

STRATEGIC PLANNING AND POLICY DEVELOPMENT

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INTRODUCTION

As First Nations² move towards greater self-governance, First Nations leadership will face increasing challenges in managing the growth of their administration and adapting their governance structures. As First Nations regain greater control over these structures, the result will be broader and more sophisticated organizations, with more departments, sections and divisions, and greater responsibility over matters such as education, housing, policing, taxation and economic development. This will require First Nations to invest greater energy and resources into the management of these organizations. In addition, First Nations leadership will need to ensure that these programs, departments and services are administered in a way that fits with the community's culture, goals, and vision for the future.

One way that First Nations governments can ensure that they are operating as efficiently, effectively, and in keeping with their culture and vision is by engaging in strategic planning and developing effective policies.

In this paper we will provide an overview of strategic planning and policy development, and make recommendations as to what a First Nation may want to consider when engaging in these processes.

STRATEGIC PLANNING

Introduction

We all do strategic planning in our daily lives. Examples include planning how to pick up groceries, run errands, get the kids to soccer practice or how to create an opportunity to ask someone out on a date. Governments and organizations also carry out strategic planning. Some people might say this is more complex and sophisticated than strategic planning at a personal level. However, an individual planning a big wedding or a potlatch would have good reason to disagree.

Historically, many First Nations had well-organized and sophisticated systems of governance. Many First Nations had traditional laws and structures for making decisions and ensuring the health and sustainability of their community and Territory. The laws and structures for decision-making were closely integrated with the lands, waters, and resources of each First Nation's Territory. Each First Nation or family or clan had the ability to carry out strategic planning and make long-term

¹ With assistance from Martin Montes, Law student.

² In this paper, the term "First Nations" includes Indian Bands as recognized under the *Indian Act* and "aboriginal peoples" as defined in section 35 of the *Constitution Act, 1982*.

and short-term decisions about resource management, division of labour, trade and inter-relations with other Nations, seasonal movements, and generation of wealth. Many of these traditional systems have been systematically dismantled or degraded by federal and provincial laws and policies and by residential schools.

For the past century, most First Nations in Canada have struggled to provide the basic necessities of life to their members. They have simply not had the time or the capacity to engage in long-term planning for the future. However, as more First Nations become self-governing, and as more First Nations increase their economic resources, they will return to the process of strategic planning.

At present, there is not a great deal of information available about strategic planning for First Nations, but this provides us with an opportunity to provide our opinion on what strategic planning should encompass, from a legal perspective.

We will define strategic planning, provide our recommendation for issues to consider in the strategic planning process, and provide an example.

Definition of Strategic Planning

The term “strategic planning” has hundreds of meanings, many of which bear little resemblance to each other. Broadly speaking, our definition of strategic planning is the means through which an organization or community sets out the goals it wishes to achieve, and the steps it will take to reach those goals. To be effective, strategic planning involves both short-term and long-term planning. Long-term plans can be used to set out a goal, and the steps and resources required to accomplish that goal. Short-term plans can be used to describe in greater detail how the long-term plan will be put in place over a specific period of time. They can also be used to set out the specific steps required to accomplish a specific component of a long-term plan.

For example, a First Nation may develop a ten-year plan for regaining control over the education of its members. As part of that process it may also set out a short-term plan for how it will develop a language and culture module for elementary students for the following school year.

The Importance of Strategic Planning

If you don't know where you're going, how do you know if you have arrived or not? If you don't work with your community to plan goals and priorities, they will likely criticize you for everything they think you should be doing. A strategic plan is like a job description for a government or an organization. It sets out what you are supposed to be doing and how your performance will be evaluated.

Strategic planning helps in deciding how to allocate scarce resources. For example, one First Nation had no resources for cultural education and bringing youth and Elders together out on the land. They decided to take 10% from each program to create a culture and resource fund. This money was used for cultural education and to reconnect youth with Elders and the Territory. This led to regular camps and expeditions out on the land, which in turn led to land-use planning and implementing aboriginal title. None of this would have happened if the First Nation had not set out a strategic plan.

Steps and Issues to Consider

We recommend that First Nations take the following steps and consider the following when engaging in the strategic planning process:

Steps

1. Develop a Community Vision

- It all starts with the community. Certain types of plans and projects may fit one community but not another. Don't try to run a First Nation's cultural tourism business like a car manufacturing plant.
- Work with the community to decide what is important and what is a good fit. Don't develop a forestry plan that includes clear-cutting a Reserve if this is not consistent with community values and visions.

2. Set Priorities

- Don't try to do everything at once or you will fail. A journey of a thousand miles begins with a single step but you have to decide which way to step and which leg of the journey is most important to begin.
- First Nation Councils have far too many tasks to carry out and far too few resources. Be honest with your community and tell them that you can't do everything at once.
- Work with the community to brainstorm a list of all potential priorities and then work to pick the top 3 or the top 5. Get agreement on these priorities and set them out in the plan. This does not excuse you from working on other projects or "putting out fires" in other areas but it should direct the focus and the resources.

3. Set VOIs (Vision, Objectives, Indicators)

- Once you have your vision and priorities, set the VOIs for each area.
- Start with the long-term vision and priorities. A vision might include improving education.
- Objectives are more specific. An example might be increasing the high school graduation rate by 20%.

- Indicators are measures of success. Did graduation rates increase?
 - Be very careful not to set unreasonable VOIs. Start with small successes. Don't set yourself up for failure by setting impossible targets. It took generations for the governments to break down First Nations social, economic and governance structures: it will take generations to build them back up.
4. Write it Down
- Once you have community and Council support, write down what you have agreed to do. Put it in a newsletter. Put it in an action plan. Write it on a chart or poster or drum and hang it in the Band Office or the Council chamber.
5. Communicate
- Publicize it within your Nation. Tell everyone that this is the result of the community input and visioning. Tell everyone that this is what you expect Council to be measured against.
 - If appropriate, use the media to publicize it to the outside world. For example, if you have developed a good strategic plan for investment and economic development, send it far and wide and invite the word to come and do business on your Reserve. Consider holding an open house or some other event to let everyone know about your plan.
6. Coordinate
- Try to coordinate the strategic plans from different departments. Otherwise you end up with a classic problem where the right hand doesn't know what the left hand is doing. A First Nation should not have an economic development corporation that pursues unsustainable projects that undermine the First Nation's Aboriginal title or community vision on protecting lands and resources.
 - Coordinate economic, legal, social and communication/ media strategies.
7. Review and Revise
- Priorities, resources and situations change over time.
 - Build in regular monitoring and reviews. For example, track the first two years of students under a new stay-in-school program. Do surveys. Get feedback. Try to find out what is working and what isn't.
 - Use information from monitoring, feedback and research to revise your strategic plan.

Issues to Consider

1. Culture of Your Community

- Each First Nation has its own unique culture, comprised of its language, history, stories and legends, art and dance, and the personality of its people. It is very important that you consider and integrate your community's culture into every aspect of your strategic plan.
- For example, a recent report by the Conference Board of Canada highlights the importance of building First Nation businesses on a solid community and cultural foundation. *Growth of Enterprises in Aboriginal Communities*³ describes how band-owned enterprises play a central role in creating wealth and employment for their communities. What is unique about these businesses is that they are owned by and accountable to the community, and all members share the benefits. These enterprises use standard business practices while respecting traditional Aboriginal culture.

2. Timeframe

- It is important to set a realistic timeframe for your strategic plan. You may want to set a five- or ten-year plan, or a plan that spans one or more generations. For example, the Anaham First Nation's strategic plan to build capacity by educating and training its members is considered a multi-generational plan.
- You may wish to set different timeframes for different components of your strategic plan.

3. Who Will be Involved in the Planning Process

- Will your strategic plan be developed by the Chief and Council? Administrator? Department Head? Community Members?
- In developing long-term operations plans, it is essential to include Chief and Council, the Band Administrator, and relevant Department Heads.⁴
- In some situations, a centralized decision-making process – where all decisions are made by the Chief and Council or the Administrator - may be inefficient.⁵ For example, in developing a strategic plan for implementing a taxation regime, it may be more efficient and effective to have the Finance Manager, CEO, and perhaps the Administrator take control of the planning

³ Conference Board of Canada: Growth of Enterprise in Aboriginal Communities (April, 2006)
<http://www.conferenceboard.ca/boardwiseii/temp/BoardWise2CBOCHMMBNGIFMCGHMKJPIIOH2006599949/143-06%20Growth%20in%20Aboriginal%20Community-Report.pdf>

⁴ Vaughn Sunday, "First Nation Strategic and Operational Planning", *Council for the Advancement of Native Development Officers ("CANDO")* conference, online at: www.edo.ca/conference/2005/Presentation_PDFs/Vaughn_Sunday.pdf.

⁵ See note 4.

process, with input from Chief and Council, other Department Heads and community members where necessary.

4. Holistic Approach

- In all communities, and particularly First Nations' communities, many topics and issues are intertwined, and it is important to consider all related issues when developing a strategic plan. For example, strategic planning for economic development also relates to issues such as education, housing of members, taxation, availability of land, and resource management.

5. Capacity

- Effective strategic planning requires that you be realistic about your Nation's capacity, both current and future, including human resources, organizational strengths and weaknesses, and financial resources.

6. Requirements to Meet Your Goals

- It is important that you identify all of the things you will need to meet your goals, and plan for how you will obtain them. For example, you may require additional funding and staff. You may need to involve your legal counsel.

7. Community Support

- You need to consider how to get your community to "buy in" to your plan.
- You will increase your chances of success, and improve your chances of gaining the support of the community, if you involve the community in the process. In particular, it is important to get input from a broad spectrum of the community, including Elders, youth, and women.
- As mentioned earlier, the Anaham First Nation has a multi-general plan for educating and training its members. As part of the planning process, the Nation conducted interviews with every member of Nation, both on- and off-reserve. The members were asked about their educational background, work experience, and were asked to identify their personal goals for the future. The Nation is using this information to develop a long-term plan to educate and train its members in their desired fields, and accordingly to increase the Nation's capacity.

Example

We provide an example of the issues and considerations involved in the strategic planning process in the context of on-reserve taxation and economic development.

Governments require stable funding to meet the present needs of their community, and to plan for the future. First Nations require more than federal transfer payments to meet the present and future socioeconomic needs of their communities. First Nations receiving one-time payments for land settlement claims or extinguishment of treaty rights, or time-limited resource revenues through royalty agreements, must also plan for a sound economic base for the future.

An understanding of on-Reserve taxation, as well as tax effective economic development, can go a long way to create independent and stable sources of revenue. Fiscal arrangements should be structured to provide for Aboriginal self-reliance to meet their governing responsibilities. The financing mechanism should also reflect the capacity of the Aboriginal government to raise own-source revenues and promote fiscal equity.

In strategic planning for taxation on reserve, a First Nation should consider the following:

1. Who Will the Taxpayers Be?
 - Non-member residences on Reserve? Businesses and Utilities on Reserve? Will taxes apply to commodities such as gasoline and tobacco purchased on reserve? Will there be an exemption for members of the First Nation?
2. Which Taxation Regime to Use?
 - Currently, the following taxation regimes are available: 1) property taxation under section 83 of the *Indian Act*; 2) commodity taxation (i.e. the FNGST); 3) taxation under the *First Nations Fiscal and Statistical Management Act* (not yet in force, but will likely be in place for the 2007 tax year); and 4) taxation pursuant to a self-government right or a self-government agreement.
 - In determining which regime(s) to choose, a First Nation should consider which model best meets the needs of the Community.
3. What is Required to Establish the Selected Taxation Regime(s)?
 - Each taxation regime will have different requirements, but common requirements are drafting and implementing taxation bylaws, hiring a tax administrator, developing a budget for tax revenues, service agreements with municipalities, contracting with an assessment authority, and establishing an appeal committee.

In developing its strategic plans for economic development on reserve, a First Nation should consider the following:

1. Capacity

- Does the First Nation have sufficient funding, human resources, infrastructure to move forward with economic development? Does it have enough members with the required training and education to staff the business(es)? Will the First Nation need to hire from outside?

2. VOIs (Vision, Objectives and Indicators)

- What is the vision you are trying to reach through economic development? To provide funding for programs and services? To provide employment opportunities and training for your members?
- What is your objective? (e.g. to create 10 jobs and bring in enough revenue to establish a language program)
- What are the Indicators of Success? The number of jobs created? How much revenue is generated? How many decisions have been made that respect the community visions and policies?

3. What is the Best Way to Structure your Business(es)

- Some First Nations run their businesses as band-owned entities, while others choose to incorporate. The implications of either decision can be significant, and we strongly recommend that you get professional advice from your legal counsel and accountants in making this decision.
- You should consider which tax exemptions are available, and under what circumstances. For example, if you use a corporation for on-reserve development, that corporation is a separate legal identity and is therefore not eligible for the tax exemptions available to First Nations under the *Indian Act*, even though it is owned by First Nations.
- Are there advantages to running your business on-reserve, or is there a more strategic location off-reserve? Will you have to seek approval from INAC?
- What is the liability of your directors and officers? Of the Corporation? Of your First Nation? How can you minimize your liability?

POLICY DEVELOPMENT

Introduction

What is a policy? A policy is a rule or guideline about how to make a decision. Typically policies are used to guide a government decision-maker on what to do in a certain situation to make consistent decisions. For example, a First Nation may

have a funding agreement and a bylaw relating to funding for housing on reserve but may also need a policy for discretionary decisions. Usually laws and agreements set out legal requirements. Policies fill in the grey areas of decision-making.

When used effectively, a First Nation's policies can reflect the goals developed through the strategic planning policy, and can provide a means for the First Nation to achieve those goals.

Advantages

- can minimize liability (e.g. employment policies)
- objective – decisions are uniform and consistent
- efficiency – having effective policies in place can significantly reduce the number of decisions that Council has to make (e.g. if Council approves a policy for allocation of band housing, then the Manager of the housing department can allocate housing according to the policy rather than Council having to decide on every single allocation)
- can minimize family and political conflicts by setting out the rules in advance and making sure decisions are made based on budgets, plans, program criteria, and need, rather than on the basis of favouritism or family affiliation
- policies can be very flexible and specific to the needs of the First Nation

Disadvantages

- Policies can become a barrier to good decision-making if old or outgrown policies continue to be strictly applied in situations where they don't make sense.
- Policies are just decisions made by one group of people at one point in time. Don't let them become handcuffs that force decision-makers to make bad decisions.
- Many of the problems First Nations have with government are caused by federal and provincial policies that don't make sense or haven't been revised to meet current legal obligations of the Crown to First Nations. For example, many INAC policies simply create obstacles for First Nations rather than providing a means for them to achieve their objectives.

Why Are Policies Important?

Policies can provide reliability and consistency and can help build trust in the community. Many First Nation communities have conflicts between families. There can be a perception that Council or staff members from one family may favour their family members. Policies help to ensure that everyone gets treated equally and that decisions are made based on approved budgets and plans rather than for personal reasons.

Issues to Consider

We recommend that a First Nation consider the following issues when developing its policies:

1. To Whom will the Policy Apply?
 - To all members of the First Nation? To employee of the First Nation? To people renting homes from the First Nation?
2. What Issues Require Policies? Some Examples:
 - Hiring Policies (Preference for members or First Nations people? References required? Is hiring done by the Council or by the Department Manager? Is it necessary to use a Human Resources consultant to avoid any appearance of favouritism?)
 - Personnel Policies (Staff relations? Disciplinary actions? Policies for cultural and compassionate leave? Policy against sexual harassment?)
 - Economic Development Policies (How to balance cultural, environmental and economic objectives? Are decisions made by Chief and Council or by an independent Board of Directors?)
 - Honoraria Policy (Do Council get honoraria and salary? What about evening meetings? What about special projects? Do Elders get honoraria?)
 - In addition, most policies will require clauses relating to confidentiality and conflicts of interest. These issues are always important but require special consideration in First Nations communities.
3. Purpose
 - It is important to set out the purpose of the policy (what you are trying to achieve).
4. Community Support
 - A policy is only effective if it is used consistently and has the support of the people who are obligated to follow the policy. The best way to ensure that your policy has the support of the people it applies to is to involve them in the development process. For example, in drafting an education policy, you should consult with your teachers, principals, parents, students, Council members, and Elders.
5. Consequences of Breaching the Policy
 - We recommend that you set out the consequences or recourse available if the policy is breached. For example, a hiring policy may provide that a job applicant can appeal a decision that they feel was not made according to the terms of the policy.

6. Consistency

- It is very important that you follow your policy consistently in every situation. A policy that is only followed occasionally is meaningless, and will not provide any protection to the decision-makers who rely on it when making decisions.
- To be effective, a policy must also be relatively static. If you revise your policy each time a new decision is made, then the policy will become ineffective and meaningless. However, if the same issue arises three or four times, you may then wish to consider whether your policy should be revised. You may wish to consult with your legal counsel in making that decision.

7. Ensure your Policy is Current

- It is very important to ensure that your policy is current and in accordance with the law. We recommend that you review your policies periodically, with the assistance of legal counsel where applicable. For example, case law and legislation in the field of employment law change regularly, so should make sure you review and revise your personnel policies every year or two.

Example

In developing your employment or personnel policies, we recommend that you address the following topics:⁶

1. Application

- Does the policy apply to all of your employees (including full- and part-time, permanent and casual employees?) Does it apply to managers and supervisors?

2. Hiring Process

- Are there minimum qualifications for certain position (e.g. high school or university diploma, drivers' license, etc.)?
- Set out the selection process (e.g. tests, interviews, etc.). It is a good idea to use standardized questions to avoid any appearance of favouritism in the hiring process.
- Is priority given to current employees? To members of your First Nation? To Aboriginal peoples?

⁶ From Eamon Murphy and Kathryn Deo, "Employment Policies for First Nations Employers", Infonex *Effective Human Resource Management for Aboriginal Communities* conference, September 2005, online at: http://www.woodwardandcompany.com/areas_employment.html.

3. Conflicts of Interest

- Do employees and management need to disclose membership, ownership, employment, participation or other interests in groups, organizations, businesses or activities that may conflict with the political, economic, business or other interests of the First Nation? If so, should such disclosures be made to the employee's supervisor, to the Administrator, or to Council?
- Can Council members work for the First Nation?

4. Work Hours and Schedules

- Are the work hours and schedule fixed (e.g. 40 hours per week, Monday to Friday, 9 am to 5 pm) or is there some flexibility?
- What are the consequences for lateness?
- How long are coffee and lunch breaks? Are they at scheduled times or at the discretion of the employee? Are they paid or unpaid?
- Are employees entitled to overtime? Under what circumstances (e.g. does it need to be pre-approved by the supervisor? Are supervisors and managers entitled to overtime?)? What is the rate of pay for overtime work?

5. Salaries and Wages

- Is the employee paid an annual salary or do they earn hourly wages?
- What is the pay period (e.g. bi-weekly, monthly, etc.)? When is pay day (e.g. every second Friday)?
- What deductions (mandatory and voluntary) are made?

6. Vacation Time

- How much vacation time is the employee entitled to? Can the vacation time be taken all at once, or, for example, one week at a time? Must the vacation time be pre-authorized and if so, by whom? Does unused vacation time roll over into the following year?

7. Cultural Leave

- Do you allow time for cultural leave for employees to attend specific cultural events?
- Are there provisions for longer term leave if an employee goes into the Longhouse for a whole season etc?

8. Confidentiality

- You may wish to state that all information relating to the First Nation, its members and employees is to be kept confidential, during or after the employee's employment with the First Nation, except as required in the normal course of employment.

- It is very important that you set out the consequences for breaching confidentiality.

9. Disciplinary Action and Termination

- What actions warrant disciplinary action (e.g. harassment, lateness, insolence)? What is the disciplinary structure? (This should be an escalating scale - for example, from a verbal warning for the first offence all the way to termination). Who determines the appropriate level of discipline?
- What recourse can the employee take if s/he thinks the disciplinary action taken is unfair or unwarranted (e.g. grievances, administrative review)?
- How much notice of termination or severance pay in lieu of notice is an employee entitled to after each year of service?
- Who has the authority to fire an employee (e.g. the supervisor, the Band Administrator, Chief and Council)? Is a Band Council Resolution required?

10. Optional Topics

- Employment policies can be extremely flexible in order to meet the needs of the First Nation. You may want to consider some of the following optional topics.
- Is there a probationary period? How long is it? Does it apply to all employees?
- Is there a dress code?
- Are employees allowed to work for other employers?
- What training is offered? Are employees entitled to attend courses and conferences?
- Is a "top-up" provided to employees on maternity or parental leave?
- Are employees entitled to paid sick leave? Is a doctor's note required? Are employees entitled to cultural leave (to attend longhouse activities, ceremonial activities, etc.), bereavement leave, and unpaid leaves of absence?
- Are employees entitled to benefits such as MSP premiums, long-term disability, life insurance and extended health and dental care?
- Are employees entitled to give notice before they resign?

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