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**Institutions of Government**

**Government**  
Chief and Council and those they empower and its structure.

**Institutions**  
Organizations of a public character with the purpose to serve the public.

**Examples of Institutions**  
School (education program), health center (health program), child and family services office (CFS program), economic development corporation (economic development department), financial (finance department), lands and resources (land department) and housing (housing and public works department).

**Measurement**  
The measurements of a good government relate to the operations of each of the above institutions of the government.

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**What is the Measurement of a Good First Nation Government?**

- Financial strength?
- Low staff turnover?
- Addressing the housing shortage?
- The quality of the school?
- The quality of services provided to the membership?
- Number of successful economic development initiatives?
- The overall sense of being treated fairly?
- The level of community spirit and happiness?

**ALL OF THE ABOVE**

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**The Realities of First Nation Governance**

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**The Manager's Perspective**

<p><b>The Services</b></p> <p>Set of rules as to the definition of the program and who gets the services.</p> <p>The funding agreement sets out the general description.</p> <p>First Nation has its own policies or rules used to make service delivery decisions within the program.</p>	<p><b>The Money (Budget)</b></p> <p>A predetermined amount of money to pay for the services.</p> <p>The funding agreement does not allow for "overruns" (deficit).</p> <p>First Nation has its own rules used to control the expenditures and stay within budget.</p>
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*Simple: "My job as an Administrator/Manager is clear. Follow the rules and spend the budget based on the rules."*

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**Introduce Politics  
Now Have Two New Rules**

<p><b>Politics Sets In...</b></p> <p>Your boss makes promises to band members who do not qualify for the program.</p> <p><b>OR</b></p> <p>Your boss makes promises to program recipients without checking if there is any budget.</p> <p><b>OR</b></p> <p>Your boss makes promises in other areas requiring that part of your budget be used to cover costs in another program area.</p>	<p><b>Now What?</b></p> <p>The budget does not matter.</p> <p>The program rules do not matter.</p> <p>The administrator/manager does not matter.</p> <p>The administrator/manager is not respected by the band members because they have no real authority – The job description is only words.</p> <p>The administrator/manager is not respected by the bosses (Chief and Council) because they are regarded as being "non-cooperative."</p>
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*Old Rules: "Spend the budget based on the rules."  
New Rules: "Shut-up and cut the cheques."*

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**The Politician's Perspective**

**What happens when politicians become managers?**

Getting elected means getting a **TARGET STICKER** stuck to the seat of your political pants.

Voters lobby the politician to get something over and above someone else OR request that a rule should not apply or that a rule be ignored.

Those who **do not get** something, **talk more** than those who **got something!**

“YES” is the political answer and the requirement to stay elected.

Energies go to address **lobbying** and away from **leading**.

The game becomes **PURE POLITICS**, and the community stagnates.

*That is the real cost of no separation of the political from the administrative.*

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**The Perspective of a First Nation Band Member**  
*“The politician is elected to give me presents.”*

**Two truths as far as can be remembered:**

**Politics is Power:**

I vote for people who can get me things personally.

Politicians in smaller First Nation communities are neighbors to their constituents and have directly or indirectly familial relationships.

I vote for my friends and family and my friends and family will take care of me.

**Rules can be Ignored:**

Policies or rules can and have been broken or ignored by the politicians for specific individuals.

My political friends will break rules for me too.

We all know that the **real managers are the politicians.**

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**IS IT SAFE?**

- Safe** for investment and businesses?
- Safe** most importantly for Citizens?
- Safe** to take a job – teacher, social worker, Manager?
- Safe** to bid on contracts?
- Safe** to work in the administrative office?
- Safe** to do improvements to my home on reserve?
- Safe** to invest time, energy, ideas and money?

Is it even safe for the politician?

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**Is it SAFE?**

Is it SAFE where the Politicians are the Managers?

- If political decisions can be hidden? *Not Safe.*
- If the rules are not equally applied? *Not Safe.*
- If bending rules depends on bending politicians? *Not Safe.*
- If have a history of breaking rules? *Not Safe.*
- If the skilled managers are disempowered? *Not Safe.*



If *“the real managers are the politicians”*  
is our community **SAFE**?

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**The Effect of Disempowerment  
on the Community**

**How does disempowerment happen?**

The politicians start responding to lobbying & become involved in the management to accommodate a band member.

Paid managers stop managing ...

Decisions become political ...

Rules contained in policies have no meaning ...

Institutions of government become **“DESTABILIZED.”**

An atmosphere of organizational unreliability emerges.

*When politics are first and everything else is last...  
community growth stagnates!*

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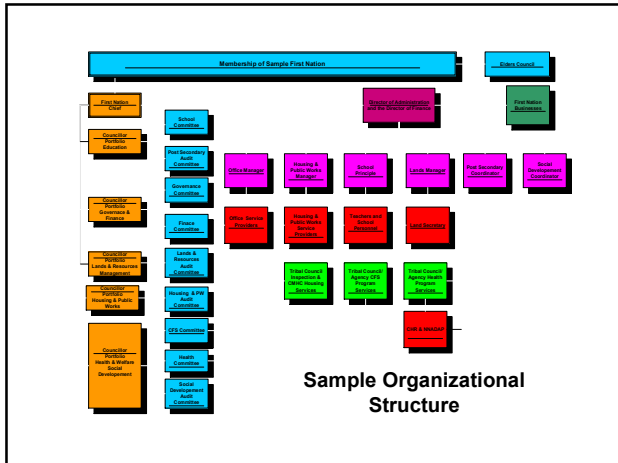
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**The Financial Effect of Disempowerment**  
*Go until there's no dough!*

**How does it happen? What needs changing? How do we change it?**

The Harvard Project on American Indian Economic Development concluded that those Tribes of the US that were able to separate the political from the administrative, were over 4 times more successful in creating sustaining businesses. The same principles apply to First Nation governance and operations.

Those that were successful must have "done something" to make this separation.

Should you take a closer look at what the Harvard Project had to say so that we can be more successful or at the least avoid **Financial Disasters**.

**Nothing changes if nothing changes!**

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**Human Resource Realities**

<p><b>The Talented &amp; Qualified</b></p> <ul style="list-style-type: none"> <li>Want a stable work environment.</li> <li>Want order as opposed to chaos.</li> <li>Want operational systems based on rules.</li> <li>Want to make a difference.</li> <li>Want to be judged based on performance.</li> <li>Do not want political interference.</li> </ul>	<p><b>Political Pressure</b></p> <ul style="list-style-type: none"> <li>Limited Job Opportunities on Reserve.</li> <li>Jobs in the FN Government regarded as political benefits.</li> <li>Community preference to hire within.</li> <li>Skills and qualifications are not the prime driver.</li> <li>Community pressure not to fire for deficient performance.</li> <li>Political interference is a by-product of the community pressure.</li> </ul>
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**Quality Organizations** appeal to quality personnel
↔
**Quality Personnel** creates quality organizations

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### Want Both – Best People From Within The case for the stable institutions of government as a human resources strategy

**Organizational Stability:**

The best people do not want to invest their lives in organizations that suffer from the "start-stop syndrome."

**Organizational Culture:**

Difficult for the talented to self train in an environment of chaos.



**Organizational Systems:**

The talented but unqualified need a proven & consistent system or path to follow and learn.

**Organizational Accountability:**

If the dummies stay as managers, then there are no good teachers for the talented.

**Organizational Strength:**

Over the long term brings Human Resource Strength.

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### Empowerment

Empowerment of personnel without the ability to do the job is fatal for the politician and for the community.

The challenge is to attract and keep skilled and qualified people.

The question is what can a First Nation do to create an environment of empowerment and attract management with talent and have a structure where the politician feels confident in empowering.



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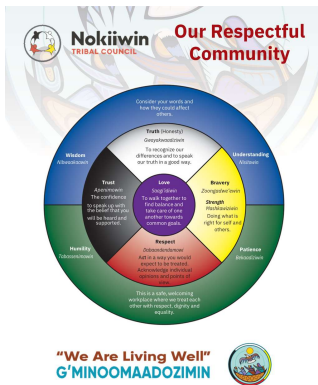
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**Dumb & Dumber**

<b>Dumb</b>	<b>Dumber</b>
Having a manager that can't manage and does nothing.	Hire a skilled manager but not empowering the manager.
The politician can keep changing management on the false belief that "a dummy will work out."	Politicians doing the work of the manager – with no training, no time and no extra pay.
	No time left to lead.
	The membership loses (poor services), and the politician becomes the target and, in the end, loses votes.
<i>Pooped out</i>	<i>Pissed off</i>

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**The Lessons of "Dumb and Dumber"**

**Lesson 1:** Good government requires that administration competently and skillfully carries out the authority given. If not, the politician is forced to step in. The institution of the FNG becomes political and unstable.

**Lesson 2:** If the FNG has a competent bureaucracy but the politicians still step in, then the result is the same – unstable institutions of the FNG.

*Good government calls for a structure where the politician feels safe and is not motivated to step in to micromanage.*

**If a policy-based government does not work – What is the structure?**

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**Look at One of the Leading USA Studies**

**The Lessons of the Harvard Project**

**Stabilizing Institutions of Government over the Long Term**

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**Principles of the Harvard Project  
First Nation Businesses**



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**The Harvard Project Principles  
As Applied to First Nation Businesses**

The Harvard Project looked at the two approaches to business being businesses run by politicians using committees and businesses run on a politically independent basis.

Compared profitability.



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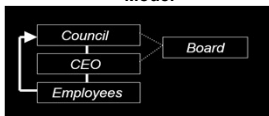
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**Two Approaches to Enterprise Governance**

**The Business Committee Model**

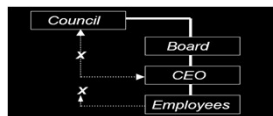


The Council sits as the *de facto* "board" over the enterprise and is in frequent contact with the CEO.

Employees can approach Council directly about Corporation matters.

Board advises Council and the CEO about strategy but has no discretion to act on important corporate policy issues.

**The Separated Model**



The Council sets the strategic direction, and it leaves execution to the Board and day-to-day management to the CEO.

The CEO & Council have no relationship with each other.

Employees do not approach Council directly about Corporation matters.

Board informs business strategy and sets policy – reports to Council regularly.

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### The Difference Between Leadership & Management

#### Leadership

##### Designing & Redesigning The System

Entails evaluating, re-directing, and restructuring systems to better meet the needs of the community (*designing the system*).



#### Management

##### Putting the System Work

Entails maintaining equilibrium or balance within a system.



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### Principles of the Harvard Project on the Subject of First Nation Governance



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### The Two Approaches (Harvard Project)

#### Jobs and Income

##### Reactive:

- Responds to anyone's agenda from the feds or off the street.
- Emphasizes short-term payoffs (especially jobs and income *now*).
- Emphasizes starting businesses.
- Success is measured by economic impact.
- Development is mostly the economic development officer's job (EDO proposes; council decides).
- Treats development as first and foremost an economic problem.
- The solution is money.

#### Nation-Building

##### Proactive:

- Responds to your agenda (strategic planning for the long-term).
- Emphasizes long-term payoffs (sustained community well-being).
- Emphasizes creating an environment in which businesses can last.
- Success is measured by social, cultural, political, *and* economic impacts.
- Development is the job of community leadership (they set vision, guidelines, policy; others implement).
- Treats development as first and foremost a *political* problem.
- The solution is a sound institutional foundation, strategic direction, informed action.

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**Components of Nation Building**  
*Harvard Project*

**Assert the sovereignty promised by federal policy** - For some First Nations this means the passing of the Legislative Framework for Government.

- Defines what is important to the First Nation as a nation;
- Creates a framework for government;
- Creates a framework for the exercise of power and law-making;
- Sets basic rules to deal with lands and resources;
- Sets basic rules as to accountability according to the standards (the laws) of the First Nation.

*When building... The foundation is first!*

**Back up assertions of self government with the ability to govern effectively** – The passing and implementing of laws such as a *Financial Management Law* or a *Housing Act*.

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**Dispute Resolution**

**Dispute**

Dispute over what and how the rules are applied.

Rules are not rules if they **can be ignored** to fit the circumstance.

Rules are not rules unless **equally applied**.

People come to respect (not necessarily like) their government if the rules are not ignored and are equally applied.

How do you ensure the respect is maintained?

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**Dispute Resolution**

**Resolution**

Resolution – Make a decision concerning the application of the rules.

Respect is maintained so long as there is belief that there is fairness in making the decision.

How can there be the perception or belief of fairness if the person doing the deciding is the same person against whom you are complaining?

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**Impact of Cultural Match on Form of Judiciary  
(Harvard Study Findings)**

**Concentration of Power**

The question is whether citizens are comfortable with concentrating power in one person.

- **IF YES**, then may be able to go with Strong Executive Chief;
- **IF NO**, then may be able to go for a strong council (parliamentary).

If consensus building is preferred, then go with strong council, large representation and votes by the citizens.

**Impartial Politicians**

The question is whether your community culture compels impartial behavior by politicians where politicians do not use political power for self interest.

- **IF YES**, then it is possible to rely on indigenous culture to shut down opportunistic politics;
- **IF NO**, then need a strong independent judiciary, good personnel grievance system, clear constitutional procedures to uphold the rules of the game.

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**Simple Test**

The Requirement of an Independent Dispute Resolution

**Is there a history of violation of existing policies by the politicians?**

- If **YES** then there is a need for an independent dispute resolution.
- If **YES** then there is a need to change the foundation of important key rules from policies to laws on (First Level Rules) and leave the implementation to an Operations Manual (Second Level Rules).

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**First Nation  
Governance Approaches**

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### The Structural Objectives *The Plan*



#### Separate the Political from the Administrative – Why?

- Politicians are not managers - Elected based on their vision and leadership skills and not managerial skills.
- Creates an operating environment that can enable the politicians to focus on leading and allow the politicians to be comfortable with letting the managers manage.

#### Create a reliable and stable operational environment – Why?

- Personnel must feel safe, so they are prepared to invest their energy, time and effort to provide better services for the membership.
- Encourages talent to invest their future with the First Nation - Managers, teachers, contractors, businesses...

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### Governance Approaches *The Blueprint*

Rules Without Legislation  
Pure Policy Based



Rules Based on First Nation Legislation

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### What is a Legislative Based First Nation Government?

Where the rules are made by the membership and take the form of First Nation laws.

The laws mandate the politicians and include how they instruct and hold accountable administration and if the laws are broken the membership can hold their politicians accountable by recall.

The right to make First Nation laws is based on First Nation sovereignty.

The making of the laws is an assertion of sovereignty.

The process is the restoration of jurisdiction of First Nations to govern themselves.

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### Governance Approaches

#### Policy vs Legislative Based Governments



Let's Compare

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### Two Governance Approaches

#### Policy Based

#### Legislative Based

- Short Term;
  - Rarely Enforceable (not-binding);
  - Management tool;
  - If dissatisfied with the rules, change the Chief & Council (wait for the next election).
- Long Term;
  - Enforceable (Binding);
  - Governance tool;
  - If dissatisfied with the rules, change the FN law for the present and future FNG.

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### The Nation Building Governance Question

In the end governance issues will come to one single question...

- *How does a First Nation Community take charge and restore a governance structure that mandates its government according to the wishes of the people and hold its government accountable for the long term?*



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### For Some, Legislative Based Government is How a First Nation Community Can Take Charge

**Step One:** Develop a constitution that lays out the "legislative foundation."

**Step Two:** Develop laws under the constitution, lay out institutional direction and create long term rules equally applicable to all on an institution-by-institution basis. Lay out the standards expected from the politicians & administration and the consequences of failure to meet the standards.

**Step Three:** Develop operational rules for each piece of legislation – Lays out the internal rules of operation usually called regulations to govern certain procedures and not rights.

For others it is different, but in the end, there will have to be a recordable & provable consensus from the community for the long-term binding on everyone equally.

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### Constitution as the Foundation



**Power:** Who gets it? How can it be used including checks and balances to power?

**Law Making:** How are laws created? What are their effect?

**Dispute Resolution:** To create an independent and binding dispute resolution to enforce First Nation laws.

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### Community Engagement Do's and Don'ts

Make sure everyone is asked for their opinion – One on one solicitation through a questionnaire addresses the standing complaint.

- *"You never asked for my opinion!"*

Do not use a rolling draft approach.

- *"Where is the wording I wanted!"*

Try to limit the community meetings to what is necessary.

- *"This is not that interesting, and I am tired!"*

Focus community meetings on the big issues and not on legal terms.

- *"What are the issues and what are the options."*

Develop a communication strategy. Voter apathy is a problem and good voter turn out is a challenge.

- *"I heard that you people were doing something."*

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**Timelines**


**Development cycle of 4-6 months is achievable.**

**Some federal funding is available.**

If too long a timeline:

- Budget will exceed funding;
- Tire out the membership;
- Chief and Council can change;
- New priorities set in creating loss of focus;
- No difference in input; or
- No difference in result.

**As soon as the constitution is done, immediately proceed with the critical legislation – a constitution does not work on its own.**



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**Legislation Building**  
**After the Passing of the Constitution**

**First Nation Legislation**  
**Follows**

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**Types of First Nation Legislation**

<p><b>Structural</b></p> <ul style="list-style-type: none"> <li>• Constitution</li> <li>• Citizenship Act</li> <li>• Elections Act</li> <li>• Referendum Act</li> <li>• Dispute Resolution Act</li> </ul>	<p><b>Operational</b></p> <ul style="list-style-type: none"> <li>• Financial Management Act</li> <li>• Lands &amp; Resources Act</li> <li>• Housing and Public Works Act</li> <li>• Human Resources Act</li> <li>• Economic Development Act</li> <li>• Illegal Substances Use Act</li> <li>• Tribal Council Act</li> </ul>
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### Rights/Restrictions and Rules Components

#### Rights/Restrictions

- Focuses on the problem to be solved.
- Rights - Give something to Band members.
- Restrictions – Prohibit Band members from something with consequences (could include non-Band members concerning on-reserve activities).
- Powers to the FNG, the Board & Key Personnel.

#### Rules

- Rights qualifications & transferability.
- Procedures to realize rights.
- Procedures for challenges to rights or restrictions.
- How to create, convey or cancel an interest created by a right.
- Operation of FNG registries or databases.
- Meeting & decision Rules.
- Form of reporting.
- Execution of documents.
- Due Process procedures.

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### Typical Subjects of First Nation Legislation

- Purpose and Name of the Act
- Application
- Power of Government
- Formation of a Board and Powers
- Powers of Persons Charged with Responsibilities under the Act
- Rights & Restrictions under the Act
- Rules Associated with Rights or Restrictions
- Conflict of Interest
- Financial & Contract Rules
- Reporting & Notice Rules
- Due Process Rules
- Effective Date and Amendment

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### Sample Laws - Follows Legislation

- **Elections Act** – *Elections.*
- **Citizenship Act** – *Membership in the First Nation.*
- **Governance Act** – *Operation of the Government.*
- **Referendum Act** – *Rules to Pass Laws.*
- **Appeal Body Act** – *Body to Enforce First Nation Laws.*
- **Financial Management Act** – *Financial Management.*
- **First Nations Fiscal and Statistical Management Act** – *Taxation Companies Doing Business on FN Lands – Federal Enabled.*
- **Housing Act** – *Existing and New Housing.*

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**Sample Laws - Follows Legislation (continued)**

- **Lands and Resources Management Act** – *Lands and Resources.*
- **Duty to Consult Act** – *Consultation Requirements within the Traditional Lands of the First Nation.*
- **Human Services Act** – *Personnel Management.*
- **Education Act** – *K-12 Education.*
- **Post Secondary Education Act** – *Post-Secondary Education.*
- **Social Services Act** – *Covers All Forms of Assistance to Members.*
- **Child and Family Services Act** – *Child and Family Services.*
- **Illegal Substances Act** – *Illegal Substances On-Reserve.*

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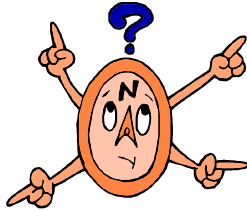
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**Constitution, Legislation, or Regulations or Policies**



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**Three Levels of Legislation**

- First Level** – The Constitution:
  - The first law above all other laws.
- Second Level** – Laws or Legislation Under the Constitution:
  - Creates long term rules and the standards expected of the politicians & administration and the consequences of failure to meet the standards.
- Third Level** – Operational Rules for each Piece of Legislation:
  - Internal rules of operation usually called regulations or FN department policies dealing with procedures.

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**Level 2 – Legislation OR Level 3 - Regulations**

**Substantive**

Those things that the community needs to accept as being the rules and binding on all should be in legislation. For example:

- Elections, rights and obligations as to housing.

**Procedural**

Those things that are purely of an administrative nature and relate to operations can be handled by regulations or go into an operations manual. For example:

- Hiring and firing rules, system of warnings and reprimands.

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**Legislation vs Regulation vs Policies**



**The decision where to place rules is not always easy**

**Consideration 1** – If the rule directly deals with rights or restrictions, keep the rule in the Act.

**Consideration 2** – If the rule indirectly deals with procedures relating to the creating or other dealings with rights or restrictions, keep the rule in the Act.

**Consideration 3** – If the rule is purely procedural but still important not to be able to easily change, then either keep the rule in the Act or use Regulations, provided the method to change Regulations is not by simple resolution of Council.

**Consideration 4** – If the rule is purely procedural and not important whether it can be changed easily but is specific to the Act, then put the rule in the Regulations to the Act.

**Consideration 5** - If the rule is purely procedural and not important whether it can be changed easily and not specific to the Act, then put the rule in operational policies as is usually contained in an Operations Manual.

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**Operational Policies**

**Office Operational Matters:**

- Organizational structure with job descriptions;
- Lines of authority; and
- Information exchange & reporting.

**Personnel Matters (could also be in a Human Resources Act):**

- Employee classification & terms of employment;
- Hours of work & holidays;
- Hiring, firing, discipline and performance evaluations;
- Compensation & benefits issues;
- Grievance system;
- Codes of conduct; and
- General conflict of interest.

**Financial Matters**

- Major components should be in a *Financial Management Act*; and
- Management of accounting personnel and minor accounting procedures can be in the operation.

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**Change Over Time**

- Over time the community will expect the accountability contained in legislation.
- Over time the politicians get used to the standards to which they are required to meet.
- Over time less will be in the Acts and more in the Regulations.



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**"I Believe"**

**The tendency** will be to go back to the old ways - people do what they know.

One foot in the new world and one foot in the old world does not work well – SPEED IS IMPORTANT – Pass critical laws ASAP.

The membership must come **to believe** that:

- Their community has rules;
- Their rules are reasonable and fair; and
- Their Government will fairly and equally apply the rules to all.

**The consistent application of the above by action (not just words)** will create the belief over time.

Successive First Nation Governments staying with a legislative based government will **meet the standards set and the accountability requirements.**

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**It's Time**

"Time to get to work – Get in the canoe."



"Time to do your job – Start paddling."

"Time to make some rules – You paddle on one side, and I'll paddle on the other."

"Time to lead – Can you keep the canoe moving forward or not?"

**THE END**

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