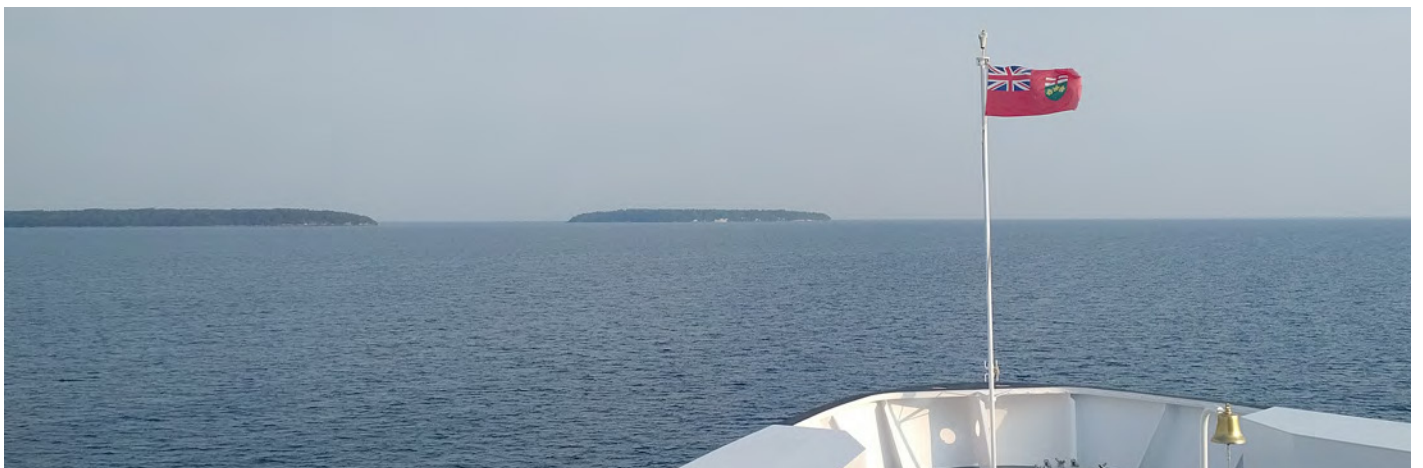


RURAL ONTARIO FORESIGHT PAPERS

2019



RURAL ONTARIO
INSTITUTE

Rural Ontario Foresight Papers

2019

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Foreword

The 2019 Rural Ontario Foresight Papers is a collection of six discussion papers on selected themes as prepared by expert authors. Each has a corresponding Northern Commentary prepared by the Northern Policy Institute. This is the second set of Papers following the successful reception of the first set of Papers in 2017. They have been commissioned by the Rural Ontario Institute as part of the Measuring Rural Community Vitality initiative – Phase 2.

Each Foresight Paper explores a particular topic affecting rural and Northern Ontario. The authors were encouraged to look ahead to what directions various stakeholders, governments or nonprofits might follow in order to foster vital rural development in light of the trends the authors foresee. The 2019 Papers offer an opportunity for rural stakeholders to be informed by the perspectives of these authors and to consider the implications for their own work or their own communities. It is ROI's intent that the Papers help catalyse further dialogue and discussion which in turn may lead to various agencies in civil society, levels of government and/or rural citizens to consider actions or strategies that will improve rural vitality over the long term.

We hope that readers will find a key thought or significant insight regarding one or more of the topics that resonates with them. We invite you to share that insight with colleagues and other rural stakeholders. Similarly, you may have specific experience and knowledge surrounding the topic that reinforces a point you picked up on or have an alternative perspective. We welcome guest blogs to the ROI website if you want to share your response with others across the province.

We recognize that many trends impacting the future rural development of Ontario communities have not been addressed across the twelve Papers in the whole series. The Institute has conducted several surveys on community development priorities with rural stakeholders and municipal councillors which were taken into consideration when identifying topics. The topics were chosen after discussion with other organizations and in light of research or initiatives underway in the province. The authors of each paper were selected because they have grounded experience, a history of involvement with the topic they address and/or academic expertise and research knowledge to share.

These Papers and the previous set will remain available for individual download at <http://www.ruralontarioinstitute.ca/knowledge-centre/foresight-papers>

The Measuring Rural Community Vitality initiative was conducted with the support of a Ministry of Municipal Affairs Research and Analysis Grant. Please note that the opinions and viewpoints expressed in the Papers are those of the authors and do not reflect the views of the Ontario government nor that of the Rural Ontario Institute.



Authors

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John C. Hogenbirk, M.Sc., has been active in e-health research since 1998. His research includes assessing the effects of virtual care on health services utilization and service delivery costs, as well as determining the implications of virtual care for policy and decision-makers. John has also examined access to and clinical use of the Ontario Telemedicine Network. John's previous research included an evaluation of Keewaytinook Okimakanak Telehealth/NORTH Network Expansion Project plus policy research and development leading to the National Initiative for Telehealth Guidelines (NIFTE).

Joyce McLean is an environment and energy policy and communications specialist with over three decades of experience in providing strategic advice, and government and media relations expertise on energy, toxic chemicals, water quality and sustainability issues. She has worked for organizations and individuals as diverse as the Ontario Minister of the Environment, Toronto Hydro and Greenpeace International, as well as having run her own consulting company. She has also participated on a variety of boards including the IJC's Great Lakes Water Quality board, the Canadian Wind Energy Association, the Friends of the Greenbelt Foundation and Green\$aver.

Dwayne Nashkawa has been the Chief Executive Officer of Nipissing First Nation, located on the shores of Lake Nipissing in Northern Ontario since January 2004. He has spent his career working in First Nations in senior roles in the areas of natural resources development, treaty research, governance and administration. Dwayne has led various tripartite negotiations including the Ontario First Nations Policing Agreement and the development of the Anishinabek/Ontario Resource Management Council. Dwayne is a member of the Chippewas of Saugeen First Nation located on the Bruce Peninsula.

Carol Simpson is the Executive Director of the Workforce Planning Board of Waterloo Wellington Dufferin. Carol has extensive experience in a variety of sectors, including workforce development, health and safety, telecommunications, federal government, retail and self-employment. Carol's specialties include: labour market expertise, research and data analysis, nonprofit management, facilitation skills, project development, strategic planning, partnership development, community economic development and more.

Mark Skinner, Ph.D., is Professor and Dean of Social Sciences at Trent University, where he holds the Canada Research Chair in Rural Aging, Health and Social Care, and was the founding Director of the Trent Centre for Aging & Society. Mark's research examines how rural people and places are

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Hilary Hagar is originally from Hamilton but has many summer memories exploring the North. A recent graduate from the University of Guelph with a B.A. (Hons) in International Development, Hilary values interdisciplinary approaches and is passionate about community economic development and poverty alleviation. During her undergraduate degree, Hilary completed participatory research in both Cuba and Bolivia. Closer to home, Hilary has also contributed policy debates on issues ranging from greenhouse gas emissions in Ontario agriculture to Inuit nutrition and health. An avid outdoors enthusiast, she spends as much time as possible camping, hiking and canoeing.

Co-Authors

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Jennifer Walker, Ph.D., co-author, Local Access to Medical Services. Jennifer is a health services researcher and epidemiologist. She has Indigenous (Haudenosaunee) family roots and is a member of the Six Nations of the Grand River. She has a PhD in Community Health Sciences (Epidemiology specialization) from the University of Calgary. Her work focuses on Indigenous use of Indigenous health and health services data across the life course, with a focus on older adults. She collaborates closely with Indigenous organizations and communities to address health information needs.

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New Approaches to First Nation Infrastructure Development – The Nipissing First Nation Experience

Dwayne Nashkawa

Introduction

The infrastructure deficit in First Nations is a regular feature in any news item about the circumstances of Indigenous people across Canada. These infrastructure deficiencies are highlighted when they have resulted in misery and frustration for local residents and leave most Canadians perplexed and disturbed.

Why are these problems so intractable and where are the real solutions? It ripples out to and across Ontario and Canada. It is a foundational problem that needs more than news stories and attention through social media feeds. It needs proactive strategies, developed in Indigenous communities by the people who live in those places. It needs resources to support not only capital investments but also the ongoing planning, capacity development and operations and maintenance of infrastructure once it is finally built.

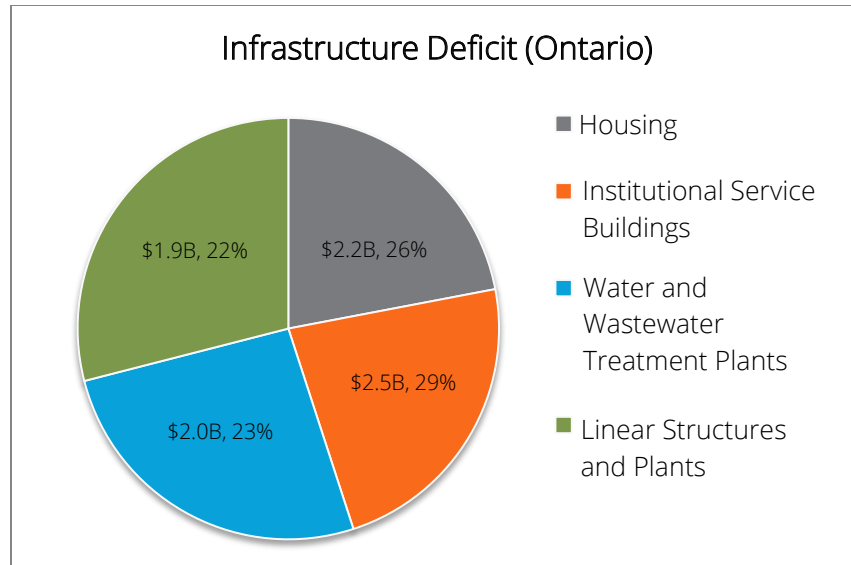
Infrastructure needs to:

- be considered and built in parallel with the other social policy areas where First Nations are working on solutions;
- reflect and support the identities of Indigenous nations;
- come from within Indigenous communities and through new or refreshed relationships at the local level.

It cannot:

- come from bureaucrats in faraway-away places;
- should not be subject to the whims of far-off committees whose members have never visited a First Nation;
- be designed in silos where problem solvers only think in systemic terms when the systems don't apply to the areas where the work needs to be done.

New ways to finance and construct these infrastructure projects need to be given serious thought. The old ways of financing critical infrastructure development have failed and continue to add to the backlog of projects waiting to get started in First Nations (Cossette 2018).



Ontario First Nation Infrastructure Deficit, from P3's *Bridging the First Nations Infrastructure Gap*
http://www.pppcouncil.ca/web/P3_Knowledge_Centre/Research/P3_s__Bridging_the_First_Nations_Infrastructure_Gap.aspx?WebsiteKey=712ad751-6689-4d4a-aa17-e9f993740a89

There is a disconnect between the committees of bureaucrats that make resource allocation decisions in Toronto and Ottawa and the community citizens and leaders that are trying to make decisions on the ground. This disconnect is about much more than distance - there is a disconnect between cultures, circumstance and worldview that all come into focus when one begins to critically examine how decisions about infrastructure are made in First Nations.

This paper will look at the efforts of Nipissing First Nation (NFN) to build an infrastructure strategy and create the conditions to close the gap and build a sustainable infrastructure base to support the long-term growth of the Nation.

Finally, wherever possible, local communities, which includes the municipality and the First Nation, must work together to find local solutions that will meet the needs of regions for decades to come. Just as with Jordan's Principle (Government of Canada 2019), the idea that certain levels of government can sit on the sidelines due to jurisdictional issues, has become outdated and is no longer acceptable. All levels of government need to do more. First Nations, and their neighbouring municipalities, also need to build relationships that benefit all the people in the region and plan together to save resources and find efficiencies. In some cases, this requires renewed effort to build relationships and extra effort to share information and consider needs beyond administrative boundaries.

Municipal Relations

Relationships between First Nations and neighbouring municipalities vary greatly across the country and are largely based on the quality of local connections between key actors. NFN has worked

diligently to build a lasting, resilient relationship with the Municipality of West Nipissing on its western boundary and the City of North Bay on its eastern boundary. It is an ongoing process.



In many cases, these relationships were not initiated by the First Nation nor the municipality, but by the federal government when it was acting in a fiduciary capacity prior to devolving responsibilities back to First Nations. In the 1980s some municipal type agreements (MTAs) were put in place in an effort to provide services to First Nations without major capital outlays on the part of the federal government.

It is my experience and understanding that when municipalities work with First Nations to meet infrastructure needs, it has historically been an imbalanced relationship from the start. The municipality is usually in the position of having benefited from support from other levels of government over many years to build up infrastructure development, while the First Nation has not. Often, the municipality has all the expertise in its planning and engineering departments while the First Nation has little, if any, capacity and must rely on technical consultants who take their expertise with them when their contract is finished.

If the parties are looking to resolve their own issues and take an approach that focuses on meeting their objectives – without making honest efforts to understand the issues and challenges of their

neighbours – then the relationship will be weak. The strength of the relationship is proportionate to the level of commitment and communication between the communities. All too often, parties only contact each other to meet basic obligations and when they are seeking something specific in relation to their interests. One should also consider that in many (but not all) circumstances, the First Nation is starting from a disadvantaged position from a capacity perspective.

The most frustrating element has been that the push for MTAs by the federal government often is much more concerned with minimizing its own costs and fiduciary duties and with municipal interests, often at the expense of First Nation interests. In the past, this has resulted in very one-sided agreements that allowed municipalities to charge higher non-resident rates while offering the local First Nation little benefit in return. The First Nation rarely had any input related to the delivery of the service(s) or any opportunity to evaluate its benefit to their members. There is little accountability to the First Nation within the agreement and the municipality always prioritizes services to its citizens over the First Nation.

Communities need to build connections that go beyond the wording of service contracts. If a contract is the only tether that binds communities, the relationship is very fragile. In 2015, a tragedy occurred when the Municipality of Loon Lake's Fire Service refused to respond to a fire in neighbouring Makwa Sahgaigan First Nation in northern Saskatchewan because the First Nation had an outstanding bill for \$3360.89. As a result two children unnecessarily died (National Post 2015). While the parties debated whether or not the children would have perished anyway given the fifteen-minute response time, the relationship between the communities further deteriorated as a result of poor communication and the absence of a resilient relationship.

There is interest in improving these relationships from a municipal perspective. The Federation of Canadian Municipalities (FCM) has made the fostering of Indigenous partnerships a focus area within its mandate. It is looking at how improved planning and communication can support local economic development and create stronger relationships (Federation of Canadian Municipalities 2019). This is quite positive given that, all too often, Indigenous issues are still relegated to the periphery of agendas or only focus on narrow legal obligations. FCM has developed a number of tools to promote relationship and capacity building between neighbouring municipalities and Indigenous communities. One toolkit called *Stronger Together* looks at creating economic development partnerships (Federation of Canadian Municipalities 2019) while another focuses on aligning First Nation and municipal land use planning



for more cohesive development (Federation of Canadian Municipalities 2019).

A recent example of taking a much narrower approach can be observed at the 2019 Rural Ontario Municipal Association (ROMA) Annual Conference. The only presentation related to Indigenous people was in a “sponsored learning breakfast” in a presentation entitled “Municipal Governments and the Duty to Consult” (Turner 2019). This presentation did not look at the relationship issues discussed above but rather on narrow legal definitions and strategies to minimize the obligations of municipalities toward their Indigenous neighbours as it relates to consultation obligations.

ROMA would have been better served by looking at best practices in working with First Nations and building stronger relationships. This would have contextualized duty to consult obligations in a more proactive and positive light that viewed these relationships as adding value rather than cost and obligations. There are legal obligations that exist – Indigenous rights and treaty obligations are not going to fade away or be legislated out of existence. However, many of the issues associated with the recognition and implementation of these rights can be addressed through proactive discussion and relationship building.

Opportunity for Regional Benefit

In 2013, NFN settled a major land claim related to the improper survey of its boundary between 1881 and 1883. This settlement of \$124 million brought many opportunities to finance infrastructure development in new ways. However, for area municipalities it provides a huge benefit as well. Settlement of land claims brings much-needed revenue to the region as much of this new community revenue gets redistributed. When claims are settled, First Nations invest in their people and their communities, yet lack the capacity to internalize those costs.

Outside workers and firms benefit given there is not the design and construction capacity in any First Nation to fully meet the requirements of developing these facilities. For example, when NFN built a water and wastewater facilities and a new serviced subdivision in 2010, all of the construction expertise and capacity was brought in from outside communities, save some of the labour components. Approximately 95% of the \$18 million project was paid to external contractors based in area municipalities. This is in addition to economic leakage from First Nations to their neighbouring communities that can be up to 75% of local spending (Cachon 2015).

Nipissing First Nation’s Relationship with North Bay

Building a relationship with the City of North Bay has been an important element of NFN’s long-term infrastructure planning. One of the first appointments I made when I became the Executive Director (later CEO) of NFN was with North Bay Chief Administrative Officer Dave Linkie. He had extensive municipal experience and was very open to sharing information and new ideas. He welcomed me to his office and was very interested in building a relationship right away. He valued the opportunity to refresh the relationship with NFN and committed to working with us to get things going.

We started the relationship-building process at a personal level, getting to know each other and what each organization – and each other personally – had for goals and objectives for the future. We discussed a variety of issues from fishing on Lake Nipissing (NFN was developing its own fisheries management regime at the time) to social issues facing the local urban Indigenous community, to more administrative issues.

North Bay had always supported economic and community development efforts of NFN. In the 1980s, North Bay entered into a municipal fire protection agreement with NFN to provide services to the east part of the reserve that shares a boundary with North Bay. Later in the 1990s North Bay and NFN also entered into an agreement for a sewer connection to the city for NFN's industrial park.

One of the key elements in strengthening our relationship was to engage some of the key departments of our respective organizations in the process. We connected NFN's Lands Department with the Planning and Engineering Department of the City and our Economic Development Department staff got together to look at projects they could collaborate on. The result of this was that when North Bay began designing a new lift station to support development of North Bay's future infrastructure needs for the west end of the city, including the university, college and regional health centre, it was also designed to support future capacity requirements of NFN which borders these institutions. Now as NFN plans for development of the area that borders North Bay, there are options for servicing new developments that would not be available otherwise.

It was also important to support the relationship between the political actors, namely the Chief and the local Mayors. During my fifteen years at Nipissing, there have been two different Mayors in North Bay and three different Chiefs at NFN. Each pairing had a different dynamic and needed to be supported in a different way. Political ideology and methods of leading were not always neatly aligned, although for a good portion of my time at NFN, cooperation and effective communication has been friendly and effective.

...pan-aboriginal approaches just will not work when imposed externally by other levels of government.

As discussed, relationships between First Nations and municipalities exist on a continuum from virtually non-existent to very closely aligned. And like any relationship, effort needs to be made to maintain and strengthen the relationship. There are no two circumstances that are the same and the variability between the kinds of relationships that exist are not dependent on any one set of factors. Within small areas there can be very different relationships. They are heavily influenced by the attitudes and perspectives of the main actors – the Councils, Mayors, Chiefs and senior officials.

Other communities are also being strengthened by building resiliency into the association by making connections at different access points within the communities. An example of this was the workshop held in early 2018 between representatives of Curve Lake and Hiawatha First Nation and area municipalities in central Ontario. Each community took turns in sharing stories and information

about their respective communities to begin building stronger relationships (Peterborough Examiner 2018).

NFN's Plan for Addressing the Infrastructure Gap

One of the frustrations Indigenous peoples have generally is the historical approach Canada has taken in trying to apply a pan-aboriginal lens to solving these kinds of problems. This cannot be done at a national or provincial level. The continuum of need and variability of the problems are just too great. The challenge with this is the sheer breadth of the problems and the differing views between First Nations leaders and governments as to the fundamental nature of relationships (Alcantara 2016). The solutions cannot be found by meeting with national or provincial Indigenous organizations alone, something that for many years was the preferred approach of the governments of Canada and Ontario as it lent itself to more coordination and uniformity in proposing solutions. The problem was that the solutions didn't work. Add to this that every First Nation has a different level of capacity to work on the solutions and manage and maintain operations once infrastructure is installed. For these reasons, pan-aboriginal approaches just will not work when imposed externally by other levels of government.

In recent years, the infrastructure deficit in First Nations across Canada was pegged by the federal government at between \$25 and \$30 billion dollars (Canadian Council for Public-Private Partnerships 2016). The federal government has recognized this and under the leadership of Jane Philpott, former Minister of Indigenous Services Canada (ISC), began looking for new solutions to close this gap. The infrastructure areas that have been recognized as needing new approaches include housing, water and wastewater, health facilities, roads, education facilities, energy systems and broadband. This includes building new infrastructure and repairs to existing infrastructure. ISC has also committed to working with First Nations, other Indigenous peoples and the private sector to co-develop and design the strategies to address these problems (Cossette 2018). The federal government has also committed to ending long-term drinking water advisories in First Nations by 2021 (Indigenous Services Canada 2019).

While it is important to note the areas that need attention from a physical infrastructure perspective, there are many other areas where gaps need to be narrowed as well in order to ensure the long-term success of First Nations as they are building their communities. Finding resources to meet the needs is critically important, but it is not the only void that needs to be filled.

There are legislative gaps and a drag that the *Indian Act* places on First Nation development. For those nations that are still entirely under the Act, there are many constraints on development. These constraints include: the requirement to have the Minister approve most, if not all, infrastructure decisions; the challenge of navigating a complex and sometimes indifferent bureaucracy; and the time all of this takes to move projects ahead. Many First Nations have begun to address these legislative and administrative challenges by adopting their own land codes and using other governance tools. The *First Nation Land Management Act* was the first piece of federal legislation – the development of which was led by First Nations – that recognized the call of First Nation leaders to

extract themselves from parts of the *Indian Act* so they could expedite developments on their lands. First Nations who chose to be scheduled under this legislation have withdrawn from sections 53 to 60 of the *Indian Act* and have taken over management of their own lands. This has greatly improved their ability to work with private businesses and adopt policies and laws to govern their lands in a way that is much more aligned with the community's culture and the pace of business.

Other pieces of legislation have followed which were created to address capacity gaps in First Nation communities. Another important example of legislation that has significantly enhanced community investment and development is the *First Nation Fiscal Management Act* (FMA). The FMA created three new First-Nation-led institutions: First Nations Financial Management Board (FMB); First Nations Finance Authority (FNFA); and First Nations Tax Commission (FNTC), designed to build First Nation capacity, develop financial tools similar to those that municipal governments have to support infrastructure builds, and raise local revenues from the use of lands and resources (First Nations Financial Management Board 2019). The FMB was developed under federal legislation as a Crown Corporation with a mandate to support First Nations in building financial administrative capacity and to develop standards that First Nations could adopt and eventually become certified under. Once certified, First Nations then have the option to join the FNFA. Its mandate is to manage a borrowing pool of First Nations that could issue debentures and gain access to international money markets.

Yet, these legislative approaches are not without their detractors. Some have criticized these pieces of legislation as minimizing the obligations of the Crown in supporting First Nations with legacy issues arising from colonialism. Some have also written that revenues should come from restoring First Nation lands and by including land rights in the discussion on fiscal relations (Pasternak 2018).

There is also a significant research gap. There is little academic literature on First Nation infrastructure needs, with most information only available through literature produced by First Nation organizations or government agencies. There is little in the way of academic research that can be reliably accessed to learn more about these issues (McCullough 2012). This is a challenge that continues to persist as First Nations wrestle with developing their own solutions.

Nipissing's Plan

Having provided some context as to the importance of local relationships and the policy and other challenges related to infrastructure development in First Nations, it is useful to provide an in-depth look at how one First Nation has approached tackling its significant infrastructure deficit.

Nipissing First Nation's plan to address its \$183 million infrastructure need (First Nations Engineering Services Ltd. 2017) started with a search for funds to create a plan. Current funding arrangements with ISC (and formerly Indian and Northern Affairs Canada) provide little in the way of resources to conduct proper planning. None of NFN's transfers for funding consider any funding for proper infrastructure planning for the nation. NFN receives transfers for minor capital, that are determined by formula, based on a calculation using data that is expensive and challenging to collect.

The funds that are transferred to the community are never enough. NFN has been chronically underfunded for water treatment for decades. There has never been a proper allocation of funding that recognizes the need and particular geographic circumstances of NFN. For example, NFN has more than twenty-one thousand hectares of lands with eleven villages spread across the territory. It has three larger communities that are at capacity or growing rapidly while there are other traditional villages that are much smaller but in the eyes of the citizens are important to the culture and heritage of the community. It is neither fair nor realistic to say “move to the larger villages” as people have spent their lives in these areas and their relatives are buried there. There is not enough money for capital to properly operate the small pump house systems or to train and pay operators properly. Funds for system planning are non-existent.

Planning

Knowing this, NFN knew that to properly plan for future infrastructure needs, the administration had to update the community capital plan. The last iteration of the plan was from 1992 – and no capital funds had ever been provided to implement it – so it had effectively gathered dust for more than 20 years. The proposals NFN received after putting out an expression of interest were in the range of \$250,000. INAC had no resources for this, nor did the First Nation so NFN had to cast about looking for funding that would fill this funding gap.

While looking to address housing needs, NFN became aware of the First Nation Market Housing Fund (FNMHF). Fortunately, early on in the FNMHF’s mandate, their board and Executive Director Deborah Taylor recognized that for market housing to become successful in First Nations, there was significant capacity building to be completed. NFN was impressed that the FNMHF started with this recognition when, typically, government demands a results-based focus in terms of units produced – in this case new housing that was based on market conditions.

FNMHF realized they would never have long-term success that way. It chose instead to invest in capacity building at the local level. With this idea, FNMHF made investments in community governance, staff training and planning. It entirely funded NFN’s new capital plan. It supported the development of NFN’s Chi-Naaknigewin (Constitution), its Financial Administration Law and training for housing and other staff. These kinds of investments gave NFN a proper governance footing. They were willing to play the long game with First Nations – making the investments that did not yield immediate returns but instead provided the capacity that would ensure long-term growth. These are the kinds of programs and investments we need to build sustainable infrastructure capacity.

Governance

The proper governance structure is critical. First Nations leaders have long been criticized for lacking proper accountability mechanisms to their citizens and, more generally, to their transfer payment partners (Quesnel 2018). NFN was always frustrated with this criticism and the root of it, namely *The Indian Act*. NFN was also frustrated because there had never been substantive support for building the administrative capacity to demonstrate that it was being accountable to the people. NFN took

this on directly when it began to write its own Chi-Naaknigewin¹ in 2007. This was taken on as a community-based initiative, led by citizens who facilitated the discussions with the broader nation. The result, some six years later, was a clear articulation of who the Nipissing Anishinabek people are, their rights and responsibilities and how they would govern themselves. This moved the narrative within the community away from the Chief and Council being accountable under the *Indian Act*, to the Chief and Council being responsible to the people directly per the Chi-Naaknigewin.

While the Chi-Naaknigewin was being developed, NFN also worked with the First Nation Financial Management Board (FMB) to develop a Financial Administration Law (FAL) for the nation, and became certified by the FMB and later participated in the issuance of the FNFA's first debenture to support First Nation infrastructure development.

These efforts were important to NFN because, while all this governance capacity development was underway, it was in the process of settling a major boundary claim worth \$124 million with the Government of Canada. This settlement addressed the historic loss of more than one hundred thousand acres of land due to improper land surveying following the signing of the Robinson-Huron Treaty by the Nipissing Chief and Headmen in 1850. With this new wealth now accessible to NFN, there was a need for a proper governance regime to be put in place to manage it. The Chi-Naaknigewin and FAL provided that foundation for the community. However, there was one more piece required.

Over the past 30 years, First Nations have gone from conditions where no bank would take on the risk to lend to them to having banks and other lenders actively compete for their business. NFN began to understand its financial strength and the risk mitigation that came with good governance foundations like the Chi-Naaknigewin and FAL being in place. NFN also believed that it could manage its settlement in a way where it could pay itself interest while getting caught up on the critical infrastructure the community desperately needed. With this in mind, NFN set out to design a trust to govern the financial settlement and manage and grow the funds for the beneficiaries. It approached the development of this trust very carefully given its history with banking and lending institutions.

Financing NFN's own Infrastructure

NFN first decided what it wanted this trust to do. The leadership and administration wanted to preserve and grow the capital while being able to access resources to build the community. NFN wanted to leverage its new wealth while also not letting its treaty partners off the hook for their fiduciary and treaty obligations. NFN set about designing the trust so that it could borrow from the trust that held the settlement and accelerate financing while retaining the value of the trust over the long term. NFN has done this very successfully. To date, NFN has borrowed approximately \$9 million from its trust and have expanded infrastructure to support community development. This includes expanded administrative facilities, ending decades of staff having to work out of portable trailers

¹ Chi-Naaknigewin is the Anishinabe word that most closely aligns with the concept of a constitution. It literally translates into "Great Law" or "Big Law".

and inadequate spaces, a new daycare and community centre, a new outdoor covered hockey rink/recreation facility that serves the community all year and a small business centre.

NFN has also proposed to the federal government that it could borrow from the trust to expedite water and waste water infrastructure expansion and enter into an agreement with Canada to pay back NFN for the loan over time. This would maintain Canada's fiduciary duty while allowing ISC to pay back NFN over a longer period of time. This is important given that the traditional approach would be for the Ontario region of INAC or ISC to use an annual funding envelope for capital that would only meet the needs of a few communities. NFN's proposal would require a much smaller annual contribution from ISC to service the debt that would be paid back over a longer period of time. This would allow the Ontario region to stretch its funding further.

When NFN initially approached ISC with this proposal, NFN was scoffed at by some in the bureaucracy. However, the concept was taken more seriously by a number of key people within the department. What was more important was that NFN were being taken seriously for its willingness to be creative in developing solutions and engaging with the bureaucracy in a way that was helping them solve the problem. This approach, in and of itself, moved NFN's project along within the internal machinery of government.

Property Taxation

NFN is also home to approximately one thousand lessees who have built homes on leased land in the community. These people pay an annual land lease to the First Nation for waterfront property on the shores of Lake Nipissing in two separate subdivisions called Jocko Point and Beaucage. These lands were designated for this purpose in the 1960s at rates that were far below market value. Over the succeeding decades, NFN began to adjust the leases to market rates, not without considerable resistance from lessees through the courts and media. However, today the relationship is relatively harmonious, the leases align with fair market values and people enjoy living in the community.

However, the infrastructure deficit also exists in the leased lands and NFN faces different challenges in how it will address those issues. The roads into the subdivisions were built to a much lower standard in the 1960s and many of the septic systems and wells that provide water and wastewater treatment are beginning to fail. Currently there are no government subsidies to support developing new infrastructure for the leased lands as they are viewed as an "economic development" venture for the First Nation in the eyes of the federal government. While the leases cover the use of the land and pay a nominal amount to NFN for the use of the properties, it does not provide sufficient revenue to support the development of new roads and municipal-type infrastructure.

NFN is now actively exploring property taxation for lessees as a means to raise revenues that can be used to rebuild roads, provide proper water treatment to all residents and protect the environment by addressing the failing septic systems. NFN does not expect this to be an easy conversation with lessees but it is a necessary one. This is an area that some First Nations have explored in depth, particularly in British Columbia. The attitude toward taxation among BC First Nations is much more liberal than it is in Ontario. Ontario First Nations are much warier of initiating taxation regimes lest it

lead to full taxation on reserve. Taxation is viewed as an encroachment on the sovereignty of First Nations by many community members and a mechanism for the Crown to absolve itself of fiduciary obligations toward Indigenous people.

As it approaches the issue of taxation at Nipissing, NFN does so in a very cautious way, mindful of those concerns and attitudes. However, the reality is that the Crown does not see that it is obligated to provide these essential services in areas that are deemed to be economic ventures in First Nations. And the issue for First Nations is that the land leased really only covers the loss of use of the land that is taken up for leasing and not the ongoing operations and maintenance that is required to keep the roads and other services operating at an adequate standard. So NFN has begun investigating the implementation of property taxation for its leased lands to make the necessary infrastructure improvements to ensure public safety and environmental protection in these areas.

Conclusion

The purpose of sharing these experiences is to create a better understanding of the challenges a First Nation government might face as it develops its own unique approach in moving away from the paternalism of the past and toward a new relationship with non-Indigenous governments and neighbouring communities. It is an approach that actively supports First Nations making their own decisions and being accountable to their own people, not the Canadian state.

There is such a broad range of circumstances and unique factors that create the conditions that each nation finds itself in. There is no common solution. Resources need to be committed and relationships built with the First Nation setting the vision for its own future. Where partnerships make sense, they should be actively pursued and nurtured.

Self-government approaches, settlement of land claims, development of new ways to implement the settlements and a new set of policy tools are all elements of success for First Nations like Nipissing. These are tools that can support and sustain long-term success. That coupled with a willingness to work together to solve local and regional problems can lead to fruitful outcomes.

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Northern Perspective: New Approaches to First Nation Infrastructure Development

Amanjit Garcha

Within northern and Indigenous communities there are various infrastructure concerns that range from wastewater systems, commercial development, transportation infrastructure, public facilities and so on (Conference Board, 2017). Neskantaga First Nation, a community in Northern Ontario, has been under a drinking water advisory since 1996 (NIEDB, 2019). In September 2019, a state of emergency was declared, and evacuations were made after the failure of their water pump (CBC News, 2019). Insufficient infrastructure is not uncommon within Indigenous communities and building towards adequate infrastructure can take years. Additionally, due to the lack of or inadequate infrastructure more generally, impacted communities are unable to reap the benefits of major economic development advancements (NIEDB, 2019).

As Nashkawa discusses, Indigenous communities under the *Indian Act* face legislative constraints that delay infrastructure projects. While Nashkawa notes challenges specific to Nipissing First Nation, issues with infrastructure-related governance occur in other Indigenous communities. Take Dokis First Nation, an island community of about 1,000 residents in the Upper French River of Northern Ontario, as an example. The community's Okikendawt Hydroelectric Project took close to 30 years to complete due to various government processes and community reasons (Energy Exchange, 2015). Under the *Indian Act*, permits and licenses for the project needed a review by the federal Department of Justice and sign off from the Minister of Aboriginal Affairs and Northern Development (Energy Exchange, 2015). The process of obtaining approval from these departments delayed the project and incurred significantly increased costs (Energy Exchange, 2015). Additionally, restructuring within several government departments further delayed progress on the project (Energy Exchange, 2015).

The delays in infrastructure development can in part be attributed to how Indigenous lands have traditionally been governed. The Framework Agreement on First Nation Land Management was instrumental in demanding governing and management powers over First Nations lands be transferred to First Nation communities. The Agreement was ratified in 1999 with the *First Nation Land Management Act* (INAC, 2013). Signatories of the Agreement with land codes could begin to govern their own lands. Until then, the administration of First Nations lands remains in the hands of the federal government, under the *Indian Act* (LAB, 2019a). Signatories are essentially removing themselves from various sections of the *Indian Act*, and accordingly the Canadian government is no longer involved in how First Nations lands and resources are to be operated (INAC, 2019; LAB,

2019a). As such, signatory First Nations are responsible for developing their own land laws that are approved by the community, known as Land Codes.

As of September 2019, the number of signatories to the framework agreement is 163 and includes 89 First Nations that have established their own Land Codes (LAB, 2019b). Within Ontario there are currently 19 First Nations in the operational stage, 17 that are in the development process and an additional 2 that have chosen to remain inactive at the moment (LAB, 2019b). Of these 38 First Nations communities, 27 are in Northern Ontario (LAB, 2019b).

The pathway to land sovereignty is long and tedious, with multiple consultation requirements and the development phase alone taking up to two years (INAC, 2019). To assist in the process, the Government of Canada allotted investments of \$143.5 million within the 2018 Budget over a five-year period to support First Nations interested in participating in First Nations Land Management (INAC, 2019). By establishing their own land laws, Indigenous communities can begin to move along infrastructure projects that were subjected to bureaucratic delays.

Gerry Duquette Jr., Deputy Chief of Dokis First Nation during the construction of the Hydroelectric Project, recognized the benefits of moving away from the *Indian Act* and employing the *First Nation Lands Management Act*. He praised the Act for giving control to the Indigenous communities and making it easy to deal with different companies because “you’re sitting at the table with them” (INAC, 2016). As Nashkawa states, communities which are still entirely under the *Indian Act* are constrained with regard to infrastructure development.

In addition to legislative and governance challenges, Nashkawa recognizes that Indigenous communities often lack expertise and must rely on outside expertise to meet infrastructure needs. This is also applicable to Dokis First Nation (Energy Exchange, 2015). As a solution, “the Dokis Nation’s leaders sought approval to hire an advisor so the band and council could make informed decisions in negotiating and forming a legal partnership with a developer and in communicating with government officials and financial institutions” (Energy Exchange, 2015).

Given the lacking local expertise, communities could consider new approaches such as the Community Economic Development Initiative (CEDI). CEDI aims to address the economic concerns of Indigenous communities and municipalities through joint economic development, alleviating the burden from a sole community (CANDO, n.d.). As Nashkawa mentions, working together and building strong relationships between Indigenous communities and the neighbouring municipalities should be encouraged as it benefits the people in the region, while saving on resources and finding efficiencies. As Nashkawa mentions in his Paper, the *Stronger Together* toolkit is also a useful resource for Indigenous communities and municipalities looking to build a healthy relationship and work jointly on community economic development projects (FCM & CANDO, 2015).

As established, infrastructure is crucial for the success and growth of any community. Due to limited funding for operations and maintenance within Indigenous communities, infrastructure tends to deteriorate quicker than the expected life cycle. In part, the problem arises from inadequate training

and/or the inability to retain trained professionals to operate the facilities (PPP Council, 2016). Public-private partnerships (P3s) are a possible solution. P3s are partnerships developed between governments and the private sector to deliver on infrastructure projects that incorporate all phases of a project into one contract (design, financing, maintenance, etc.) (PPP Council, 2016). Indigenous communities can benefit significantly from P3s as the private sector is financing the upfront costs. The private sector, in turn, is responsible for ongoing maintenance, and only gets paid when a substantial portion of the project is complete. As such, Indigenous communities could benefit from such partnerships (PPP Council, 2016).

The P3 model has been employed by First Nations outside of Ontario. Namgis First Nation in British Columbia benefitted from the P3 Canada Fund, which helped finance the \$200 million Kokish River Hydroelectric Project (PPP Council, 2016; Knight Piésold, 2019). Financing using the P3 model has also been employed within Northern Ontario. The City of Greater Sudbury employed the P3 model to finance its Biosolids Management Facility (Infrastructure Canada, 2018). In moving away from traditional methods of procurement, the City was able to transfer risks associated with construction and operation to the private sector partners. Accordingly, employing P3 models within not only Northern Ontario but also Indigenous communities specifically, is well within the realm of possibilities.

Due to their size, infrastructure projects are often multi-year projects that require significant financing. Institutions such as the Canada Infrastructure Bank (CIB), a Crown corporation designed to invest and advise on infrastructure projects, are instrumental in providing funding (CIB, n.d.). CIB is an option for Indigenous and northern communities in Ontario pursuing infrastructure projects in: “public transit, trade and transportation, and green infrastructure” (CIB, n.d.) The CIB can also be employed to attract private partners that are hesitant to partner with Indigenous communities for P3 projects, given the large financial investments required for the infrastructure projects (Conference Board, 2017).

As Nashakawa outlines, addressing infrastructure development within Indigenous communities requires collaboration and cooperation among communities. Movement on infrastructure projects can best occur when Indigenous communities are more actively involved in their own affairs. Getting creative with securing funding and moving away from legislation that holds Indigenous communities back will be key. Given that there are more than 25 Indigenous communities in Northern Ontario that are a part of the framework agreement on First Nation Land Management, this is indicative of the movement away from traditional ways of conducting business.

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