

Governance Pilot Project: Skeetchestn Indian Band

The Skeetchestn Indian Band is currently planning to come under the *First Nation Land Management Act*. This will result in the development of a series of new bylaws, adding to the community's current bylaw regime. The *First Nation Land Management Act* provides Band Councils with the power to enact bylaws but, like the *Indian Act*, provides little in the way of mechanisms to enforce First Nation bylaws and prosecute infractions.

The Skeetchestn governance project took note of the fact the First Nation encounters significant difficulties implementing and enforcing its bylaws. Bylaws are disregarded altogether because of the lack of enforcement mechanisms and/or an unwillingness on the part of the First Nation to prosecute members for infractions. There are limited resources to monitor bylaw compliance and then prosecute infractions through a costly, potentially litigious process. In addition, the First Nation takes the position that those being charged with a bylaw infraction should be given access to a fair and impartial hearing if they wish to dispute a matter. But, as the political body responsible for the creation of a bylaw that has been contravened, the Band Council is unable to act in such an adjudicative capacity. While the First Nation relies upon the RCMP to cooperate in bylaw enforcement, their first task is to "keep the peace", for example when persons are charged with contravention of trespassing bylaws. Skeetchestn's project investigated the potential to develop a Bylaw Prosecution Agreement / Bylaw Quasi-Judicial Forum to assist in dealing with bylaw infractions and disputes within the community.

Although the First Nation was not able to fully develop an enforcement model through the governance project, it did propose alternative solutions considered appropriate to a First Nation context. It is suggested these solutions may better fit the circumstances of First Nation communities than the municipal and summary convictions regimes commonly used in other jurisdictions in Canada. Research conducted as part of the project indicates that Canadian municipalities also experience difficulties prosecuting bylaws through the courts due to the large commitment of time and financial resources that is needed. As a result, several municipalities are considering alternative mechanisms to address bylaw disputes, including community forums which permit panels consisting of volunteers or paid professionals to adjudicate minor bylaw offenses.

While First Nations do have the option of prosecuting bylaw infractions in the provincial courts, their limited financial resources and the potential for jurisdictional disputes create significant roadblocks. The research conducted as part of the Skeetchestn project suggests that few, if any, First Nations have a bylaw prosecution mechanism of their own in place. The First Nation suggests there is significant potential for exploring how First Nation bylaws can be more effectively enforced through pilot projects that have the backing and cooperation of the province(s).

Excerpted from *First Nations Governance Pilot Projects: Challenge and Innovation*. A Final Report Prepared for the National Centre for First Nations Governance by Carleton University Centre for Community Innovation. February 2005.