8

Building Governance Capacity: The Case of Potable Water in First Nations Communities

John Graham and Evlyn Fortier

Introduction

There is a near consensus among development experts, both in this country and abroad, that governance is a critical component in improving individual and community well-being.[1] Not surprisingly, a growing number of organizations in Canada focus on building governance capacity of Aboriginal communities as a critical element of their mandate. Some of these organizations are run by Aboriginal people. One of the newest is the recently constituted National Centre for First Nation Governance, which has a broad mission for stimulating improvements in Aboriginal governance. And there are many others—from training organizations to educational institutions to special purpose bodies like the National Aboriginal Health Organization.

Furthermore, many federal and provincial government departments would claim to be in the capacity-development business, with Indian and Northern Affairs Canada as one of the most important players. Its capacity mandate is wide and includes implementing claims and self-government agreements; assisting First Nations in administering certain sections of the *Indian Act*; improving financial management; and assisting communities and governments in the northern territories.

But despite the importance of governance and the prevalence of governance capacity building, there appears to be much confusion about what the term capacity building encompasses; what approaches are effective and in what circumstances; what are important preconditions for success; and what constraints exist for organizations funding capacity building approaches.

The purpose of this paper is to help fill this knowledge gap. In the following, we present a model for capacity development that outlines the various approaches, goals, and considerations for strategies to develop capacity. We examine the advantages and disadvantages for each of the possible approaches. To illustrate this model, we apply it to a case study—potable water in First Nations communities. Finally, we conclude with "lessons learned" from the application of this model to the case study.

What Is Capacity Building?

Among the acknowledged leaders in the field of capacity development and building governance capacity is the United Nations Development Program (UNDP). Most recently, the UNDP has implemented a program called Capacity 2015 to build capacity at the local level through partnerships. The object of this program is to realize the Millenium Development Goals. The various initiatives of Capacity 2015 are designed to support processes leading to increased incomes, and link local communities to the global economy.

The UNDP uses this definition for capacity development:

> Capacity is the ability of individuals, organizations and societies to perform functions, solve problems, and set and achieve goals. Capacity Development (CD) entails the sustainable creation, utilization and retention of that capacity, in order to reduce poverty, enhance self-reliance, and improve people's lives.[2]

This definition has considerable merit. It puts the emphasis on ultimate objectives—improving well-being—and contains the notion of sustainability as critical to capacity building. Nonetheless, the very breadth of the definition is challenging in that it could encompass anything from training a single individual to a massive project, such as introducing the rule of law into China, an exercise that one commentator has called "one of the largest social infrastructure projects in the history of mankind."[3]

International Experience

The next question to consider is what has been the experience internationally in building governance capacity. This has been an important priority of many international development agencies, including the World Bank. Every year the World Bank publishes a document called "Governance Matters." In May 2005, their document "Governance Matters IV" looked at governance indicators in 209 countries.[4] The salient conclusions of this paper include the following:

- Wealth is not a precondition of good governance.
- The most important causal relationship is good governance leading to good outcomes.
- Corruption is of critical importance to society's investment climate.
- Relatively rapid improvement in governance is rare but possible.
- The worldwide average of a host of good governance indicators has not improved over the past eight years, despite significant investments from aid agencies.
- "The importance of political commitment from the top has been underplayed …"

These conclusions contain much that is encouraging, but also much that is worrisome. The fact that wealth is not a precondition for good governance is good

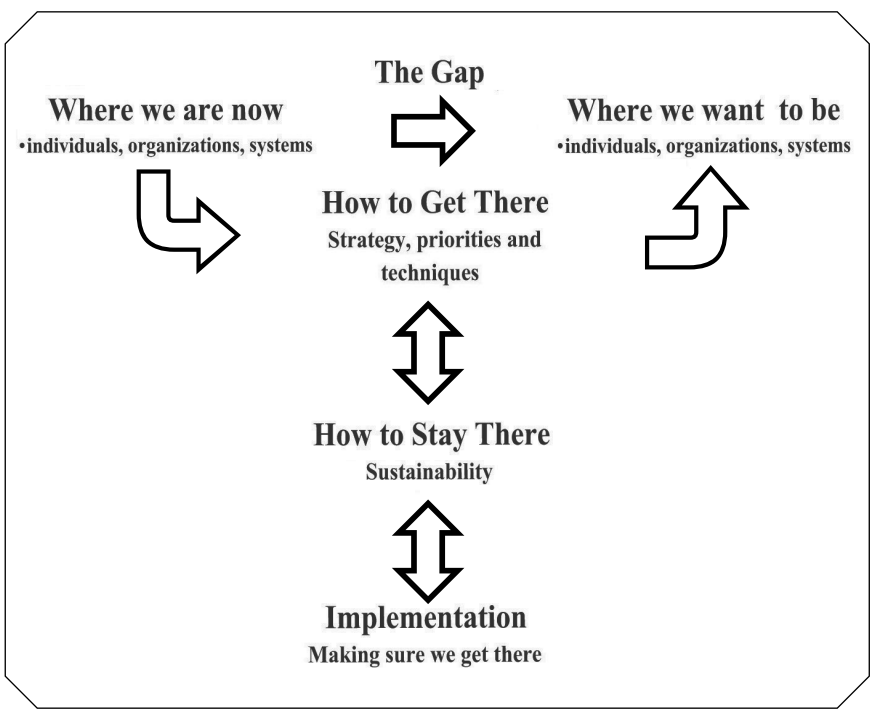
news, given the need for good governance in countries with poor economic conditions. The causal relationship is actually the other way—that is, good governance leads to improved outcomes in the form of economic and social well-being.

However, the fact that rapid improvement is rare but possible sounds a cautionary note. Furthermore, the fact that the worldwide average of good governance indicators has not improved over the past eight years, despite substantial investments, is discouraging to say the least. And the last bullet points to one reason for the lack of progress—that is, the need for political commitment from the top as a necessary precondition for realizing progress in improving governance.

The conclusions of this World Bank report are significant for the case study that follows.

Developing a Capacity Building Plan

The following model is adapted from a similar analytical tool developed by the UNDP:



Several aspects of this model deserve further elaboration. One of its critical elements is the gap analysis between "where we are now" and "where we want to be." This paper will not address various approaches for undertaking this gap analysis. Suffice it to say that this is a complex undertaking meriting a paper in its

own right. That said, the Institute has developed several tools for effecting such an analysis and these tools are built on good governance principles.[5]

The sustainability part of the model is also very important. Sustainability will figure prominently in the case study featured in the latter part of this paper.

Finally, the gap analysis situates the issue as a matter involving individuals, organizations, or systems. This tripartite view of building capacity allows analysis of the three approaches, the strategies and techniques for each, and their advantages and disadvantages. And it is to this that we now turn.

Individuals

A common approach to capacity building focuses on individuals. That is, the critical issue from this perspective is developing the skills, knowledge, and values of individual people, and giving them the tools to do their jobs. Indeed, for many, capacity development boils down simply to training.

Even from within the confines of individual approaches to capacity building there is a richer array of approaches than just training. For example, establishing a professional association is a common strategy among a wide range of public service disciplines. For First Nations, there are more and more professional associations being set up, such as associations of financial officers, economic development officers, and water operators. Other strategies include establishing certification requirements, changing incentives such as pay and recognition, and providing better tools such as computers.

Using the approach of focusing on individuals is popular with funders. There are advantages such as low cost, quick and measurable results, low political risk, and well-defined roles for funders. However, the disadvantages are also compelling. Governance capacity issues are seldom confined to individuals, and sustainability is an issue when using these strategies. In short, despite the fact that this approach involves low risk, it also involves low reward.

Organizational

A second approach to capacity building concentrates on the organization. According to the rationale for this approach, improvement in the organization is required because it lacks a clear mission, has poor morale, lacks policies, has poorly defined roles and so on. In the case used as an example below, the organization could be the First Nations public works function, including the Chief and Council, and staff.

Strategies and techniques for this approach are well known. One strategy uses an "outsider" to conduct a policy or program review or study. Another involves leadership change. Certification for the organization is a third technique, which is relevant for First Nations issues. For example, the Membertou First Nation has an ISO certification and the Institute on Governance has advocated such a system

for improving financial management.[6] Furthermore, the *First Nations Fiscal and Statistical Management Act* sets up a First Nations-run certification scheme for First Nations interested in property tax and borrowing, using the income stream from property taxes as collateral. Other strategies for the organizational approach involve organizational development workshops, and twinning with an outside organization.

There are a number of advantages to focusing on the organization. Building capacity at the organizational level is more likely to address underlying governance issues. There are potentially high payoffs to such an approach. Finally, if the organization is improved, this can provide incentives for individual skill building. For example, an ISO certification will require using certified individuals for certain functions in order to maintain certification. This provides an ongoing incentive for individual capacity building.

However, the disadvantages need to be considered. Focusing on the organization can involve higher costs and longer timetables. There is uncertainty about how long these exercises will take, and their status when they end. Furthermore, an organizational approach is riskier in that it might imply change to the existing power structures. And sustainability is an issue. Leadership change, for example, can set the organization backward dramatically.

Finally, the funders' role becomes more problematic because projects focusing on the organization start to change power relationships and this presents problems for public servants or NGO officials wary of getting involved in community or organizational politics.

System-wide

The last category involves a system-wide approach. In this case, the focus is on relationships among organizations in a system. So, for example, in a First Nations context, we would examine the set of relationships the First Nation would have with other governments—federal, provincial, municipal—and with other organizations such as Tribal Councils, service organizations, etc.

The issues prompting a system-wide approach could include poor legal or regulatory systems, inadequate system resources, poor relationships among players, and so on. To tackle these issues, capacity-building strategies might implement new or enhanced regulatory systems, new coordinating machinery and agreements, or dispute resolution systems. The Social Union Framework Agreement (SUFA)[7] is an example of new coordinating machinery and agreements struck between the federal and provincial/territorial governments. Another strategy might employ adding more resources to the system, and there have been many examples of this technique. A final technique uses system-wide review and advocacy. A Royal Commission, such as the Romanow Commission, is an example of such an approach.

There are potential benefits, but also potential costs, to a focus on a governance system. One advantage is that this is the only sustainable strategy, assuming a gap analysis identifying system-wide problems is correct. There are also high potential payoffs in the long term. Furthermore, a system-wide approach can provide incentives for organizational and individual approaches. For example, the Navajo in the United States, with a population of 140,000 on a reservation the size of West Virginia, embarked on an eight-year plan to build their own Environmental Protection Agency (EPA) with the help of the US Environmental Protection Agency. This plan involves a system-wide focus that stimulates incentives for tribal organizations to conform to environmental regulations and individuals to become properly qualified to perform certain functions.

However, there is an important precondition in that a system-wide approach requires a high degree of political commitment from all of the critical players involved. The disadvantages include high cost, and the fact that a system-wide approach is time consuming and high risk. Money alone may not solve the problems, and there is an increasingly uncertain role for funders.

In sum, system-wide approaches involve potentially substantive changes in power relationships and long-term commitments with uncertain outcomes. For these reasons, they tend not to be favoured by funders.

Considerations—A Look Back at the World Bank Findings

The above analysis of the three approaches to capacity building helps illuminate the World Bank's gloomy findings. One of these was that rapid change is rare, and we can see why. System-wide changes—those with the biggest impact and potentially the most sustainable results—are premised on political commitment and moreover take considerable time. Furthermore, the long time frames and uncertain results present significant problems for funding agencies. Demonstrating results, especially in the short term, is not likely possible.

An example of a system-wide approach illustrates the dilemmas involved. Hernando de Soto, the Peruvian economist, notes that developing countries are much richer than we give them credit for, but they suffer from what he calls "dead capital" because of the lack of a land registry system. Thus, in these developing countries, financial institutions have no way of taking property as collateral to finance small business loans, because of the lack of a registry. But small business loans are the most important source of capital for small businesses. Thus putting in place a land registry system in a country like Egypt can be crucial for economic development by leveraging the country's considerable housing capital. Nonetheless it's an undertaking that can take decades. Just imagine the number of land disputes involving such matters as ownership and land boundaries in a city as complicated as Cairo!

This and other examples of system-wide changes are important reminders that too often, citizens of first world countries take complex governance systems for granted. These systems function below the radar screen unless something drastic goes wrong, as in the case of Walkerton, Ontario. However, when they are not in place, a country or society faces formidable challenges to build them.

The following case study will explore this theme in more depth.

Case Study—Safe Water in First Nation Communities

The model developed in the previous section can be applied to a pressing problem—safe drinking water on First Nations reserves. A large number of First Nations reserves have poor quality drinking water, a fact that is now well understood. In March 2006, over 10% of First Nations communities (79 of the 755 community water systems identified by the Department of Indian and Northern Affairs on reserves across Canada) faced boil water advisories. Furthermore, 193 water systems were identified as high risk, 312 as medium risk and 250 as low risk.[8]

The gap analysis for this situation reveals problems at all three levels.

- **Individual**: many water operators on reserves are uncertified; some leaders lack knowledge and commitment
- **Organizational**: some water plants on reserves are not well maintained; water systems suffer from early rust-out; community budgeting issues sometimes restrict the ability to address problems
- **System-wide**: there are unclear standards for water quality on reserves; inspections are insufficient; enforcement of standards is limited; resources are insufficient; there are few communities with user fees despite the requirement for such in agreements with INAC. Such fees might help curb consumption and provide a source of additional funding for maintenance; and roles of the key players are poorly defined.

The story of water problems at the Kashechewan reserve brought the issue of unsafe water in First Nations communities to national prominence late in 2005, but the issue has had a long history. Following the outbreaks of waterborne illnesses at Walkerton in 2000 and North Battleford in 2001, the federal government announced a seven-point strategy with elements aimed at individuals (primarily training and certification of operators); organizations (more funds and other approaches to encourage better maintenance); and some system-wide deficiencies (e.g., attempts to introduce standards and enforcement measures).

In March of 2006, the new Conservative government announced a five-point plan to tackle water issues on reserves, a plan that in many ways repackaged the former government's seven-point strategy but with one significant difference: it made a commitment for a legislated regulatory system.

It is worth examining the elements of the seven-point strategy ("Strategy 7") and five-point plan ("Plan 5") in more detail.

Individual Approaches

One important part of both Strategy 7 and Plan 5 is aimed at water operators. That is, they both include a program to train and certify operators. The program has provided circuit rider training in all areas of Canada, training that originated in Ontario with the Ontario First Nations Technical Services Corporation. Efforts have also been directed at educational materials for the Chiefs, Councils, and members. Public education efforts have also begun in certain regions.

The most significant issue for this approach involves problems around certification. The original objective was to have 100% of operators certified by 2006. This objective has been restated by the current government.

However, the 100% certification target is unattainable, assuming that the approach is to recruit and train members of First Nation communities. Why is this so? The answer relates to the stringent education and experience requirements, along with certification exams. Take Ontario as an example. Like most jurisdictions in North America, Ontario follows the ABC standard of water-operator certification, which involves four levels or classes: water treatment plants, water distribution, waste water treatment and waste water distribution. In Ontario there were 134 First Nations operated plants in 2004—71 were Class I, 54 were Class II, and 7 were Class III. Certification requirements for these three classes of plants are as follows:

- Class I: Grade 12; 1 year experience; 70% on exam
- Class II: Grade 12; 3 years experience; 70% on exam; must have Class I licence
- Class III: Grade 12 plus 2 years of additional education; 4 years experience (at least 2 years as operator in charge); must have a Class II licence

For many communities the educational requirements represent a major hurdle. Furthermore, the time necessary to become certified, especially for the Class II and III plants, is so long that replacing a certified operator who retires or leaves with another community member who is certified to the appropriate level is not practical. Therefore, the whole notion of having trained First Nations operators, employed by their communities, is very much in question. Kashechewan provides definite proof of the weakness of this strategy.

Fortunately, the new Conservative government's five-point plan recognizes the problem, and proposes another approach based on the use of outside suppliers with certified operators to oversee First Nations plants in situations where the First Nation cannot provide its own certified operators.

In conclusion, the approach to training and certifying operators, in each community, manifests many of the advantages and disadvantages predicted by the UNDP-based capacity building model. This approach has proven popular with both funding agencies and with First Nations and their organizations (tribal councils and technical organizations). Few would argue against more training and better qualified operators.

Nonetheless the disadvantages of pursuing this route outside the ambit of more systemic changes—such as the introduction of a regulatory system that would make the certification of operators legally mandatory—are equally glaring. Thus it has taken over three years to realize that relying on First Nation members to be trained and certified will not meet the goal of having certified operators in every community in a sustainable manner. Furthermore, even with certified operators in place, other critical elements are required to match the situation off-reserve: dedicated budgets and sufficient funding for operations and maintenance; political leaders aware of and committed to their responsibilities; legally enforceable standards; sufficient information available to the public to track performance; and inspections with appropriate penalties.

It is to some of these elements that we now turn.

Organizational

Both Strategy 7 and Plan 5 have also focused on a number of organizational approaches. For example Strategy 7 included more funding for maintenance and, in some regions, stringent audit requirements. It also included better commissioning of plants and increased testing and inspection. Plants must undergo evaluations by third parties every three years, and funding for plants not meeting standards is a number one priority. In addition to these measures the new government's Plan 5 calls for specific remedial plans for First Nations communities with serious water issues.

Once again, the predictions of the UNDP-based model appear to be borne out. Without more systemic reforms, the appropriate incentives are not in place to realize significant, sustainable change. For example, those First Nations which do the worst job of running their plants become the highest priority recipients for new funding. Furthermore, the more heavy-handed federal officials become in insisting that new funding for water-related initiatives be spent effectively by First Nations—through increased audits and inspections, for example—the more strained the relationship becomes between the partners in this joint endeavour to ensure safe water for First Nation communities.

So organizational capacity building efforts, even when combined with activities aimed at key individuals like water operators, are not sufficient to deal with the safe water problems on-reserve. More systemic approaches—approaches that alter the incentives for both First Nations and their federal counterparts—are required.

System-wide

In relation to system changes, Strategy 7 did mention the introduction of standards, but stated this in very tepid terms. For example, it talked about developing a stronger, transparent inspection, reporting and compliance regime, and establishing national standards and protocols. But until the Kashechewan crisis, the federal government had demonstrated little appetite for a legislative approach for a variety of reasons—not the least of which, no doubt, is the political challenge of introducing legislative change affecting all First Nations across Canada. When the Kashechewan situation became well known, the Martin government announced their intentions to introduce legislated federal standards. And the new government, as noted above, has continued this commitment.

But the World Bank experience, buttressed by other attempts at large-scale systemic change, suggests that any attempt to introduce such a regulatory system will be a long, arduous process. In the remainder of this section we canvass the reasons why this will indeed be the case.

What's Involved in the Regulation of Water?

To begin, the principle elements of a regulatory system for water quality would include the following:

- Legislative base
- Standards—source protection; water quality; system type; plant commissioning and certification; operators; maintenance; lab certification; testing; public disclosure; inspections; general standard of care
- Arms-length regulatory bodies (likely two—one for public health, a second with an environmental focus), inspection powers, enforcement options, and penalties
- Emergency procedures
- Public education

Several points require elaboration. First, regulation of water is a complicated business, highly scientific in nature, and one where there are multiple standards. Furthermore, water acts and their accompanying regulations are hundreds of pages in length, and call for some judgment in even identifying what standards exist.

But regulation is also very much an art form. The issue comes down to managing risk and allocating scarce resources to keep the risk of something going wrong at acceptable levels. This requires considerable experience and years of practice. And it necessitates identifying and working with allies.

Finally, regulation can become politically charged. No one likes being regulated, especially if the reporting burden is high, and the possibility of fines, or even jail terms is real.

Why Legislation?

Legislation is the preferred base for such a system for a variety of reasons:

- Legislation forces needed clarity and transparency into the murkiness of unclear roles and accountabilities that characterize the current situation.
- Legislation is more likely to encourage sustainability. Courts do not look kindly on governments which establish regulatory regimes and then do not manage or resource them adequately.
- Legislation provides an easy out for politicians to deal with the politics of regulatory regimes. Faced with pressures to "let up," politicians have a ready response: "I have no choice but to enforce the law."
- Inspection and enforcement powers can be draconian, and regulators need the certainty and force of legislation to do their jobs properly. For example, a provincial officer in Ontario has the authority to conduct an inspection without a warrant, or enter without a warrant any place that he or she reasonably believes contains part of a drinking water system. Along with broad powers of entry, they also have the power to take and remove documents, make inquiries, make excavations, and require tests to be performed. A provincial officer can also issue a compliance order requiring a person to repair, maintain, or operate a drinking-water system, water testing equipment or a laboratory in such a manner and with such equipment as may be specified in the order, among other things.
- Penalties are also significant. Again, using Ontario as an example, enforcement of water quality can lead to convictions involving five years in prison and $6 million in fines. These penalties must have a legislative base.
- A well-designed regulatory regime, as opposed to the contractual approach that has been utilized, would have a much wider variety of responses to water problems, responses varying from traditional enforcement techniques to negotiation, education and other voluntary approaches.

What Should Be the Scope of the Legislation?

Should the government establish a combined regulatory system for water and waste water? The Sustainable Development Commissioner recommended a regulatory system for water only,[9] but the experiences of North Battleford and Kashechewan suggest that any initiative should encompass waste water as well. Furthermore, there are practical reasons for a combined system because the same inspectors are involved. That said, federal and provincial/territorial leaders have already embarked on a Canada–wide exercise to harmonize waste water treatment standards. Thus, coordination is required between this exercise and any attempt to develop a safe water regime for First Nations.

Which Standards Should Be Adopted—Federal or Provincial?

Another issue involves using provincial versus federal standards. There are strong reasons to use provincial standards. The provinces already have education and certification systems based on provincial standards for operator training and certification. Furthermore, the construction industry will be familiar with these provincial standards. However, some provinces and territories do not yet have regulatory systems for water—for example, New Brunswick, Newfoundland and Labrador, and the Yukon. So federal standards or other provincial standards will be necessary for these jurisdictions.

What Should Be the Role of the Federal Partners—INAC, Health Canada and Environment Canada?

The role of federal departments in regulation of water is an issue. Federal departments, such as INAC, Health Canada and Environment Canada, should not be regulators. In some instances, they may actually be the regulatees. Do federal departments provide enough funds? Are they doing a good job when they approve plant designs, and so on? Regulators should pose these and other questions to the federal departments.

The issue of adequate funding for First Nations will be a major obstacle to overcome. It will not be tenable for First Nations leaders to assume the same liabilities as their non-Aboriginal counterparts in local governments across Canada, and yet not have some reasonable guarantee of adequate funding. This will be, indeed, a tough nut to crack.

Who Should Be the Regulatory Authority?

There are three options: a new federal authority, existing provincial authorities or some newly established First Nations authority. The obvious answer is to build on the provincial experience and have provincial authorities acting as agents of the federal government. Furthermore, within each provincial regulatory authority, there could be units specifically established for First Nations. All of this would take considerable negotiation, involving First Nations and the other two levels of government in each province and territory. And the issues will not be easy, funding being a key obstacle to overcome. Also, there is still the question of what to do in provinces without existing regulatory regimes.

How to Bridge this New Regime to Self-government?

Implementing regulatory systems for potable water involve questions about the roles of the different levels of government, but for First Nations, the issue is also about building an important bridge to self-government. An ideal situation, as noted above, would involve a negotiated agreement with each province to establish a special inspection and enforcement unit to be staffed primarily by personnel recruited from First Nations. This would be more acceptable to First Nations communities in administering what is essentially a provincial regime. Also, at

some point in the future, the First Nation unit could become part of some First Nation government and would bring with it the experience, skills and contacts that would otherwise take years to build.

What about Existing Self-government Agreements?

Unfortunately, existing self-government agreements, such as those involving Yukon, Cree-Naskapi and Nisga'a First Nations and the *First Nations Lands Management Act*, have not addressed the issue of potable water well.[10] Often, these agreements provide First Nations with the jurisdiction to deal with potable water but do not ensure that they have a fully functioning regulatory regime. Furthermore, the large majority of agreements do not provide an appropriate governmental structure for an effective regulatory system for potable water. In essence the self-governing entities would both operate water systems and regulate themselves. These agreements need to be reviewed, and future agreements should be developed with greater attention to the regulatory function.

What about Powers and Penalties?

Inspection powers and penalties comprise yet another area of potential concern. Post Walkerton, provincial penalties have stiffened considerably, and some adjustments may be necessary in the First Nations context. Furthermore, there may ways to develop sanctions more in keeping with First Nations culture than simply reverting to fines and jail terms.

What Should Happen to Existing Plants that Don't Meet Standards?

Another issue involves the relationship of regulation to plant conditions and operators. Many plants are not up to standard at present, and will require significant investments to upgrade them. These plants might require a transition stage.

Looking toward the future, there is an additional dilemma facing federal funders, assuming the federal legislation adopts provincial standards, and it is this: the regulation of water is a dynamic area of public policy with ever-evolving regulatory standards. To meet new standards will likely cost money. And yet, both federal and First Nations governments would not be in control of the development or adoption of these standards. This is not a position in which governments like to find themselves.

What about Other Regulatory Voids Affecting First Nations Communities?

Any solution for setting up a regulatory system for clean potable water on reserves could provide some routes to deal with other environmental and health-related voids.[11] These are considerable:

- Environmental protection relating to water and land (solid waste recycling, contaminated sites, hazardous waste, nutrients, pesticides)

- Resource management (land use, water use, forestry, fish, wildlife, agriculture, minerals, aggregates)
- Environmental assessment
- Health, safety, and transportation (hazardous substances, fire safety, spill responses, dangerous goods)

To avoid dealing with these voids implies health and environmental conditions on reserves well below those found in other Canadian communities. Furthermore, the road to self-government will be a long, rocky one. It is asking a lot for new self-governing entities to address the enormity of the challenges these voids present.

Conclusions

In this paper, we have examined a model that outlines three possible strategies for building governance capacity: individual, organizational and system-wide. We have argued that there is a program bias among funders of capacity building activities towards individual strategies. Organizational and system-wide strategies tend to be costly, risky, longer-term, and dependent on political commitments. Also, the roles of funding agencies are more uncertain in these latter approaches.

It is clear from the potable water case study we presented that a reliance on individual or even organizational strategies will not suffice to deal adequately with the problems facing First Nations in providing this basic necessity to their citizens. Furthermore, communities in the greatest need of reform for their water systems are often the least likely to be equipped to lead such reforms.

So putting in place a regulatory system akin to that found in non-Aboriginal communities across Canada is clearly the way to proceed. But having said this, the difficulties of addressing the array of issues in implementing such a systemic change should not be underestimated. Indeed, this may well be a five-to-ten-year exercise, involving significant changes to existing incentives. Readers may recall television clips of the Chief of the Kashechewan First Nation returning to a hero's welcome to his community after negotiating a deal with Ottawa for significant housing and other upgrades to his community. Had the Chief been a mayor of an adjacent non-Aboriginal community, rather than being seen as a hero, he and his fellow councillors would have been subject to significant fines and even jail terms for allowing E.coli into their community's drinking water.

With so much at stake, and with the wide range of difficult issues to address, the question becomes whether there will be significant political will on the part of all parties—First Nation, federal, and provincial/territorial—to stay the course. For the sake of some of Canada's poorest communities and most vulnerable citizens, let's hope the answer is yes.

Endnotes

1 For a review of some of the evidence for this statement, see John Graham, Bruce Amos and Tim Plumptre. "Governance Principles for Protected Areas in the 21st Century." June 2003. <**www.iog.ca/publications/PA_governance.pdf>**

2 <**www.capacity.undp.org>**

3 Dr. Zhenim Wang. "Developing the Rule of Law in China." *Harvard Asia Quarterly*. Autumn 2000. p. 7.

4 <**www.worldbank.org/wbi/governance/pubs/govmatters4.html>**

5 See, for example, John Graham and Jake Wilson. "Towards Sound Government-to-Government Relationships with First Nations." Policy Brief No. 21, October 2004. <**www.iog.ca/publications/fn_govtogov_rel.pdf>** and John Graham. "Managing the Relationship of First Nation Political Leaders and Their Staff." March 30, 2006. 40–42. <**www.iog.ca/publications/2006_fnleader_staff_rel.pdf>**

6 See John Graham. "Getting the Incentives Right: Improving Financial Management of Canada's First Nations." Policy Brief No. 8, May 2000. <**www.iog.ca/publications/policybrief8.pdf>**

7 <**www.unionsociale.ca/news/020499_e.html>**

8 <**www.ainc-inac.gc.ca/nr/prs/j-a2006/2-02757_e.html>**

9 Report of the Commissioner of the Environment and Sustainable Development, 2005 Report. "Drinking Water in First Nation Communities." <**www.oag-bvg.gc.ca/domino/reports.nsf/html/c20050905ce.html>**

10 See John Graham. "Rethinking Self-Government Agreements: The Case of Potable Water." Policy Brief No. 12, November 2001. <**www.iog.ca/publication/policybrief12.pdf>**

11 The reason for such voids results from section 91.24 of the Constitution Act 1867 where the federal government has exclusive legislative authority for "Indians and lands reserved for Indians." Section 88 of the *Indian Act* only provides for provincial laws of general application to apply to "Indians" but not "lands reserved for Indians."