

## Authority, Rights and an Economic Base: The Reality of Aboriginal Self-Government

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### Introduction

Perhaps one of the most timely political debates under way in Canada is that concerning the concept of Aboriginal self-government. Aboriginal peoples across Canada have come to a crucial point in their relationship with the Crown and decisions that will be made in the next few years at the constitutional and community level will change forever the political status of Aboriginal peoples in this country. Three fundamental ideas stand out in the debate over the concept of self-government and, in essence, these three ideas comprise the concept of self-government. They are authority, rights and an economic base. This commentary outlines briefly why all three must be examined holistically and why each has a crucial role in the final outcome.

Before this discussion begins, it is recognized that the First Nations of this country are not a homogeneous group. The Inuit, the Metis, status and non-status, treaty and non-treaty peoples all have different goals and objectives. This commentary does not attempt to examine the goals of each one of these groups but rather, simply explores the necessity of an holistic approach to self-government discourse for all groups involved.

### Authority

The concept of authority relates primarily to the formal structure of power and government. What authority does the First Nations' government possess and how, and to what extent, can that authority be exercised? The Cree and Naskapi First Nations in northern Quebec derive their authority from the 1976 *James Bay and Northern Quebec Agreement* and the 1984 federal *Cree-Naskapi (of Quebec) Act*, which have become constitutionalized by virtue of subsection 35(3) of the *Constitution Act, 1982*. The Sechelt Band in British Columbia derives its authority from the 1987 federal *Sechelt Indian Band Self-Government Act* and the



*Sechelt Band Constitution.* In both of the above cases, legislation was enacted to replace the paternalistic *Indian Act* and is designed to place the governing of First Nations in the hands of First Nations' peoples. These pieces of legislation are not perfect by any means, but they do represent forms of authority.

The recent constitutional discussions have focused on another aspect of authority: a constitutionalized inherent right of Aboriginal self-government. By placing the issue of authority at this level, i.e., the Constitution of Canada, the participants are solidifying a constitutional basis of authority for First Nations' governments. By doing so, they ensure that First Nations' governments can operate and function independent of outside interference. This is self-government and the constitutional recognition of such a right is crucial to the concept having any significant meaning in the Canadian constitutional and legal arena.

Within the concept of authority come all government services and apparatus. Everything from social services to policing, health to education, resource allocation to economic development, depend on an adequate, efficient and solid government base. This base must possess sound authority to handle the tasks necessary to operate in a modern society. This is the task ahead for First Nations. To develop solid infrastructures and governmental support systems is one of the goals of authority. In turn, with the proper mechanisms in place, dependent of course on the needs of each particular First Nation, the societal needs of First Nations' peoples can be met by their governments. The legislative, executive and judicial portions of government are all within the ambit of authority. The judiciary also plays an important role in the area of "rights."

However, regardless of the authority system put into place, it must be one that is based on community integration. That is, the First Nation must design the self-government apparatus from the ground up. Notwithstanding the importance of constitutional recognition of self-government and Aboriginal rights in general, any system of authority that does not have the support and does not represent the views of the people, is doomed. Self-government means community.

The constitutional recognition of self-government and the practical application of self-government must work in unison for each to be a success. A constitutional right is good to the degree that it can be exercised and implemented. Aboriginal government is good to the degree that it receives constitutional entrenchment and secures adequate resources.

In essence, authority defines that which composes a government. It is this aspect of the self-government discussions that has received the most



attention because it is the most visible. However, there are two other important areas that need further discussion in order to make self-government a reality: rights and an economic base. While the formal structures of government (i.e., authority) are necessary, their success depends on the other two factors in the self-government equation. Failure to examine all three aspects of self-government can only lead to disappointment.

## Rights

The concept of rights, as it relates to self-government, has two main components to it: rights in the macroscopic sense and rights in the microscopic sense. Each will be discussed briefly.

In the macroscopic sense, First Nations have been concerned about the applicability now, and in the future, of their government being subject to the *Canadian Charter of Rights and Freedoms*. Their fundamental concern is the extent to which their governments will be bound by the Charter, especially as it relates to their customs and traditions. Although section 25 provides that the rights contained therein shall not "abrogate or derogate from any aboriginal rights or freedoms," the concern remains that this clause may not prevent certain Charter rights from superseding some Aboriginal rights. As well, at the macroscopic level, it has been suggested that an Aboriginal charter of rights be developed at the national level. While this is laudable, there may be problems in that not all First Nations have the same goals and objectives. Perhaps a better mode of operation would be the development of individual First Nations' charters of rights. This would allow for the development of rights from a community-oriented basis, thereby serving the needs of the community better.

At the heart of the macroscopic rights debate is the extent of the rights that should be protected. This is particularly true with regard to individual rights. Some First Nations have argued that individual rights must succumb to the rights of the collectivity. However, notwithstanding this, there is a need, which is reasonable, that all individuals be guaranteed certain rights: such as a right to a fair trial, freedom of association and religion and sexual equality, among others. This is in keeping with many tribal traditions.

At the microscopic level is the issue of the administration of justice on a day-to-day basis and the creation of an Aboriginal judicial system or systems. Almost every board of inquiry or royal commission investigating wrongdoing or discrimination against Aboriginal peoples has come to the conclusion that either the systems involved were not sensitive enough to the needs of Aboriginal peoples or that a separate Aboriginal justice system(s) is in order.



Thus, if self-government is to succeed, each First Nation, or group thereof, should be encouraged to develop its own judicial structure that meets the needs of their respective peoples. This places the control of a crucial aspect of a society, the administration of justice, into the hands of the First Nations, where it belongs.

Therefore, Aboriginal self-government needs, in addition to a sound administrative and governmental structure, a solid basis of rights, both at the constitutional (macroscopic) level and with respect to the administration of justice (microscopic) level.

## An Economic Base

Regardless of the formal structures in place—that is the basis of authority and the degree of rights secured—First Nations must have an adequate economic base in order to finance their governments. As federal resources become more scarce with each passing fiscal year, First Nations are becoming increasingly aware of their precarious situation. Program funding has been dwindling, in real economic terms, for more than a decade and the demands placed on First Nations governments are increasing as they place more and more governing responsibilities onto themselves.

First Nations must examine all economic, legal and political routes to expand their financial base. From real estate development to investment strategies, from taxation to new fiscal relationships with the federal Crown, First Nations must take an aggressive step forward in solidifying, to the greatest extent possible, fiscal security for their people and for their future. Perhaps the best means of developing a sound economic base for First Nations is to attract outside investment or venture capital to their communities. Many First Nations have much to offer investors by taking advantage of their s. 87 *Indian Act* tax exemption, a reduced property tax regime and large work forces.

A self-reliant economic base has obvious economic and social benefits for a society. However, with self-reliance comes the restoration of dignity that First Nations' peoples have had taken away from them during centuries of paternalistic and colonial treatment and animosity. Aboriginal economic strategies are more than simply means of addressing fiscal shortfalls and the costs of self-government. Aboriginal economic strategies provide to the First Nations of Canada the tools for determining their destiny and future as a peoples.

## Conclusion

This commentary has explored briefly the three major components of Aboriginal self-government, as this author understands the concept. First



Nations' governments must have responsible and effective governmental structures and institutions that have, as their base, ultimate authority over their peoples. Such governments must have in place, or work towards having in place, a system of protecting rights, both at the constitutional (macroscopic) level and at the microscopic level through the institution of a judicial or quasi-judicial system. Finally, without a solid economic base, self-government is akin to a tree that can bear no fruit. A dynamic economic base provides the means for self-government, including the authority and rights components, to operate efficiently. The task for First Nations' peoples is to focus their energies on creating the kind of governments they want and need, keeping in mind that whatever system they do desire must examine all three components of the concept of self-government: "authority," "rights" and an "economic base."