

The District of Sechelt, British Columbia and the Municipal System of Aboriginal Self-Government

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The purpose of this paper was, in exploring the details of the Sechelt Indian Band Self-Government Act and the powers it entails, to ascertain whether or not the Municipal Model represents a viable and successful option toward Aboriginal self-government. In this paper I examined the extent to which certain key provisions of the Sechelt Act align with the traditional goals of Aboriginal self-government to gauge its usefulness to Aboriginal groups. I performed this by first exploring the concept of Right and Title, its implications and the resulting powers which self-governing bands must possess to satisfy the provisions of Right and Title. I then used these criteria to establish a basic 'report card' against which the Municipal Model's efficacy can be gauged through comparison with the provisions of the Sechelt Act. I found that not only does the Sechelt Act satisfy all vital criteria for an effective self-government agreement, but that the Municipal Model name is itself a misnomer for a far wider package of rights and responsibilities than those given to municipalities. I conclude that the Sechelt Indian Band Self-Government Act is a highly effective iteration of the Municipal Model, contrary to criticism, and that the model's success merits consideration as a viable Aboriginal self-government solution for future cases.

Introduction

Canada is home to a plethora of Aboriginal groups who have been recognized as having certain inherent rights. Since the late 20th century, the federal government has pursued a policy of negotiating toward Aboriginal self-government, an actualization of these rights, which has manifested in various forms. The execution and extent of these rights to self-government vary widely however, with a few distinct models considered primary. The most notable models are the Public Model, the Treaty Model and the Municipal Model. The Municipal Model of Aboriginal self-government has historically received broad criticism for its perceived inadequacy and apparent subservient nature to both provincial and federal levels of government (Abele "Four Pathways"). Believing that this criticism is based more in misconception than reality, in this paper I will argue that the Sechelt agreement represents a desirable outcome for Aboriginal bands on the basis of its adherence to their aims and the system's sustainability, and that a 'modified municipal' model deserves more consideration as a practical means of

implementing Aboriginal self-government. I will further contest that the label ‘municipal’ is a misnomer for the system, ill-characterizing the package of self-government powers it entails. I will argue these points by drawing heavily on self-government agreement reached by the Sechelt Band, examining the powers the Band holds and comparing them to the powers held by British Columbian municipalities as outlined in the Local Government Act. Before any of these assessments can take place, however, several key terms must first be defined for the sake of clarity and coherence.

Defining Terms

It would not make sense to discuss the differences between the powers held by municipalities and those derived from an Aboriginal self-government agreement, such as the Sechelt, without first defining what these terms mean within the context of this paper. Since the greater overall topic of the paper is Aboriginal self-government, this term will be defined before going on to explain how municipalities and the term ‘municipal’ factors in. In order to lay the foundation for Aboriginal self-government however, it is necessary to first discuss Aboriginal ‘right and title’ and what exactly the ramifications of it are.

Aboriginal Right and Title

The Royal Proclamation of 1763 was the first document to recognize the Aboriginals of Canada as possessing certain inherent rights which set them apart from other peoples of Canada (“Royal Proclamation, 1763”). In specific, it recognizes Aboriginal ‘right’ and ‘title’. Both of these inherent traits recognized in the proclamation serve as keystones in supporting modern claims toward Aboriginal self-government, as no piece of legislation exists which overrules it (“Royal Proclamation, 1763”). Title will be addressed first, followed by right.

Title has been interpreted historically to refer to the inherent Aboriginal ownership of land in Canada, Erin Hanson writes (“Aboriginal Title”). These lands are based on ancestral inhabitation and title conveys a collective right over the use and jurisdiction of lands of such ancestry (Hanson). It is especially important to note that this right is not one that is granted to the Aboriginal peoples by the British Crown, but one being recognized as inherent (*sui generis*). Although the Royal Proclamation also transferred ownership of North America unto King George III, it still recognizes the existence of Aboriginal title, a right which can only be “extinguished” by a treaty negotiation with the Crown (Hanson). This means that Aboriginal lands can only be ceded or sold to the Crown alone through treaty negotiation. In practice however, the settlers of Canada and the British Crown frequently appropriated what would be considered ancestral Aboriginal lands without treaty negotiation, especially in British Columbia (“Royal Proclamation, 1763”). Whereas Alberta has at least the Numbered Treaties, transferring title in exchange for certain rights and benefits¹, British Columbia has no such agreements. The practical value of this for BC Aboriginal bands is a legal claim against the provincial government.

¹ These typically include a degree of self-government, annual payments, and health and education subsidies; however this kind agreement pertains wholly to the treaty model of Aboriginal Self-Government and is therefore beyond the scope of this paper.

What is meant by ‘Aboriginal right’ however was far less specific in the Royal Proclamation, with plenty of variation in modern interpretations between courts, members of government as well as across different bands (Hanson, “Aboriginal Right”). The aspects generally agreed upon however typically include rights to the land, “subsistence resources and activities”², self-determination and some extent of self-government (Hanson). As it was with Aboriginal title, it must be noted that these rights are not ones that are granted by the Crown, rather the Crown has recognized them as permanent, intrinsic attributes of Aboriginal bands. These rights are therefore not sought after; rather the accommodation of these rights within the Canadian system is what is sought.

Aboriginal Self-Government

After laying out Aboriginal right and title, the claim to self-government is simply derivative from recognizing these inherent claims. The argument follows that because the Crown gained ancestral Aboriginal lands without entering into treaty negotiations, such Aboriginal bands are entitled to restitution and accommodation of their inherent right to self-government on these lands. Their right having already been recognized in 1763 and following the appropriation of their lands without the compensation promised, execution of these rights is therefore the next step required for the federal and provincial governments from a legal standpoint³. In negotiating the terms of an Aboriginal self-government agreement, the aforementioned rights of land and jurisdiction, resources and their use are the main items that must be discussed. Additional subjects of negotiation were listed by the federal government in 1995; they include policing, health, education and social services (Wherrett, 1999). It is my stance that these areas of interest, along with the rights previously stated, can comprise a ‘report card’ for which to measure self-government agreements against, such as the Sechelt Band of British Columbia. To what extent a certain model achieves sustainable control over these subjects will determine that model’s measure of success for its band, and by extension, the efficacy of the model in question.

Comparing and Contrasting Powers of BC Municipalities and the District of Sechelt

Having defined the terms in which the paper will be argued, this section will demonstrate how exactly the powers held by a BC municipality under the Local Government Act differ from those of the Sechelt Band under the Sechelt Indian Band Self-Government Act. It will be shown that the District of Sechelt is in possession of all the most common municipal powers with a few extra that truly set it apart. From this, two important points will be gleaned; first is that the District of Sechelt, having largely achieved the previously established criteria, constitutes an effective self-government agreement. Second, due to the additional powers held by the District of Sechelt over municipalities, as defined in their respective Acts, the label ‘municipal’ for this kind of model ill-applies and therefore requires re-examination.

² Examples of subsistence resources are game and fish, subsistence activities include hunting, fishing, agriculture, etc.

³ Opponents in the BC government contest that because British Columbia was not yet colonized when the Proclamation was made that it therefore does not apply, along with Aboriginal right and title. This can be countered on the basis that the Proclamation refers to applying to all lands under British Crown rule and therefore would in fact apply once Crown rule was applied to the lands of BC (“Royal Proclamation, 1763”).

Zoning

The common features of a municipal model seek to establish a system of Aboriginal self-Government which mimics the structure and authority of a municipality. It follows that certain expected ‘municipality-like’ powers are indeed found within the Local Government Act. Under the Act, local governments of municipalities have zoning powers; these include the abilities to “divide the whole or part of the municipality or regional district into zones... and establish the boundaries of the zones” as well as regulate use of the zone, including the dimensions, density and purpose of all buildings and structures within each zone (Local Government Act, 903). Although zoning powers sound mundane, without them a municipality effectively has no authority over how their land may be purposed; therefore, for a self-government agreement to have any weight to it the governing band must have zoning powers. This is indeed possessed by the Council of the District of Sechelt, along with the ability to legislate on “the use, construction, maintenance, repair and demolition of buildings and structures on Sechelt lands” (Sechelt Act, 14.1b). These powers should not be of surprise; rather exclusive rights to the use of municipal land are part and parcel of any municipality and should be expected of a municipal-style model, or any self-government agreement for that matter. The exclusive right to make use of one’s land expressed in zoning is one of the paramount rights outlined in Aboriginal rights the earlier criteria.

Law Enforcement

The ability to enforce bylaw and other legislation through policing is another major subject of negotiation in Aboriginal self-government. Under the Local Government Act, municipalities have extensive powers of bylaw enforcement including conviction, ticketing, and the imposition of fines, costs, penalties and imprisonment (266-267). Municipal police forces are also widely prevalent⁴. The Sechelt Council may also pass legislation concerning public order under the Sechelt Indian Band Self-Government Act, as well as impose fines and imprisonment to an extent (14.11-p, 14.2); in addition, the District possesses bylaw enforcement as well as enforcement officers (“Sechelt Bylaw Enforcement”). Having authority over matters of policing, this subject criterion is considered met for the Sechelt self-government agreement.

Fish and Game

In order for a self-government agreement to be considered satisfactory, it must recognize and fulfill the Aboriginal right to subsistence resources and activities. In practice, this can be covered under fish and game regulations. It is at this point where ordinary municipal powers become insufficient in executing effective Aboriginal self-government. In British Columbia, policy concerning fishing and hunting are provincial matters; municipalities do not ordinarily have authority over them and are subject to provincial regulation (“Fish, Wildlife and Habitat Management branch”). In the District of Sechelt however, the Council has authority over legislation concerning both “the preservation and management of natural resources on Sechelt lands” as well as “the preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands” (“Sechelt Act” 14.1j,k) These

⁴ Edmonton Police Service, for example.

powers held by the District go beyond what the Local Government Act entails; such powers are not held by ordinary municipalities, fulfilling the criterion of right over subsistence resources and activities.

Health, Education and Social Services

Similar to policing, authority over the fields of health, education and social services is a more recent objective of Aboriginal self-government agreements, as outlined earlier. These programs, similar to fish and game regulation, are ordinarily outside of municipal legislative authority. The Local Government Act has little mention of health in particular, stating that the local government's capacity for bylaw only extends to regulation toward the ends of "maintaining, promoting or preserving" public health (523.1a). These three fields are ordinarily matters of provincial jurisdiction⁵; nevertheless the District of Sechelt has the ability to pass legislation on all of these areas in their self-government Act (14.1g-i).

Revenue Generating Capacity

Besides having authority over all of the mentioned fields, the ability of a given municipality or band to ensure administration of them are financially sustainable are tantamount to success. Under the Local Government Act, municipalities have options of revenue-generation, including property taxation as well as revenue-sharing between municipalities (14.1, 808-812). The District of Sechelt also has powers concerning taxation, specifically, "taxation, for local purposes, of interests in Sechelt lands, and of occupants and tenants of Sechelt lands in respect of their interests in those lands, including assessment, collection and enforcement procedures and appeals relating thereto" ("Sechelt Act" 14.1e). In addition to this capacity, the Band may also rent their land, borrow money, sue and invest, providing additional revenue-generating options (6). Sections 32 and 33 of the Act also enable the Band to enter agreement with the government of Canada for the purpose of transfer payments to the Band. This is important for the Band's finances because it means they are never truly 'cut off' from the option of federal funding. A Sechelt-style municipal model therefore has reasonable ability to sustain itself, its programs and responsibilities financially, fulfilling the final criterion of success.

Addressing Other Criticisms

Having shown how the Sechelt Band municipal-style model succeeds in many regards of Aboriginal self-government agreements, some final criticisms of the model must be addressed before the issue can be considered concluded. One major criticism of the municipal model comes from Frances Abele and Michael J. Prince, where they write in "Four Pathways to Aboriginal Self-Government" that "band councils have even fewer powers and less independence than the elected representatives of Canadian towns and cities". I believe that I have shown sufficient evidence in the case of the Sechelt Band that this notion is not entirely accurate, the District is equipped with many areas of authority that ordinary municipalities simply do not possess. A counterargument might suggest that the District of Sechelt shouldn't be considered a municipal-model on this basis, though one who argues this would be forgetting that a more frequent criticism of the Sechelt Act is that it resembles a "municipal-type arrangement, governed by provincial legislation" (Wherrett, 1999). Such a criticism

⁵ The organizations of Alberta Health Services, Alberta Education and Alberta Support for example.

actually bolsters the municipal model by associating it to the Sechelt's relatively successful self-government agreement. It cannot be denied that the District is legally considered a municipality under provincial legislation (Ibid.), although the criticism that this aspect makes it subservient to the provincial and federal government levels overlooks the reality that the Sechelt Act specifies that where Canadian laws and BC laws are inconsistent with Band laws that the Sechelt Act takes precedence (37-38). Having dealt with several of the most prominent criticisms of the municipal model, there is no further reason this style of municipal self-government agreement does not deserve more consideration as a serious execution of Aboriginal self-government rights.

Conclusions

It has been clearly demonstrated that the powers of the Sechelt Band cover key areas of concern for Aboriginal self-government, namely those of land ownership, resource use, policing, health, education, social services as well as the ability to pass legislation and finance all of these key areas. Given their success in these regards, I would consider the agreement reached in the Sechelt Indian Band Self-Government Act a highly effective execution of a municipal-style model. The most prominent criticisms of the municipal model have been addressed and overwhelming evidence has been provided for its success with respect to the Sechelt Band. For these reasons I have argued that the municipal model, especially the kind the Sechelt has reached, deserves to be recognized as a viable and successful option toward Aboriginal self-government. It has also been shown that the additional powers the Band holds set them apart from a generic municipality under the Local Governments Act. It is precisely because the Sechelt agreement surpasses municipal areas of jurisdiction in a wide list of powers and that their Act takes precedence in areas of legal inconsistency that I in return contest that 'municipal' is a misnomer for the package of powers the model offers. Perhaps agreements such as this should merely be called Sechelt models in lieu of pioneering such an expansive iteration of a municipal-type Aboriginal self-government agreement.

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