancouver aboriginal lawyer and author of last year's *Dances with Dependency: Indigenous Success Through Self-Reliance*.

The only way around that, he says, is to ensure that the head of the AFN, the most powerful aboriginal in Canada and the one who often has the prime minister's ear, is actually elected directly by Canada's aboriginal people, through a general vote. "We can do that these days by a referendum," Mr. Helin says. "It used to be a case where the geography was a barrier, but with the Internet these days, and all of the sorts of things we have at our disposal, everything is possible."

There are certainly chiefs and councils who take their responsibilities to members seriously, run clean elections and govern with integrity. But as long as Ottawa sends money directly to First Nations bosses who are then, in turn, in charge of doling funds out to band members in the form of housing allowances, social assistance and, often, jobs, members will always depend on their politicians, rather than the other way around.

"If there are any problems, they are not answerable to their community. They are answerable to the Minister of Indian Affairs. That is just a recipe for corruption," says Mr. Helin. "It would be like us voting for a Prime Minister in Canada and then having him responsible to Westminster Abbey. It would be absurd."

But creating political accountability on reserves can be done. What is missing is the one mechanism that, off-reserve, inspires citizens to hold their leaders to task, namely, the exercise of paying tax and demanding it be used responsibly.

"Taxation is one of the most fundamental things" for proper governance, says Tom Flanagan, a political science professor at the University of Calgary who studies, and has written several books on, aboriginal policy.

He argues that if Ottawa were to begin sending financial support directly to individual reserve residents, requiring band councils to tax it back for public expenditures, First Nations members, like most Canadians, would naturally take a much deeper interest in ensuring that government revenues are being used properly and with efficiency, and have the power to do something if it weren't. Studies by Robert Bish, formerly co-director of the University of Victoria's Local Government Institute, found that in every country where a government has derived the majority of its funds from something other than taxes, government services have deteriorated, with Norway and its oil revenues standing as the sole exception.

To be sure, taxes would not end scandalous governance on reserves completely, just as taxpayers off reserves were not spared the Liberal sponsorship scandal or the MFP computer leasing fiasco in Toronto. But it is an important start to ending much of it.

"The need to tax does not guarantee good government, but the absence of the need to tax usually guarantees bad government," writes John Richards, the former Saskatchewan MLA and Simon Fraser University public policy professor, in his 2006 book *Creating Choices: Rethinking Aboriginal Policy*.

It is easy to see why: When politicians have to start convincing voters to part with cash, citizens are more apt to begin scrutinizing who they elect and how they devise spending priorities. It provides voters the power to check the size of government, something that can otherwise grow as large and expensive as the politicians themselves desire. (For an idea of what uncontrolled size can lead to, consider the Stoney First Nation, west of Calgary, which has three chiefs and 12 councillors for just a few thousand members; the Ottawa-based Institute on Governance last year reported that the average First Nation spends ten times more per capita on governance than the average Canadian municipality).

When First Nations people begin paying their own way for the band's administration, the many missing or flawed governance institutions that exist on most reserves -- auditing agencies, independent electoral officers, term limits for chiefs -- would arouse attention, and if taxpayers demanded it, adjustment. Meanwhile, those members making enough money to fix their own broken windows or replace their own roofs would suddenly get resistance from neighbours when they demand the band pay for repairs from the treasury -- a kitty that members today understandably see as money not their own, but money for the taking. At the very least, there is a good chance that taxpayers would demand that their houses and water aren't diseased. In fact, a look at the Community Well-Being Index compiled for Indian and Northern Affairs Canada shows as much: Many of the First Nations communities recognized to have implemented more progressive standards of governance are almost always the highest ranking reserves on the index.

More accountable leadership is certainly the route to making any welfare state run more effectively and responsibly, leaving the question of how public money should be allocated to those best prepared to make that call, the members themselves. Just as importantly, however, it has the added and important benefit of creating an environment where businesspeople from outside the reserve feel more comfortable, potentially encouraging them to bring investment and jobs to on-reserve natives.

The bizarre strictures of the Indian Act make contracts and leases already difficult to enforce within the legal grey zone that reserves exist, and are sometimes simply ripped up by councils who decide they no longer wish to honour them: Open something as basic as a video store in a band-owned strip mall and there is little to stop council, should it desire, from one day evicting you, confiscating your inventory and deciding to run the shop itself.

Better councils don't eliminate investment risks created by the Indian Act, but they can reduce them. The Harvard Project on American Indian Economic Development concluded after a study of the most prosperous tribes in the U.S. in 2000, that "poverty in Indian Country is a political problem -- not an economic one." Tribes that succeed have in common a few key characteristics, it noted. Among the most important: "They settle disputes fairly," and that "sends a signal to investors of all kinds that their contributions will not be expropriated unfairly." In addition, "they separate the functions of elected representation and business management," which counters the urge of politicians to "interfere in business on behalf of voters." Look at the Canadian bands that have gone furthest in implementing governmental reform and you will find they are in virtually every case the same ones who have managed to lure millions of dollars in investment.

Clarence Louie, chief of the prosperous Osoyoos Indian Band, created an economic development corporation to distance band business — including a winery and a vacation condo development with Calgary-based Bellstar Hotels and Resorts -- from political interference, and hired a former executive from juice giant Sun Rype Products Ltd., from off the reserve, as chief operating officer.

In Sydney, Nova Scotia, the Membertou First Nation posts all its band finances online and in 2001 achieved International Organization for Standardization (ISO) 9001:2000 certification, verifying the band had met globally recognized business standards. In barely a decade, Membertou has gone from scraping by on a \$4.5 million annual budget, nearly all federal transfers, to collecting \$65 million annual revenues from partnerships in seafood processing, tourism, retail, and high tech industries.

On the Westbank First Nation in BC, Chief Rob Louie recognized that the reserve political system as it is typically structured provides no mechanism for the industry concerns to be heard. So, in 2005, when Westbank attained self-government status (which required it to clear several high hurdles to demonstrate sufficient levels of accountability and transparency) it enshrined in its band legislation laws requiring the establishment of an advisory council representing non-member business interest. Another Westbank law applies the Judicial Review Procedures Act of B.C. to Westbank lands, in essence, volunteering Westbank to be accountable to the same legal system businesses rely upon to protect them off-reserve. Indian Affairs calls Westbank "one of the most economically successful Aboriginal communities in Canada."

There are a dozen other bands like this, maybe two dozen. In every case the formula works pretty much the same: when First Nations people are given real control over their leadership and the fate of their own lives, they start demanding, and getting, things we all want: thriving economies, well-paying jobs, access to housing, effective government services, and water they can drink without getting sick.

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