



Public Works and
Government Services
Canada

Travaux publics et
Services gouvernementaux
Canada



PUBLIC WORKS FUNCTION AND SELF-GOVERNMENT IN ABORIGINAL COMMUNITIES

Real Property Services for INAC
July 1999

Canada 

Purpose of Meeting

- review what RPS-INAC has done
- discuss where we might go from here

Principles of Aboriginal Self-government

Vision: sustainable, accountable Aboriginal governments leading healthy, self-sufficient and economically viable communities

Building a new relationship with Aboriginal peoples in Canada means providing them with the tools to become self-governing.

The federal approach will give Aboriginal communities the legitimate tools they need to make a tangible, positive difference in the lives of Aboriginal peoples and enable them to exercise greater control over their lives.

The federal government decided that ... it was time to move forward to negotiate practical arrangements that will make self-government a reality.

There is no single form of government that will work for all Aboriginal communities.

The federal government is willing to support various approaches that will meet the needs of different Aboriginal groups.

Self-government arrangements need to be affordable and consistent with the overall social and economic policies of governments, while taking into account the specific needs of Aboriginal peoples.

Sources: DIAND Self-Government Publications

Public Works - Primary Needs

The planning, design, financing, construction, maintenance, research and related regulatory and redress regimes pertaining to:

- public buildings (government buildings, schools, libraries, etc.)
- roads, bridges and related infrastructure
- systems for providing potable water
- systems for collecting, treating and disposing of sewage
- solid waste collection and disposal
- development of community plans and zoning bylaws

Also:

- protection of environment and prevention of pollution
- parks and recreation
- fire protection
- wharves and harbours

Public Works - Elements

- regulation (law, policy)
- operations (delivery)
- inspection and enforcement
- penalties
- redress mechanisms (appeals)
- transfer of assets (federal to Aboriginal ownership)
- harmonization with federal and provincial laws
- federal and provincial standards
- priority of laws in the event of a conflict
- user fees (local authority and willingness)

Public Works - Principles

- health and safety
- efficient services at comparable costs
- fiscal prudence
- environmental sustainability
- economic development
- cultural expression and pride
- strengthen governance

What has RPS-INAC done to date?

“Self-Government Agreements and the Public Works Function” (98-10-7)

- defines public works function
- reviews question of “which jurisdiction should do what”
- considers RCAP four level model for government functions: local community, **nation**, multi-nation organizations, Canada-wide networks.
- nation is the building block re law-making, policy development and resource allocation. Having sufficient size and capacity to assume powers of responsibility flowing from a right to govern. Also integrity.
- discusses jurisdictions (aboriginal, shared, federal) relating to PWF
- surveys and summarizes treatment of the public works function in past and current SGAs
- conclusion: little consistency in treatment of PWF in SGAs, e.g. comprehensivity, regulatory powers, user fees, harmonization, redress
- issues raised
 - should SGAs treat PWF more consistently?
 - should SGAs have separate section on PWF?
 - how to reconcile regulatory and operating responsibilities in single and two tier governance systems?
 - need for further research of PWF in existing self-governing entities

Workshop on the Public Works Function and Aboriginal Self-Government (98-11-17)

- attendees (33): DIAND, IOG, RPS-INAC, Katherine Graham, FN orgs.
- Christine Cram: focus on prudent fiscal management, health and safety, effective public involvement in decision-making
- John Graham: reviewed first paper, raised issues (e.g. balancing individual vs collective rights)
- Abel Bosum: Ouje-Bougoumou approach to PWF
- Jeff Haynen: overview of provincial and municipal relationships across Canada. Muns. never have complete authority, governed by provincial statutes, tribunals, trends. Presented tiered approach to PWF (prov, regional, lower). Raised issues(e.g. in FN situation, who plays provincial role? Can regulation be achieved in a one-tier system? Authorities for financing public works? Minimizing insolvency in PW projects? Capacity constraints. Accountability.
- Katherine Graham: ASDs, professional codes of conduct, minimum standards, no consistency of provincial regulation re PWF, debt financing, taxation, accountability, one/two tiers best?
- Group discussions: redress mechanisms and balancing individual vs collective rights, jurisdictional relationships re standards and regulations, financing, inspection and ensuring public safety
- importance of community involvement, don't over-prescribe at the expense of flexibility and responsiveness, two tier best so far to separate regulations from operations

“Public Works Function in Canadian Jurisdictions” (98-10)

- legal and regulatory relationship b/n provincial and municipal governments in Canada. - province: regulator, municipality: operator (reasons: efficiency and economy)
- emphasis on how PWF/governance promotes health and safety
- does not equate FNs to municipalities
- provinces determine powers and responsibilities, set standards, provide redress, approve various decisions, sets out acceptable sources of revenue and borrowing limits
- many statutes: municipal act, planning act, assessment act
- provincial boards, commissions, quasi-judicial agencies
- narrow limits on municipal powers, not complete autonomy
- trends: service down-loading, municipal consolidations, more user fees, better financial accountability (accrual accounting)
- capacity development: wide variety of associations to train and certify (60 in Ontario), many training opportunities, professional accreditation governed by statute
- planning acts: provide for official plans and zoning by municipalities
- financing: developers to finance and build new developments
- provincial building codes, municipal inspection and enforcement
- responsibilities, standards and financing options for roads and bridges, parks and recreation, water and sewage systems, solid waste

Issues:

- how should province-like roles be addressed in SGAs?
- can regulatory and enforcement role be achieved in one-tier government?
- to what extent can regulations be harmonized over multiple communities?
- what, if any, financing authorities be required in SGAs?
- how can insolvency be minimized when financing local FN infrastructure?
- innovative financing? User fees?
- how can capacity PWF constraints be handled? Accountability.

“Negotiating Guidelines for the PW Function” (98-11-23)

Ten points to consider:

- understanding the public works function and what it represents
- relationship to the Inherent Right Policy (multiple jurisdictions)
- what are the key interests of the federal government re PWF?
 - health and safety
 - financial concerns
 - balancing individual and collective rights
 - avoiding inappropriate liabilities
- nature of Aboriginal law-making powers for an effective PW function
- expropriation power of the Aboriginal government
- powers of inspection and enforcement and penalties
- redress mechanisms
- operating and regulatory responsibilities
- financing public works
- harmonizing mechanisms

**“Self-Government and the Public Works
Function - Issues for Consideration
by Self-Government Negotiators
and First Nations Leaders” (98-12)**

- essentially the same as preceding paper

“Public Works in Small and Rural Municipalities” (99-3)

- synopsis of how public works are managed in small and rural Cdn. municipalities
- approach: interview-based (CAOs, professional associations, provincial depts, pw training organizations), less than 5000 people, recognized success in PW management.
- +6000 local governments, various approaches, no optimal way to administer PWF. No standard pw organization. Municipalities of 1000 or less typically have foremen and all-purpose maint. staff. All need consulting engineering help.
- financing strictly regulated, bond financing most common mechanism, but difficulty for small muns. if no bond rating. Some bank borrowing. Increasing expectation to be financially self-reliant (property taxes and user fees)
- elected officials play a large role in over-seeing quality of public works
- public-private partnerships exist in many forms - some difficulties (e.g. job loss)
- citizen participation and expectations
- need to be open to joint servicing arrangements
- key pw issues: sewers and road maintenance, funding
- examines addressal of building inspection, water and sewer delivery, and other pw elements
- for every pw function a redress mechanism exists
- competencies of pw manager: broad range of duties, commonly civil engineer. Experience in public admin., contracting, law, communications, accounting, organization
- training needs: critical. Training available, accessibility is problematic (location, cost, time)
- Implications for FNs: financing, citizen expectations, service partnerships, building staff capacity, planning at the regional level, role of Councils which have vast responsibilities, proposed Technical Guide for Urban Infrastructure for Canada

“Compendium of Provincial Public Works Statutes” (99-3)

- provides a synopsis of provincial statutes re PWF.
- not definitive: hundreds of acts and associated regulations in each jurisdiction
- attention to: standards and regulations, inspection procedures, appeal and redress mechanisms, and offences and penalties
- building and safety codes: provincial sanction of provincial or national code. Also fire prevention act.
- water and sewage: municipal authority derives from Municipal Act
- solid waste: Municipal Act authorizes or compels municipalities re solid waste collection and disposal. Also provincial environmental protection acts
- roads and bridges: allow municipal ownership and maintenance of roads, bridges, etc.
- parks and recreation: Municipal Act permits municipalities to own and maintain facilities (libraries, museums, sporting facilities).
- land use planning: planning act sets out process and content requirements and establish consultative process. Confers power to zone, subdivide, etc.

Where do we go from here?

SGA Negotiations and Implementation

Need for federal and FN negotiators to be aware?

- papers can be used right now, but guidelines/training strategy needed re how negotiators can provide for this, briefings. Not adversarial: both sides need to be aware. Leave them with documents and tools. Powerpoint presentation? Video? Allow RPS-INAC to be available to consult with federal negotiators. We need a few more tools: redress, expropriation, etc.. Need to establish a consistent approach? Include somewhat in negotiators instructions?

Need to resolve many issues
(E.g. at nation (RCAP definition) level)

How to involve provinces (crucial to achieving harmonization) and associations?

With whom does RPS-INAC deal in DIAND?

Capacity Building

What capacity is necessary and at what level (band, nation, etc.)? Capacities include: professional, technical, managerial, financial.

How can Aboriginal communities develop and maintain the capacity to manage and administer PWF?

What is the role of DIAND?

- how do we partner with FNs to develop and deliver? Joint DIAND/FN working group to develop long term strategy? Technical, non-political. We can facilitate and develop tools but maybe FNs should do for themselves.

What tools can be developed to help?

- model by-laws, codes of conduct, organizational templates, etc.
- awareness and training workshops
- compendium or video on best practices
- develop a course for IOG's CESO training
- compendium of professional associations and training organizations
- recognition of (and funding for?) pilot projects
- twinning Aboriginal pw managers with counterparts in other communities
- existing RPS-INAC courses and TIDs (delivery?)

How to involve provinces (crucial to achieving harmonization) and associations?

With whom does RPS-INAC deal in DIAND?

Further Research and Analysis

- survey of best PW practices in Aboriginal communities
- models of FN housing authorities
- land use planning in small municipalities
- current provincial government involvement with FN communities
- public consultation at the municipal level
- public works contracting
- survey of redress mechanisms
- expropriation procedures
- compendium of professional and training associations