Records and Information Management Issues in First Nations Governments

Abstract: This paper focusses on the challenges to establishing effective records and information management programs in First Nations government bodies, primarily within Indian Band or independent First Nations government bodies. While they share similarities with organizations of all types, First Nations government bodies also face some unique barriers because of the span of responsibilities they oversee, the diverse ways in which they are funded, and the chronic shortage of manpower or capacity within their organizations to perform their work. Records and information management professionals have an opportunity to train and provide leadership for these developing government bodies.

Introduction

At a recent symposium on First Nations Records and Information Management[1], Grand Chief Ed John (Akile Ch'oh) underlined the importance of records management for First Nations governments. He described the key role that a staff review of archived documents played in supporting the host, the Musqueam First Nation, to establish their right to claim market rent for land that had been leased on their behalf at a disadvantageously low rate by the Government of Canada. [2] This public statement of support was followed the next day by his salutary remarks at the meeting of the First Nations Summit, addressing the chiefs and officials, and congratulating the successful symposium for contributing value to the capacity of First Nations governments. Grand Chief John's example and his recognition of the value of records emphasize the importance that the senior management levels in First Nations governments are placing on an effective records management program.

However, these government bodies also face unique challenges to implementing effective records and information management programs. At a Joint Gathering in October, 2015, in a session on information management, several senior managers in the audience confessed that their biggest problems in their offices were caused by lost information, and the daily frustrations faced by staff in the constant hunt for records.

---

[1] 2016 First Nations Records and Information Management Symposium, February 2, 2016. Musqueam Community Recreation Centre, Vancouver, B.C. Jointly sponsored by the First Nations Summit Society, Musqueam First Nation, ARMA Vancouver Chaper, Naut'sa mawt Tribal Council, and Collabware.

[2] The referenced case "R. vs. Guerin", 1984, was the decision by the Supreme Court of Canada that established the Government of Canada's fiduciary duty, a trust like relationship, to manage the financial affairs of the band. The details of this case involved an agreement to lease band lands for a golf course that was 10 percent of the original amount agreed by the Musqueam. Details of the changed terms were revealed to the Musqueam 12 years after the lease was signed. This case is also described as setting a precedent for aboriginal rights in Canada.

Records and Information Management Issues in First Nations Governments
Alexandra Bradley, CRM, FAI

Types of First Nations Governments

In order to review the records issues, it is important to understand the different types of First Nations governments that exist in Canada.

The term "First Nation" is now used commonly to replace "Indian Band", and is the term that will be used in this paper to describe the various types of aboriginal government groups that are present in Canada. Currently, there are 617 First Nation communities, which represent more than 50 nations or cultural groups and 50 Aboriginal languages.[3]

Across Canada, as First Nations governments establish their independence from direct federal government management, or pursue pathways to strengthen their claims, these government bodies have a unique opportunity to build records and information management systems based on information governance principles, policies and best practices that the records and information management profession has established. In many cases, particularly in the western part of the country, the First Nations are establishing a new order of government, and can build systems from inception that incorporate the necessary elements. However, these organizations also face unique records and information management challenges as they move forward to establish their governance models.

Given the variety and complexity of First Nations government organizations today, one can easily confuse the subtleties and differences among these various groups. They are not all the same in their composition and governance.

An Indian Band is

> "a body of Indians for whose collective use and benefit lands have been set apart or money is held by the Crown, or declared to be a band for the purposes of the *Indian Act*. Each band has its own governing band council, usually consisting of one chief and several councillors. Community members choose the chief and councillors by election, or sometimes through custom. The members of a band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to be known as First Nations."[4]

The First Nations, in this category are closely tied to the federal government for their core operational funding, although they may also have own source revenue.

---

[3] Indigenous and Northern Affairs Canada. https://www.aadnc-aandc.gc.ca/eng/aboriginalpeoples/firstnations/
[4] Terminology. Indigenous and Northern Affairs Canada. Aboriginal Peoples and Communities.
http://www.aadnc-aandc.gc/ca/eng.

Self-governing First Nations are

> "governments designed, established and administered by Aboriginal peoples under the Canadian *Constitution* through a process of negotiation with Canada and, where applicable, the provincial government"[5].

The First Nations in this category have negotiated a settlement for their own territory and rights. This includes obtaining payment for their land, and developing their own revenue sources. Depending on their settlement, they have some or complete independence from the federal government for their funding. In addition, they have their own governance models, election processes, membership admission and management, and pass their own laws, such as *Freedom of Information and Protection of Privacy* Laws.

Tribal councils are regional affiliations of First Nations, frequently united by language or adjacent land areas. Within these collectives, they may agree to manage resources or undertake activities jointly rather than as separate entities. As an example, the Naut'sa mawt Tribal Council (NmTC) is

> "a non-profit society that provides advisory services to its eleven member First Nations in five core delivery areas: economic development, financial management, community planning, technical services, and governance."[6]

Understanding the distinctions between these groups helps to understand how they are funded, and consequently, why they face the records management issues and challenges that are identified in this paper.

How First Nations Governments are Funded

In 1867, under the terms of the British North America Act, Indians and lands reserved for Indians became the responsibility of the Federal Government under the terms of the *Indian Act*. Most programs and services that non-native citizens receive from a variety of other governments and service providers are provided to the First Nations from Federal Government programs. The support to operate First Nations government services and programs is a combination of annual contribution agreements as well as the communities' own funds, or "own source revenue".[7] Contribution agreements do not cover programs such as records and information management.

The adequacy of the funding has been the subject of much debate and is not the point of this paper. However, the consequence of this blend of funding means that in addition to the annual contribution, most First Nations are also seeking funding from other sources, including making arrangements for specific funds or a memoranda of understanding with external organizations in order to provide

---

[5] Ibid.

[6] Naut'sa Mawt Tribal Council. http://www.nautsamawt.org/. There are 11 member First Nations on both sides of the Georgia Strait between the British Columbia mainland and Vancouver Island.

[7] Schwartz, Daniel "How does native funding work?" CBC News, February 06, 2013. http://www.cbc.ca/news/canada/how-does-native-funding-work/

government services to their communities. This search for funding takes staff time away from daily operations and creates uncertainty about continuity of programs.

A search for "program funding guidelines 2015-2016" on the Indigenous and Northern Affairs Canada (INAC) website[8] finds 33 search results, covering a wide number of programs including "community opportunity readiness program", "basic organizational capacity contribution program fund", "elementary/secondary school fund", "skills/jobs training program" and others. This search did not cover other federal agencies such as Health Canada to review what funding programs might be offered for First nations.

Among the possible funding sources from INAC, the Professional and Institutional Development Program (P&ID) is currently the program where First Nations Communities are applying for funding to support records and information management programs.   The program objective is to

> "To develop the capacity of First Nations and Inuit communities to perform core functions of government, by funding governance-related projects at the community and institutional levels."[9]

There are ten core functions of government listed as eligible for support in the P&ID program, including information management/technology. Consequently, First Nations communities can apply for funding for support of projects, activities and expenditures, such as professional/consulting services, training, and professional development or travel to courses. Currently, this fund is being accessed for records management program development, information management policy development and a variety of consulting services for records and information activities in communities. If successful, recipient agencies must submit a report on activities and expenditures. Language in the funding agreement permits INAC to share the results of these activities with other First Nations.

However, organizations are cautioned that the P&ID program is "project funding only" and does not provide core operational funding to the community. How does the community fund records and information management on an ongoing basis? Hopefully it is provided from the contribution agreement for core funding and sustained long term. More typically, the records and information management programs become projects, and operate in bursts of activity only so long as the project funding is available.

Government program responsibilities

When comparing the functions of a First Nation government to another type of government body, a functional analysis reveals that the First Nation has a very wide span of responsibilities, as contrasted with a city or town, a province, or even a federal government ministry.   Typically the First Nation government manages the following programs and services:

---

[8] https://www.aadnc-aandc.gc.ca/eng. Accessed February 12, 2016
[9] Ibid.

- land administration and regulation, including specific claims for land, referrals for other organizations for use of land, land use planning and comprehensive community planning;
- housing (including financing, construction and development, maintenance, tenants and rent)
- community and social development, including child development, welfare, social services, elder care and support;
- education and lifelong learning, including day care, early childhood development and support, school development and funding, or relationships with local school authorities, financial support for students in post-secondary education;
- engineering, public works and infrastructure, includes streets, roads, water supply and maintenance, sewerage and waste management, environmental management;
- fisheries and wildlife management, including licensing, catch management and sales, fisheries fleet management, aquaculture, hunting permits, mushroom licensing, range management;
- forestry, including logging, silviculture and tree farm management, wood sales;
- health care services including clinics, patient transportation and support, liaison with other health agencies, specialized health programs, preventive programs, addiction programs;
- protective services including law enforcement, fire protection, emergency services;
- culture and history, including archaeology, language support, specific cultural programs including collecting oral histories;
- economic development, including establishing corporations for such activities as aboriginal tourism, store operation, development of business partnerships for resource development, etc.[10]

There are also the common administrative functions that are typical to all organizations. However within these functional areas, such as within the legal matters, there may be specific land claims, a treaty negotiation or litigation. They may also operate their own membership or Indian registry functions. In addition, there may be partnerships with the tribal councils for joint activities on resource use, environmental matters or economic development.

In other types of governments, these functions are performed by separate agencies, such as a municipality, a health authority, a school district, a social services branch of a provincial government, housing agency and separate police, fire or emergency services organization. Moreover, each of these agencies have the services of records and information managers, information technology staff, archivists and museum staff, and appropriate facilities to store and manage the records accrued.

The diverse government functions generate volumes of records. These records relate to current business, but may also include historic documents, maps, language records, oral history records, cultural property and materials that belong in a cultural or historic centre and archives or museum. The program records are often linked to externally imposed record keeping requirements. How can a First Nation support records and information management in view of these broad and often conflicting

---

[10] Based on the functions in the *First Nations Information Management Toolkit,* published by the First Nations Public Service Secretariat, Vancouver BC, 2011, and available for download at www.fns.bc.ca/fnps.

functions that must be supported? Often, in light of the competing interests from these portfolios, it is difficult to have a program without specific funding. However, the funding may be limited to project rather than program funding.

Records Management Issues and Challenges

"The usual suspects"

Like other types of organizations, First Nations governments experience some typical challenges in establishing records and information management programs. These include:

- The need for leadership and senior management support, without which the programs get no financial or organization support and buy in. In most organizations, records managers must establish the value proposition in order for the program to obtain a mandate, funding and support;
- The growth of organization functions and the competition for funding of programs. Growth of organizations often means that funding must be directed to the programs directly associated with the key business operations. This competition, especially when there may be uncertainty about the value of records management, may lead to the view that the program is seen as not core to the organization, or "administrative", consequently underfunded, or funded with what remains, often little or none;
- The diverse mix of materials to manage. Personnel use a blend of technologies to create information, and place equal importance on the historic and cultural records as well as on the current, frequently digital formats. Consequently, the records managers are required to assert control and manage a diverse array of information resources.

At the Records and Information Management Symposium cited earlier, participants were asked identify their records management problems. Of the choices provided, the greatest number of respondents (30 of 65) answered that "all of the above" were their problems:

- no funding,
- no political will,
- no buy in from management and staff,
- not sure where records are stored, and
- no designated Records Manager to assign responsibilities.

These types of problems can be present in any type of organization, and are familiar to records managers in many settings.

Issues unique to First Nations bodies

In addition to the problems cited, the First Nations governments also experience some unique challenges with records and information management programs.

Record Keeping Terms within Agreements

Frequently there are terms and conditions within agreements for services with which First Nation must comply to maintain the relationship.

Most often, within many of the programs that First Nations provide, there is a provision for submitting reports and maintaining records for audit purposes. Beyond reporting, there are often much more specific requirements.

The provision of health services is an example with defined record keeping requirements. As previously described, the health portfolio is a key area present in most First Nations. In 2013, the First Nations Health Authority in British Columbia assumed the responsibilities and programs formerly provided to British Columbia First Nations through Health Canada. Interim and year-end reports are required for each of the programs for which the community receives contribution funding.[11]

Data management is also one of the key components of BC First Nations health governance.

> "One of the action items in the *Transformative Change Accord: Tripartite First Nations Health Plan* is to improve the collection, use and sharing of First Nations health data in order to:

> • Increase First Nations involvement in decision-making concerning their data and services and develop the capacity of First Nations in the area of health information governance.

> • Facilitate access to accurate, timely, reliable health information for First Nations to inform decision-making and use health data to improve the quality and effectiveness of health programming

> • Facilitate and support principles of First Nations health information governance. "First Nations Health Information Governance" is a component of First Nations Health Governance and refers to a structure, process and protocols by which First Nations in BC have access to First Nations data and are influentially involved in decision-making regarding the culturally appropriate and respectful collection, use, disclosure and

---

[11] Funding Arrangements. http://www.fnha.ca/what-we-do/funding-arrangements. Accessed February 12, 2016

stewardship of that information in recognition of the principle that such information is integral to First Nations policy, funding and health outcomes. "[12]

Regional meetings throughout the province from February onward will provide further training on such data governance subjects as research and data anonymity.

The Indian Register is another function that is managed in many First Nations government offices, although it may also be managed in a regional office of Indigenous and Northern Affairs Canada. The Register

> "is the official record identifying all Registered Indians in Canada. Registered Indians are people who are registered with the federal government as Indians, according to the terms of the *Indian Act*. Registered Indians are also known as Status Indians. Status Indians have certain rights and benefits that are not available to Non-Status Indians or Métis people. These may include on-reserve housing benefits, education and exemption from federal, provincial and territorial taxes in specific situations.
>
> The Indian Register contains the names of all Status Indians. It also has information such as dates of birth, death, marriage and divorce, as well as records of persons transferring from one band (or First Nation community) to another."[13]

A staff member who is trained to manage the Indian Register must follow the protocols that are included in the agreement for the individual community to manage the register. These protocols will include establishing processes to maintain the privacy and security of the records and information that are required. The types of information listed above include the most sensitive personal information, and custody and use of such information requires an understanding of the permitted uses and disclosure of such information.

For self- governing First Nations, the equivalent function is expanded to include their Membership Registry, which is the list of members of their nation, and their processes for admitting members into their community. The essential nature of this information requires that the staff members secure and protect the records against all possible disasters. This function is the equivalent of a Vital Statistics unit at the provincial level.

A third example of service provision by agreement in many communities is the Child and Family Services portfolio, by which the First Nation operates child welfare services, including child protection and child custody. The service is administered through, and provided by, the relevant provincial ministry, and the First Nations social workers and other staff will operate the program according to the standards established by the ministry. Particular requirements include the templates for documentation required, and the reports and audit information to be submitted. In addition, there are compliance requirements

---

[12] Data Management. http://www.fnha.ca/what-we-do/data-management. Accessed February 12, 2016

[13] Indigenous and Northern Affairs Canada. https://www.aadnc-aandc.gc.ca/eng/indianstatus/theindianregister

for privacy provisions necessary to protect the child and family identity. The information is maintained according to the provisions of the provincial protection of privacy legislation.

Personnel who administer the terms of these individual agreements are imbued with a sense of responsibility for the terms of agreement. This sense of individual responsibility often leads to siloes of activity, with staff in the portfolios unable to share their information with their peers in other departments within the First Nations government office.

Limited capacity/manpower

The term "capacity" is used to describe the capability of the organization, usually in terms of staff numbers and skill sets. Despite the wide range of functions for which they are responsible, the typical First Nation office does not have many employees. Of the 617 communities, 60 percent have fewer than 500 members.

As an example, a very small First Nation, with 86 members, has 10 staff in its office. With this small number, staff members assume responsibility for several portfolios, in order to provide the range of services that the membership is entitled to receive. In addition, this First Nation employs several staff on contract to perform core functions of information technology management, housing management and policy development. The person performing the policy development role is supervising a contract for records management services. Information technology support is provided by an external service provider, who is responsible for the network, applications, hardware and software, as well as help support.

In a great number of communities, working for the First Nation government is the key source of employment, and governments see it as their responsibility to ensure as many members as possible have work. Whether employees have the necessary skills can be an issue. Hence, in most communities, there is training on the job, or attendance at courses, as a way to develop employees' skills to perform their jobs.

In British Columbia, as communities established their own treaties, the issue of building capacity for their government bodies was addressed by the chiefs. The First Nations Public Service Secretariat (FNPSS) was established in 2008, specifically to address the development of skilled staff in the areas of financial administration, human resources development, policy development and information management. As part of the FNPSS information management capacity initiatives, consultants and partners developed the Information Management Toolkit, and provided training through nineteen 2-day Information Management Boot Camps hosted by individual First Nations and tribal councils.

 Until their funding was removed in 2014 by the former Federal government administration, the FNPSS built partnerships with agencies and organizations that provided training for their membership. One of the key partnerships created by the FHNPSS was with ARMA Canada and the ARMA Vancouver Chapter.

The ARMA region and chapter were signatories to a Memorandum of Understanding[14] with the FNPSS and the First Nations Summit in 2010 to provide training and capacity building opportunities for First Nations and First Nations organizations in British Columbia. The specific areas of work included provision of training to First Nations record keeping staff, professional development opportunities, research and development and mentorship for individuals. Since the signing, ARMA Canada has offered First Nations Information Management Boot camps as preconference sessions at the annual conference, has introduced topics of specific interest or held a complete track of topics relevant to First Nations organizations. The ARMA Vancouver Chapter was a co-host to the 2016 FN Records and Information Management symposium, and is providing financial support to an upcoming one-day symposium in Whitehorse. Attendance at the Vancouver symposium was expected to be 75 delegates, but the final number of registrants was 98, with a total attendance of 134, when speakers and sponsors were included.

Who is the records and information manager?

With consideration of the factors described, from the extensive number of portfolios to manage, the uncertain and varied sources of funding, and the limited number of staff, who is performing records and information management duties in First Nations government bodies?

A survey of First Nations governments in British Columbia and the Yukon, conducted by the First Nations Summit and ARMA Vancouver Chapter in November, 2015,[15] determined that only 16% of the agencies surveyed had one person managing records, as contrasted with 80% where each department or individual managed their own records (4% didn't know). From 101 responses, only 8 indicated that there is an individual with "records" (manager or clerk) in their job title, and only 3 indicated that there is a records and information, or records and archives, department.

 Who else manages the records? The survey further revealed that if there was one person assigned, the most typical person is the administrative assistant to chief and council, followed by the membership clerk or receptionist.

The survey confirms that most of the time, each department or each individual is left to manage the records on their own. The staff member may be organized and maintain a system, particularly if they are following rules established through a service agreement. However, usually, the records are maintained according to the individual's own method and most are not inclined to manage records.

---

[14] Memorandum of Understanding between ARMA Canada Region, and ARMA Vancouver Chapter, and the First Nations Summit Society, and the British Columbia First Nations Public Service Secretariat (BCRNPSS), effective October 15, 2010.

[15] Survey conducted by the First Nations Summit and ARMA Vancouver Chapter, November 2015, to obtain guidance on topics to present at the First Nations Records and Information Management Symposium, February 2, 2016.

Records and Information Management Issues in First Nations Governments
Alexandra Bradley, CRM, FAI

Most current records are now born digital, and most communities are able to use electronic communication. In the same survey, respondents indicated that there were electronic document/records management systems in place in 16 organizations.

Despite the use of computers and digital formats, staff members have difficulty locating the past records. Even in small organizations, when a person leaves their position, the successor staff member cannot find the records or make sense of them. Often the past files will be in various locations, with no uniform descriptions or finding aids to assist current staff to locate and use them.

So, we are left with the situation described by the leaders – the Grand Chief seeing the vision and practical value of records, and the leadership in communities hampered by not finding information.

The Future of Records and Information Management for First Nations

Information governance principles indicate that for programs to be fully developed, there has to be accountability, transparency, integrity, protection, compliance, availability, retention and disposition in place. Few First Nations government programs currently in place meet the requirements of the Principles®.

Grand Chief John's comments indicate that records and information are valued assets in First Nations governments. He was discussing a specific legal case, which foreshadowed the current situation with litigation, e-discovery and the need for governments to have reliable and authentic records to support the variety of legal cases going forward.

The support from leadership will help lead the way forward to fully developed programs in all governments. However, from the words of the leadership to the operation of a fully developed program, there is a long pathway to be built. The support must be followed by specific funding and staffing to enable the program to develop, along with the other nine elements of government capacity[16]. Given the wide focus of their mandate, and the diverse body of information that a typical First Nation government is managing, a department consisting of trained records, information and archival professionals is required.

As new government bodies are established through treaty, the First Nations have a unique opportunity to build systems based on the principles, practices and procedures that have been developed by the Records and Information Management profession. A comparison with other types of government

---

[16] The Professional and Institutional Development program lists leadership, membership, law-making, community involvement, external relations, planning and risk management, financial management, human resources management, information management/information technology and basic administration as the ten core elements of governance.

Records and Information Management Issues in First Nations Governments
Alexandra Bradley, CRM, FAI

bodies in Canada should be made as funding is negotiated, to ensure that there is adequate support for their information assets.

Canadian records and information management professionals have been reaching out to the local First Nations communities to provide services and support. That support, as represented by the working relationship in British Columbia through the Memorandum of Understanding, has started a process to provide education and training initiatives. That support has also helped to raise the awareness of what is possible. We also have a unique opportunity to be advocates and leaders, assisting the First Nations staff to make the case and develop the strategic opportunities for records and information management programs.

End

February 26, 2016

Works Cited

2016 First Nations Records and Information Management Symposium. February 2, 2016. First Nations Summit Society, Musqueam First Nation, ARMA Vancouver Chapter, Naut'sa mawt Tribal Council and Collabware, sponsors.

First Nations Public Service. *Information Management Toolkit for First Nations. 2011.* http://www.fns.bc.ca/fnps

Indigenous and Northern Affairs Canada. Aboriginal Peoples and Communities. http://www.aadnc-aandc.gc/ca/eng.

Saloman, Tamisha and Erin Hanson. *R. vs. Guerin, 1984.* Vancouver, BC. http://indigenousfoundations.arts.ubc.ca/home/land-rights/guerin. Accessed January 31, 2016

Schwartz, Daniel "How does native funding work?" CBC News, February 06, 2013. http://www.cbc.ca/news/canada/how-does-native-funding-work/

Records and Information Management Issues in First Nations Governments
Alexandra Bradley, CRM, FAI