



**First Nations
Accountability**

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plain
talk



it's
our
time

First Nations governments across Canada are making progress in improving the quality of life for all our citizens by rebuilding our nations, assuming responsibility and advancing recognition of our inherent Aboriginal and Treaty rights. An important step forward requires confirming a genuine accountability relationship between the Government of Canada, First Nation governments and the citizens they represent.

Assemble of First Nations Chiefs in Assembly unanimously passed a resolution in December 2010, reaffirming their commitment to maintaining transparent and accountable decision-making structures in First Nation communities. This “lead by example” approach includes a commitment to providing clear and timely access to audits and public accounts, itemizing and publicly disclosing salaries, honoraria and expenses to First Nation citizens.

At the same time, some continue to raise allegations of a lack of accountability. The facts contradict this view.

Financial Management:

- Among 557 audits conducted by AANDC in 2002-03, problems of any kind were found in only 16 cases (less than 3%). These problems range from matters as simple as a lack of full documentation to more serious accounting irregularities.
- As of March 2004, AANDC had followed its policy to intervene with third party management due to financial, political or other management problems in a total of 34 cases (approximately 5% of 633 band councils). In 2009/2010 there were only 23 First Nations under TPM. This is a cumulative rather than annual figure as resolution often takes several years. Interventions are brought on by a range of matters that would be dealt with internally by non-First Nations managers, such as carrying greater than 8% debt load, something municipal governments, businesses and individuals do frequently with no intervener.
- An investigation through the Parliamentary Standing Committee on Aboriginal Affairs and Resource Development in 2003 showed that 96% of First Nations had no accountability issues of any kind, meaning that they were fully compliant with all rules and regulations.
- The fact that there is a fiscal accountability issue of any kind in less than 5% of cases compares favourably to non-First Nations, whether applied to other governments, businesses or individuals.

Reporting:

- First Nations government reporting greatly exceeds that of comparable institutions.
- First Nations provide a minimum of 168 different financial reports to the four major funding departments (AANDC, Health Canada, HRSDC and CMHC). That's three per week. The majority of these communities have less than 500 people.
- AANDC alone receives over 60,000 reports from First Nations annually.

- The Auditor General of Canada, in her December 2002 report, said “We are concerned about the burden associated with the federal reporting requirements. Resources used to meet these reporting requirements could be better used to provide direct support to the community”.
- In the Auditor General’s 2006 Status Report on Management of Programs for First Nations, it was found there had been some engagement from the federal government on reviewing and reducing reporting requirements, BUT the burden that they present to First Nations governments had not been reduced at all.
- Additionally, the federal focus remains on compliance reporting rather than performance reporting, which leaves First Nations citizens and Canadians in general no better informed regarding effectiveness of programming.

There is also the question of accountability of the federal government for its management of First Nations funding. With federal government control over decision-making and funding levels, First Nations communities have been relegated to the poorest in Canada. Real accountability would:

Affirm accountability and responsibility from First Nations governments to their citizens;

- Ensure accountability from the federal government for delivery of services and equitable funding in accordance with the fiduciary responsibility of the Crown;
- Amend reporting requirements to provide relevant information about outcomes to communities, while reducing the burden on them;
- Integrate programs and streamline processes to remove overlap and accelerate decision-making; and
- Establish sustainable funding, with an escalator formula that mirrors the true cost drivers of need, inflation and population growth.

Changing the accountability relationship and reforming processes will bring us all closer to better outcomes and real improvements in quality of life for First Nations peoples.

The federal government has introduced a bill, Bill C-27, to address accountability issues with First Nations. According to several observers, the Bill is seriously flawed, as reported in the Hill Times on October 15, 2012.

The federal government says Bill C-27, the Financial Accountability and Transparency of First Nations Bill which received second reading and is currently up before the House Aboriginal Affairs Committee this week, will bring financial accountability and transparency to First Nations, but some experts say it is redundant, paternalistic, and “an exercise in futility.”

“It’s a completely unnecessary bill. It’s an exercise in futility. It doesn’t serve anyone’s purpose except the Conservative government’s purpose to try to make First Nations look like they have more money than they do, or look like the reason for their poverty is somehow mismanagement,” Ryerson University professor Pamela Palmater told The Hill Times last week.

The House Aboriginal Affairs and Northern Development Committee will be studying the

bill for the first time this week since the bill received second reading in June.

Aboriginal Affairs Minister John Duncan (Vancouver Island North, B.C.) will appear before the committee to discuss the bill on Oct. 15.

The bill aims to provide more “transparency and accountability” when it comes to First Nations governments’ salaries and expenses.

“The bill builds on our government’s ongoing commitment to ensuring First Nations have strong, transparent, and accountable governments. It will also lead to decreasing the reporting burden for First Nations,” Mr. Duncan said when introducing the bill in the House.

First Nations are already required to submit and publicly release salary information, but the bill adds detailed expense reports and First Nations’ audited consolidated financial statements to the list of disclosures.

First Nations would also have to disclose financial information from band-owned businesses that don’t receive funding from the federal government. The figures would be posted on the Aboriginal Affairs departmental website as the information is received. Under the bill, First Nations are required to provide the information upon request to its members within 120 days and maintain the information on their own website for 10 years.

If First Nations governments fail to meet the act’s requirements, members and “any person, including the minister” are able to go to court to obtain the information.

The bill allows the Aboriginal Affairs minister to withhold or terminate funds to First Nations. Conservative MP Kelly Block (Saskatoon-Rosetown-Biggan, Sask.) first introduced this bill in the last Parliament as a private member’s bill, C-575, with the same goals. It passed second reading and was referred to the House Aboriginal Affairs Committee, but died on the Order Paper when the election was called.

Prof. Palmater, a Mi’kmaq lawyer who recently ran unsuccessfully against Shawn Atleo for national chief of the Assembly of First Nations, said the bill does not serve First Nations’ purposes and, despite Mr. Duncan’s comment that the bill would not put an added reporting burden, it will do just that.

Prof. Palmater said the bill panders to the Conservative base and to rhetoric around accountability and transparency and is a distraction from other issues the government is ignoring, such as lack of funding for education and clean water. She said the government is using Bill C-27 to focus the conversation on First Nations as not being accountable and want to be seen to be doing something on the issue.

“The feds are getting hammered right now for funding cuts, lack of funding for education and housing, there’s been a lot of media on it lately,” she said.

NDP MP Jean Crowder (Nanaimo-Cowichan, B.C.), her party’s aboriginal affairs critic, agreed. “I don’t think this bill, in particular, does anything to increase accountability, from First Nations chiefs, and council to the people who elect them. They’re already required to produce audited



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financial statements. The minister can already require them to release that so this isn't something that can't already be organized by the minister," she told *The Hill Times*.

In a backgrounder, the federal government said the bill is necessary because of "complaints from community members and recent media attention" to the "lack of availability of financial information in some First Nations."

In a speech during second reading in June on Bill C-27, Mr. Duncan said the department receives "many complaints."

"Currently, the only recourse for community members who are denied access to a First Nations audited consolidated financial statement is to appeal to the Department of Aboriginal Affairs and Northern Development. We receive many complaints," Mr. Duncan said in the Commons.

"Some First Nations do not willingly release such information when requested," Mr. Duncan said. "In these cases, the only option for complainants at the moment is to bring the issue to my attention. The minister of Aboriginal Affairs and Northern Development has sole authority to compel a First Nation to release financial information. This puts me in the position of perpetuating a sense of paternalism that both First Nations and our government are working to overcome.

As it is now, when First Nation members raise concerns about the non-disclosure of financial information, we respond. My officials work with the band governments to have it released, and if these efforts fail, the department then provides the information directly to the individual member who is requesting it."

Mr. Duncan said the system is "unnecessarily complicated" and "undemocratic" as it is. "It is entirely reasonable for First Nation members to expect their governments to meet the same basic accountability standards as other governments in Canada," he said.

Liberal MP Carolyn Bennett (St. Paul's, Ont.), her party's aboriginal affairs critic, said that she hasn't heard First Nations asking for changes and criticized the government for failing to consult with the people this bill will affect.

"I've never been able to figure out the motivation for just about anything they do. It seems to be unfortunately feeding into stereotypes and it is a real problem in the way they continue to ignore the duty to consult, the free, prior and informed consent on anything to do with First Nations, keeping with the UN Declaration on the Rights of Indigenous Peoples and it is more paternalism is what it looks like," she said. "I'm not aware of First Nations community members who are asking for this."

Prof. Palmater said the government's approach to First Nations is "overwhelming and aggressive." There are currently four government bills on the Order Paper affecting First Nations, the highest in Canadian history, she said.

"They're all almost unanimously rejected by First Nations, so it's being imposed against our collective will essentially and we have absolutely no say. None of these bills serve First Nations purposes, they tend to serve Conservative purposes," she said.

Darcy Bear, chief of the Whitecap Dakota First Nation, in a press release welcomed the bill,

however. "This bill will mean more accountability of First Nation leaders to our people," he said. "Transparent and accountable First Nation governments support a strong environment for investment leading to greater economic development."

In a preliminary analysis of the bill, however, the Assembly of First Nations said that the standards in this bill "surpass those for elected officials in many other jurisdictions" and the consequences are "overly punitive."

"In addition, the requirements do not take into account capacity or existing reporting burdens faced by First Nation governments," the AFN said. "Implementing provisions in Bill C-27 could endanger the provision of key and core services to First Nation citizens if the information required is not provided."

The Canadian Bar Association is also against the bill and believes it should not pass. In a letter to Mr. Duncan, Aimée Craft, chair of the CBA's national aboriginal law section said the bill would decrease First Nations' capacity "to assume control over their own affairs" and "fails to address larger systemic issues of funding and responsibility for those issues."

Further, while First Nations agree that accountability and transparency are top priorities, Bill C-27 does not achieve those goals, Ms. Craft said.

"In principle, all parties agree that accountability and transparency of First Nations' elected officials is a top priority. Indeed, some First Nations have had financial regulations and budgetary laws for decades, adopted under their own constitutions or customary laws," she said. "Whether this proposed legislation would achieve the goal of accountability and transparency in an appropriate manner is a different question. Given First Nations' inherent right to self-governance, dictating reporting requirements without sufficient consultation with First Nations is problematic. It fails to recognize the unique constitutional arrangements between First Nations and the federal government, and does little to move away from the paternalism which has historically defined this relationship."

Prof. Palmater took issue with the requirement for First Nations to disclose financial information about privately-owned businesses on reserves.

Mr. Duncan said it would make it easier for investors to go into joint ventures with First Nations under the rules of Bill C-27.

Ms. Bennett said Bill C-27 could open First Nations' businesses up to "predatory practices" and could be "devastating." She said she's hopeful the Conservative members of the Aboriginal Affairs Committee will allow amendments to the bill.

Ms. Crowder said the committee hearings "will be interesting once we get the final witness list," but is unsure whether the government is amenable to amendments.

Prof. Palmater said there's nothing in the bill that can be fixed, and it should not pass. She said, however, that she "has no doubt" it will pass, and there could be legal challenges against it.

Meanwhile, in a 2002 report, then-auditor general Sheila Fraser recommended that "unnecessary



or duplicative reporting requirements should be dropped,” and in a follow-up to measure progress in her 2011 report, she noted the government made “unsatisfactory” progress. The report noted that the Department of Aboriginal Affairs received more than 60,000 reports annually from 600 First Nations communities who have to make 168 reports to four federal departments a year, in addition to the audited financial report and that “many of the reports were unnecessary and were not in fact used by the federal organizations.”

In addition, the report said, “First Nations officials with whom we spoke also told us that they had not seen a reduction in reporting requirements since our last audit, and many indicated that the reporting burden has increased in recent years.”

In her 2011 report, Ms. Fraser said her office was “concerned about the burden associated with the federal reporting requirements, particularly related to AANDC’s contribution agreements with First Nations. Many initiatives with the potential to streamline reporting have been started but have not resulted in meaningful improvement.”

More specifically, the report said it’s still unclear “whether this degree of reporting helps make First Nations accountable, or whether it assists either the Department or First Nations with their management responsibilities. First Nations continue to spend time and resources to complete reports for AANDC, but some of these reports may serve little purpose and may interfere with First Nations’ ability to meet the needs of their members.”

Doug Cuthand has expressed similar concerns in an article published in Saskatoon’s StarPhoenix newspaper on November 23, 2012.

The federal First Nations accountability bill known as the “Act to enhance the financial accountability and transparency of First Nations” is being rushed through Parliament. Debate was cut off Thursday and a vote will be forced as of the end of today.

On the surface it is being sold as accountability and transparency for First Nations governments. Chiefs and band councillors’ salaries will be made public, which is no big deal as most band councils provide this information to their band members already. It’s only common sense that the people know how much their leaders are making. My First Nation holds an annual band meeting where the audit and salary information are made public. The band members can pick up a copy of the audit at the door and take it home if they want.

As they say, however, the devil lies in the details. The federal bill also requires that both the salaries and expenses be made public. Groups such as the Canadian Taxpayers Federation like to lump the two together to create an overblown number.

In fact the two must be taken as separate amounts. For example much of the expenses are reimbursements for meals, gasoline, hotel rooms and so on. This is a zero-sum game for the person submitting an expense claim but if the two numbers are lumped together the amount is counted, which serves to inflate the chief’s or councillors’ remuneration. Also there is lots of travel for the average chief or councillor. They have to go to meetings in the city or travel around the reserve doing their business. This requires a proper vehicle to meet the need. Cars today are built for black

top and urban driving, not navigating reserve and rural roads. After three years the \$30,000.00 car is a clapped out, high mileage piece of junk. A pickup will last longer but it will still end up with high mileage. No First Nation provides transportation. The individuals must provide their own at their expense.

The act goes further than salaries and travel expenses and includes "the reporting of information from First Nations-controlled entities." Entities are defined as "corporations, as well as partnerships, joint ventures and all other unincorporated associations and organizations." This means that a First Nation owned company that receives no funding from the federal government will be obliged to post its financial information on the Internet.

This could give competing companies an unfair advantage. How far does this go? Does it include the band store, the curling club, the annual hockey tournament, the annual powwow? Our people could be swamped with more and more reporting.

The bill states that financial information must be posted on the Band's website and remain there for 10 years so it would be available to the general public and not just band members. This act will apply only to First Nations operating under the Indian Act and not those with self government agreements.

There already is a high degree of accountability within many First Nations. We need to get greater support for training and capacity building in First Nations administrations. We're getting a stick here, but no carrot. As it stands now it appears that the government is trying to create a wedge between the leaders and the people. They leave the impression that First Nation's governments are not accountable when the opposite is the case.

When it comes to First Nations issues the government gets off cheap. The chief and council are used to carrying out government policy and in spite of the impression the government likes to give, First Nations are severely underfunded. The chief and council are on the front lines of First Nation social problems and poverty related issues. They have little time for long-range planning and the band office more often than not is a crises centre.

Being a chief or councillor is not like a being small-town mayor or rural municipal reeve. It is a gruelling, full-time job that never ends. While municipal officials worry about potholes and weeds, First Nations leaders are involved in health, education, social programs, employment, housing and economic development. Potholes and weeds are near the end of the list.

It's passing strange that while the government comes down on First Nations with more accountability and transparency, Parliamentary Budget Officer Kevin Page has to go to court to get the Harper government to be accountable and provide his office with information related to the austerity measures. Page has complained for months that government departments have not been responded to his requests on budget cuts, staff reductions and impacts on services. So far the government claims it has cut \$5.2 billion but the PBO has only received responses for about three per cent of the funding cuts proposed in the March budget. I can't help but wonder if the First Nations accountability bill is a diversion or a poorly timed contrast to the government's own lack of accountability.