



"Our lives begin to end the day we become silent about things that matter."  
Martin Luther King, Jr.

## **A Way Forward**

### **Canadians Speak Out on Aboriginal Issues**

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**A Paper prepared by the adhoc POGG Aboriginal-Canada Think Tank Committee**

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**POGG Canada** is an Ottawa-based not-for-profit non-partisan grassroots organization founded in March 2004. POGG has evolved into the think tank practice of supporting ad hoc committees that look into specific issues. From time to time, they express findings and opinions publicly or privately to government and others. For more information, visit [www.poggtalk.org](http://www.poggtalk.org).

## EXECUTIVE SUMMARY

This paper addresses the critical issues of First Nations' healthcare, education, economic development, governance and the Indian Act as well as the tenuous relationship between First Nations and federal, provincial and territorial governments. The overarching principle of this paper is that all Canadians – First Nations and Non-Aboriginals – be treated equally.

It is clear that education, employment and economic development on and off reserves are critical to the way forward on the issues detailed in this report. Training and apprenticeship opportunities must be created such that First Nations young people - Canada's fastest growing demographic – can participate fully in natural resource and other developments in Canada.

First Nations must be involved in federal, provincial and territorial decisions on healthcare. The Kelowna Accord should be revisited as it contains practical recommendations concerning First Nations health services. In addition, the 1996 Royal Commission on Aboriginal peoples and the Romanow Report state that an integrated partnership model is vital to the development of effective and efficient First Nations' health policy.

The government should establish a Relocation Policy in conjunction with leaders of bands in remote locations. Band/reserve relocation to more suitable lands would improve opportunities for self-sustainment, healthcare, education and employment.

An important step in the way forward for First Nations would be that the government reaffirms the Royal Proclamation of 1763 by issuing, in consultation with the Aboriginal peoples, a modern Canadian Royal Proclamation that reflects 21<sup>st</sup> century language and issues.

As part of the commemoration and celebration of Canada's 150<sup>th</sup> anniversary, it is recommended that, as envisioned by William Commanda, Victoria Island, Ottawa be ceded to the First Nations for the ASINABKA National Indigenous Centre.

Implementation of the recommendations in this report should ease tensions between governments and First Nations and improve their socio-economic standards bringing them closer to those enjoyed by other Canadians. Additionally, Canada should become compliant with the UN Declaration on the Rights of Indigenous Peoples.

DECLARATION OF INTERESTS

This study and Paper has not been funded or financed by any government source, organization or individual. All members of the Think Tank committee are volunteers; none are of Aboriginal background and none have any financial interest in the outcome of the study.

**TABLE OF CONTENTS**

Overview.....	1
Recommendations.....	2
Legal and Constitutional Framework.....	4
Legislative Review.....	5
The Indian Act.....	6
Education and Training.....	8
Kelowna Accord.....	10
Economic Development.....	10
Health Care.....	13
Aboriginal Justice System.....	14
Learning from Experience.....	15
Consensus by Circle.....	15
Who is in Charge? .....	16
Royal Proclamation.....	17
Aboriginal Cultural and Heritage Centre.....	18
Circle of Hope.....	19
Conclusion.....	20
References.....	21
Appendix A - Acts, Responsibility of Minister of AAND.....	A
Appendix B - Acts, Shared Responsibility of Minister and Parliament.....	B
Appendix C - Economic Development.....	C
Appendix D - Consensus by Circle Matrix.....	D

## OVERVIEW

“We are all Treaty people,” said Bob Osborne, a member of the POGG Aboriginal-Canada Think Tank. As Canadians, we each have the responsibility to be mindful of the Treaties. We are the inheritors of both their benefits and the damaging fallout caused by the failure to fully honour them.

Research included the review of documents, books and numerous meetings with individuals who provided subject-area expertise that enhanced our knowledge and understanding. A major impediment to developing universal practical and attainable recommendations is the diversity amongst 600 plus bands. Each has its own accumulation of priority concerns and aspirations as well as ongoing grievances. A spectre hovering over many bands is living conditions that are similar to those of developing countries; in particular, a lack of adequate education, training and health care.

The failure of successive governments to fully honour specific treaty obligations, to meet the challenge of environmental degradation (especially of water) and to develop strong mutual trust and respect, is the common negative thread in Canada-First Nations relations. Discussions with Canadians from all walks of life revealed an appalling lack of knowledge of the history and cultures of First Nations and the challenges they face to this day. However, there is a widely-accepted belief that the status quo is not desirable or sustainable.

Other areas that demand thoughtful consideration are the controversy over the future of the *Indian Act* and the deep attachment to the land that is accompanied by a strong desire to protect culture and language. In this Paper, the term ‘Aboriginal’ consists of the three constitutionally recognized groups of First Nations, Inuit and Métis.

## Objectives

1. To influence the development of public policy as it applies to First Nations people residing on and off reserves and to further national reconciliation.
2. To provide all stakeholders with clear opinions and practical recommendations directed at creating ‘A Way Forward’ in Canada-First Nations relations.
3. To provide recommendations to:
  - a) Eliminate the current marginalization of First Nations people within Canada.
  - b) Improve the general well-being of the First Nations people.
  - c) Ensure that First Nations youth are well-educated and trained for the benefit of themselves, their communities and Canada as a whole.

**RECOMMENDATIONS INCLUDED IN THIS PAPER**

<p>Legislative Review</p> <ol style="list-style-type: none"> <li>1. That Aboriginal Affairs and Northern Development (AAND) maintain Indian Registries and retain the authority for resolving disputes.</li> <li>2. That AAND, in consultation and collaborations with bands in remote areas, establish a Relocation Policy to include a) guidelines for designation of reserves to be relocated b) designations of available suitable lands for relocation c) adequate monetary and other support necessary for relocation d) authorization for bands to purchase the new land for a nominal fee and, e) authorization to convert such lands to a reserve.</li> </ol>	<p>Pg. 6</p> <p>Pg. 6</p>
<p>Indian Act</p> <ol style="list-style-type: none"> <li>3. That control of reserve lands is transferred to reserves whereby property may be leased to individuals but may not be disposed of except back to the band.</li> <li>4. That AAND and the leadership of First Nations organize reserves based on a self-governing model similar to the Sechelt Agreement which has municipal features.</li> </ol>	<p>Pg. 7</p> <p>Pg. 8</p>
<p>Education and Training</p> <ol style="list-style-type: none"> <li>5. That the Government of Canada revisits the Kelowna Accord recommendations pertaining to education.</li> <li>6. That the Government of Canada expands technical and professional education opportunities to Aboriginal peoples and that a support structure is put in place to enable them to better take advantage of these opportunities.</li> </ol>	<p>Pg. 9</p> <p>Pg. 10</p>
<p>Economic Development</p> <ol style="list-style-type: none"> <li>7. That the Government of Canada implements the recommendations in the 1996 Royal Commission report concerning the means of transferring decision-making authority to the individual bands and groups.</li> <li>8. That the Government of Canada implements the National Aboriginal Economic Development Board recommendations.</li> <li>9. That the Government of Canada significantly increases funding for capacity building programs on reserves.</li> <li>10. That all capacity building programs and initiatives are consolidated into a new agency that can mesh its programs with provincial and territorial education and training programs.</li> </ol>	<p>Pg. 11</p> <p>Pg. 12</p> <p>Pg. 12</p> <p>Pg. 13</p>

**RECOMMENDATIONS INCLUDED IN THIS PAPER**

<p>Healthcare</p> <p>11. That agreement is reached to facilitate the participation of First Nations as full partners in federal, provincial and territorial decisions related to their health.</p> <p>12. That the Government of Canada revisits the Kelowna Accord recommendations concerning healthcare.</p>	<p>Pg. 14</p> <p>Pg. 15</p>
<p>Aboriginal Justice System</p> <p>13. That ‘Sentencing Circles’ continue to be used for minor infractions that contravene the Criminal Code of Canada.</p>	<p>Pg. 15</p>
<p>Consensus by Circles</p> <p>14. That the First Nations use their traditional democratic consensus Circle to better express concerns and aspirations and to propel positive change.</p>	<p>Pg. 16</p>
<p>Who is in Charge?</p> <p>15. That the Aboriginal leadership develops a consensus as to what is best resolved at the national level and at the band level or treaty level with provision for the national leadership to play a role in resolving each non-national issue.</p> <p>16. That First Nations elect the national leader by a process that utilizes a direct democratic methodology.</p> <p>17. That the Government of Canada ensures that all freedoms available to Non-Aboriginal peoples are equally available to Aboriginal peoples.</p>	<p>Pg. 17</p> <p>Pg. 17</p> <p>Pg. 17</p>
<p>Royal Proclamation</p> <p>18. That the Government of Canada reaffirms the Royal Proclamation of 1763 by issuing, in consultation with the Aboriginal peoples, a modern Canadian Royal Proclamation that reflects 21<sup>st</sup> century language and issues.</p>	<p>Pg. 18</p>
<p>Aboriginal Cultural and Heritage Centre</p> <p>19. That Victoria Island, Ottawa, be ceded to First Nations people for the express development of the site according to William Commanda’s vision- ASINABKA - National Indigenous Centre.</p> <p>20. That the Government of Canada commits financial resources to the development and construction of the site and structures so that it may be completed and dedicated on or before July 1, 2017.</p>	<p>Pg. 19</p> <p>Pg. 20</p>

## LEGAL AND CONSTITUTIONAL FRAMEWORK

Legal and constitutional realities include a multitude of Acts and the Crown's fiduciary relationship with Aboriginal peoples. These impede First Nations people on reserves from designing education programs, administrative and governance practices and policies in keeping with their cultural norms. The complexities engendered by a plethora of Acts and regulations, in addition to the *Indian Act*, can only be classified as a quagmire. The Minister of Aboriginal Affairs and Northern Development (AAND) has the sole responsibility for the management of the 62 Acts (See Appendix A) and shares responsibility with Parliament for an additional 17 Acts (See appendix B).

Many Acts concern specific bands or issues and are quite substantive. The implementation and management of this legislation have engendered generations of ill-will and distrust. A large number of Federal Departments and Agencies in the mix connect or intersect with Aboriginal issues and/or communities.

The reality is a long way from the intent of the original Treaty Agreements as reflected in the Two Row Wampum.<sup>1</sup> They respectively confirmed and endorsed peaceful co-existence and non-interference as a commitment for all subsequent dealings between Indigenous peoples and the French and English governments. In effect, First Nations people became, “conquered by law.”<sup>2</sup>

The *Indian Act* itself was not designed to promote indigenous systems of governance, although amendments in 1951 and 1988 did provide some increased First Nations participation. Today, the Act does allow some measure of control through the election of local Chiefs and councils, a European system, albeit with federal oversight. Enactment of further amendments negated the right ‘to consult.’ Consultation is viewed as a fundamental right stemming from the *Constitution Act* of 1982. With looming northern development, this issue needs to be addressed by the federal government. Commercial interests have been pro-active and lead on this issue.

Section 35 of the *Constitution Act* provides constitutional protection and explicitly recognizes and affirms Aboriginal and treaty rights. This was further affirmed by the 1992 Royal Commission on Aboriginal peoples. The most frustrating aspect of the research is that numerous Acts deal with specific issues applicable to specific bands, and as such, have rendered a comprehensive national consensus impossible to achieve.

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<sup>1</sup> Paul Williams, Curtis Nelson, “Kaswentha,” Research Reports: Treaties (Project Area 1, “Early Treaty Making in Canada”) (CD-ROM, Ottawa, ON: Libraxus, 1997), pp.91-5, 129, 402.

<sup>2</sup> Lindsay G. Robertson, “Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands.” Oxford University Press, 2007.



Justice Harry LaForm stated that the demand for a restructuring of the relationship between the government and Aboriginal peoples would first have to be acknowledged at the political level. Then, a major shift that is required in government policy might be achievable. In the short term, however, there are over-arching areas of concern that are widespread. They affect all bands, reserves and Aboriginal communities. Specifically, the inherent right to self-governance, decent living standards, education, health care, clean water and basic human rights. These are fundamental expectations of all Canadians. Implementation of the recommendations in this paper should ameliorate the most egregious areas of inequity.

Numerous studies, reports, books and Royal Commissions repeatedly called for attempts to achieve a fair and just resolution of grievances with little or no success; rejected by one side or the other. This Paper will nonetheless serve to express the viewpoint and desire of Canadians for a just and equitable settlement of Constitutional and Treaty issues and a hope that all Canadians may enjoy a decent standard of living. This brings to mind the Shakespearian quote, “There is a tide in the affairs of man. Which taken at the flood, leads on to fortune.”<sup>1</sup> Now is the time to ride the tide for positive change.

## **LEGISLATIVE REVIEW**

The issue of land management has long been recognized and the *First Nations Land Management Act* of 1999 was passed to address this issue. Those First Nations that develop their own land codes, as described in this Act, become the owners of the reserve land that they occupy. This gives them authority over development, conservation protection, management and possession of the land. All of the provisions in the *Indian Act* related to land resources and environment cease to apply. Currently, many First Nations have either developed such codes or are in the process of doing so.

### **Indian Registration & Band Membership**

Perhaps the most fundamental aspect of Section 6 of the *Indian Act* is the maintenance of the Indian Registry. It is controlled by the Department of Aboriginal Affairs and Northern Development that identifies Status Indians. The responsibility for management and control of these registries is vital to establish funding levels and resolve disputes over who is entitled to be

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<sup>1</sup> William Shakespeare, “Julius Caesar Act 4, Scene 3, 218-224.”

a Registered Status Indian. Band registration on the other hand is under the control of the First Nations; if the Chief and Council agree, anyone can be a band member. This policy has the potential to be divisive. It should be addressed urgently because it affects the distribution of economic benefits.

### **Recommendation**

**That Aboriginal Affairs and Northern Development (AAND) maintains Indian registries and retains the authority for resolving disputes.**

Over the years, the national media has highlighted the tragic conditions on many northern reserves. The reasons for these dysfunctional communities are many but perhaps the most obvious cause can be attributed to their remote location. They are not on major transportation routes, far from power grids; lack clean, pure drinking water and lack quality education and training facilities. These current conditions are untenable. Following respectful negotiations, these bands or communities would benefit from a 'Relocation Policy'.

The purpose would be to relocate them near to existing communities that are self-sufficient. They would have access to infrastructure, established education facilities and employment centres. Precedents exist, e.g. Muskeg Lake, Saskatchewan, a former federal property and experimental farm close to Saskatoon.

### **Recommendation**

**That AAND, in consultation and collaboration with bands in remote areas, establish a Relocation Policy to include, a) guidelines for designation of reserves to be relocated b) designation of available suitable lands for relocation c) adequate monetary and other support for relocation d) authorization for bands to purchase the new land for a nominal fee and e) authorization to convert such lands to a reserve.**

## **THE INDIAN ACT**

It is difficult to begin to fully understand the anger and frustration of First Nations people. The *Indian Act*, first promulgated in 1876 by the Parliament of Canada, reveals that to be a 'Reserve Indian' is to lack power to act as owner of your own land and the power to spend your own money. Too often, to be a Reserve Indian is to be without a good house, running water, without adequate education facilities and training, and consequently, without a job. All of these conditions are the product of history and have nothing to do with the abilities of First Nations

people. The special treatment engendered by the *Indian Act* continues to keep them disadvantaged and apart.

The *Indian Act* resides within the Department of Justice and is administered by the AAND. It authorizes the departmental Minister to manage all aspects of a Registered Indian's life. On reserves, a Registered Indian is known as a Status Indian. These powers are in turn delegated to the Deputy Minister and lower level bureaucrats. The intent of the Act was to encourage assimilation. Relationships between Aboriginal peoples and the Crown preceded this by several decades in the form of Treaties and under the provisions of the *Constitution Act* of 1867. This latter Act has seen numerous amendments and challenges over the years. The result is a somewhat convoluted document with many of its original clauses ignored. Amendments enacted in 1985 allow a measure of autonomy, albeit with the approval of the Minister. No one can claim this is a useful document. The seemingly endless negotiations process to date requires that all parties take urgent action to resolve the myriad of unresolved issues.

The *British North American Act* was designed to protect the reserve lands. However, they still legally belong to the Crown. Subject to this Act and to the terms of any Treaty or Surrender, reserves are held for the use and benefit of Indians while the Cabinet may determine the purpose for which lands are to be used and the benefit that will accrue to the band.

Currently, land transactions are not lawful on a reserve unless approved by the Minister or delegated authority. As described in Section 21 of the Act and under a Certificate of Occupation, possession of the land allotted to a Reserve Indian by the band council is only for a period of two years. This is open to nepotism and favoritism. This practice makes the occupant a tenant with limited rights, with little place for pride of ownership or incentive to maintain or improve the property. However, some reserves have decided to operate outside the *Indian Act*.

First Nations people should have the same rights and benefits as Non-Aboriginal Canadians. This can be achieved through a land-claim process similar to that of the Labrador and Innu settlement. It has achieved significant success. The Canadian Taxpayer's Federation has stated, "No one would accept their property being owned and managed by federal bureaucrats, so why should First Nations people?" Nowhere has democracy worked well without a great measure of local self-government. Some countries, including The Republic of South Africa, have recognized this and enshrined self-government in their Constitutions; why not on First Nation reserves?

### **Recommendation**

**That control of reserve lands is transferred to reserves whereby property may be leased to individuals but may not be disposed of except back to the band.**

## **Recommendation**

### **That AAND and the leadership of First Nations organize reserves based on a self-governing model similar to the municipal features of the Sechelt Agreement.**

The first recommendation may entail much soul searching on the part of First Nations people as it negates the concept of communal property. However, it is put forward in the sincere belief that if individuals are given the opportunity to build economic advantage it will lead to healthier functional communities. The recommendations do not intend to imply that management and administrative practices should follow Western methods. There is no reason why they could not fit into First Nations cultural norms and also meet the recommendations. They would also bring Canada into compliance with the United Nations Declaration on the Rights of Indigenous Peoples.

In its most recent report, the Assembly of First Nations (AFN) argues for a clear plan to replace the *Indian Act* following the approach articulated in the 1996 Royal Commission report that is consistent with the UN Declaration on the Rights of Indigenous Peoples. While the AFN wants changes for a number of reasons, the major impetus are for greater control of their own governance, education, health and economic development.

It is evident in many documents that the goal of self-governance is untenable without a significant economic base. A major impediment to all economic development is the lack of land ownership. Only those groups that have extracted themselves from the stricture of the *Indian Act* in this regard have made real progress. Noted previously, the AAND has sole responsibility for the management of 62 Acts. This is a long way from the *Two Wampum Treaty* that governed the relationship between Indigenous peoples and the French and English governments – that of co-existing sovereign nations.

## **EDUCATION AND TRAINING**

The Council of Chiefs, the Kelowna Accord, the more recent recommendations of the Drummond Report (Ontario) and First Nations leaders have all pointed out the urgent need for a comprehensive plan to increase the achievement levels of First Nations and other Canadian students. It is interesting to note that there are only two references to education in the *Indian Act*. Sub Section 114 (1) of the Act provides for the Minister to authorize the creation of schools for the education of Indian children. In all provincial jurisdictions there are specific Acts pertaining to the provision of primary and secondary education to First Nations' students. Provinces have agreements that recognize the right of First Nations to enact laws respecting education on reserves. The legislation reviewed provided forward-looking models for Aboriginal education. However, limited resources did not permit verification of what is actually being achieved.

Research revealed that the graduation rate of Aboriginal students, from reserves adjacent or close to urban areas and who attend schools with an integrated student population, is 10% lower than the larger Canadian student body. No definitive reason was identified. The most recent statistics show that less than 40% of First Nations' students on reserves graduate high school. Many reasons were put forward, for example, cultural and socio-economic factors, difficulty in hiring teachers to teach on reserves and absenteeism due to hunting and fishing seasons. On the other hand, there are modern, well-staffed schools that respect the cultures of First Nations people and they should be held out as examples of best practices.

First Nations, federal, provincial and territorial governments approved the education components of the Kelowna Accord which were priced at 1.8 billion dollars over five years to pay for the creation of school systems and training of Aboriginal educators. If implemented, the funds would meet the national and Aboriginal interests with respect to education, employment and development. The development of educational capacity will play a major role in meeting anticipated labour force projections identified by various businesses. Construction, trade and teachers jobs, for the most part, are imported and paid out of band allocations within the reserve. Better educated and trained First Nations people will result in increased reserve self-sufficiency. When given the opportunity to access higher education, many young Aboriginal peoples excel. The Royal Military College ALOY program is a shining example. It is clear that proper funding and long-term planning create success.

The projected population growth rate within Aboriginal communities and the falling birthrate in the rest of Canada should make the development of an educated Aboriginal workforce a national priority. There are numerous scholarships and bursaries made available to these students by Canadian universities and corporations. Some industry groups, particularly those operating in the North, find financing these students to be in their self-interest. Their contributions should be acknowledged and encouraged.

Business groups are concerned with serious current and future skills deficit for Canada. If the country is to achieve its economic potential, the demand for professional and technical personnel must be met, particularly in light of increasing northern development. Outlined in its Economic Action Plan, the recent initiatives of the Government of Canada with respect to proposed 'Skills Training' is lauded. However, it should be pointed out that these initiatives do not specifically mention a plan directed to Aboriginal peoples. All proposed education and training require long-term planning and a dedicated commitment by both the Government of Canada and First Nations. It is also imperative that at the Provincial level, Aboriginal history is included in the curriculum at all Grade levels.

### **Recommendation**

**That the Government of Canada revisits the Kelowna Accord recommendations pertaining to education.**

## **Recommendation**

**That the Government of Canada expands technical and professional education opportunities to Aboriginal peoples and that a support structure is put in place to enable them to better take advantage of these opportunities.**

## **KELOWNA ACCORD**

The Kelowna Accord signed in 2005 in Kelowna, BC is titled “First Ministers and National Aboriginal Leader Strengthening the Relationship and Closing the Gap.” It is a series of agreements between the Government of Canada, the First Ministers of the Provinces, Territorial leaders and the leaders of five Aboriginal organizations. The Accord concentrated on four major areas, education, housing, health and economic development. The plan included targeted funding recommendations of \$5 billion over five years as follows.

- \$1.8 billion for education to create school systems, train Aboriginal teachers and identify children with special needs
- \$1.6 billion for housing; this includes \$400 million to address the need for clean water in many remote communities
- \$1.3 billion for health services
- \$200,000 for economic development

For the average Canadian, this was an enormous expenditure to accept, particularly since there was the erroneous belief, even among well-informed people, that the monies would be paid out directly to Aboriginal peoples. The reality is that the lion’s share would accrue to the Provinces for education and health care and to the Federal government for the provision of schools and housing on reserves. It is already the Federal government’s responsibility for the provision of schools and housing on reserves. To put these funding recommendations into perspective, when measured against other spending, all of these targets were achievable.

## **ECONOMIC DEVELOPMENT**

Economic development is the primary means by which First Nations groups can improve their standard of living. It is recognized that development issues and funding opportunities are complex and diverse, presenting significant challenges to the communities.

Given the diversity in the size, location, capacity and economic opportunities that exist across Canada in the Aboriginal communities, it is evident that no single approach is appropriate for establishing a stronger economic base in each community. It is essential for each group to have positive control over the development and use of natural resources on its reserve.

Of paramount importance is the 1996 report of the Royal Commission on Aboriginal peoples. This document presents a comprehensive approach to creating a whole new political, economic and social relationship with Canada's Aboriginal population. It bases recommendations on a thorough understanding of the historical, cultural, political, economic and social relationship with our Aboriginal peoples. This report remains the most detailed and articulate description of the issues and the need to take action.

The Royal Commission emphasized the essential need for the Aboriginal nations to establish negotiated modern treaties encompassing full self-government that includes full jurisdiction over their economic development programs. These programs should be funded through Treaty settlements, fiscal transfers and their own revenue sources. Any business on these territories should be eligible for regional, business or trade development programs administered by Canadian governments for business generally. With respect to decision-making authority as it applies to economic development, the Commission expressly noted the need to consider economies of scale through close cooperation with those having similar culture within a given region. The underpinnings of the report, the conditions and statistics provided and the rationale for taking the broad and comprehensive approach still apply today. New large-scale studies are not required. Commitment over an extended period and significant resources for the implementation of these recommendations are essential and long overdue. (See Appendix C)

## **Recommendation**

**That the Government of Canada implements the recommendations in the 1996 Royal Commission report concerning the means of transferring decision-making authority to the individual bands and groups.**

A major focus of the *Indian Act* is land management. The Crown retains title to all reserve lands.<sup>1</sup> The bands cannot use their land as collateral in order to access capital. A Certificate of Possession can be granted by the band council,<sup>2</sup> however, it is subject to the approval of the AAND. There is no access to capital based on property ownership.

Bands cannot benefit financially from their goods and services unless the federal government grants them an exemption.<sup>3</sup> *First Nations Land Management Act* (1999) was passed to address these issues. Those First Nations that develop a land code, as described in this Act, become owners of the reserve land they occupy; although not at the individual level. This gives them authority over resources, development, conservation protection, management, use and possession of their land. Currently, 76 First Nations are signatories to this Act but an additional 65 are on a waiting list due to insufficient funding.<sup>4</sup>

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<sup>1</sup> Section 18 (1)

<sup>2</sup> Sections 20 (1) and (2)

<sup>3</sup> Section 32

<sup>4</sup> Addressing the Barriers to Economic Development on Reserve: A Report by the National Aboriginal Economic Development Board, April 2013.

Since reserve communities do not have access to the same financial assets that Canadian municipalities have, their infrastructure is deteriorating and cannot be adequately maintained by the current cash-based model used by the federal government. To address this, the *First Nations Fiscal and Statistical Management Act* was enacted. Its primary purpose is to help First Nation communities develop a financial management structure and levy taxes which can then be used to securitize bonds. These bonds are used to build community infrastructure, a prerequisite to economic development.

In a 2012 report, the National Aboriginal Economic Development Board (NAEDB) has made a number of recommendations for improving this Act. Of particular relevance to economic development, are the calls for greatly enhanced funding for the *First Nations Financial Authority Act*. This includes funding for the development of community plans, that infrastructure projects be considered within such plans and for a number of steps to be taken to develop the capacity to develop and administer long-term financial plans, infrastructure partnerships and asset management. The *First Nations Commercial and Industrial Development Act* was enacted in 2006 to allow the federal government to incorporate, by reference, those provincial rules and regulations that apply to large-scale commercial or industrial projects outside of reserves.<sup>1</sup> This provides greater certainty for developers, investors and the public looking at developing projects on reserves.

### **Recommendation**

**That the Government of Canada implements the NAEDB recommendations.**

The proposed approach will require competent and experienced people in the areas of community planning, creating partnerships, financial controls, communications and regulatory oversight. Many of the First Nations groups will need considerable mentoring, interim support and ongoing training to be able to take full advantage of the mechanisms that foster support and development.

### **Recommendation**

**That the Government of Canada significantly increases funding for capacity building programs on reserves.**

There are a number of disparate and isolated capacity building activities in place but they are spread throughout far too many federal departments and agencies. These, and any new programs designed for capacity building in areas not currently being addressed, should be consolidated.

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<sup>1</sup>Recommendations on Financing First Nations Infrastructure. National Aboriginal Economic Development Board, February 8, 2012.



## **Recommendation**

**That all capacity building programs and initiatives are consolidated into a new agency that can mesh its programs with provincial and territorial education and training programs.**

The status quo for far too many Aboriginal communities is not acceptable. These communities are growing rapidly and represent a resource of great advantage to Canada. It will require a massive effort to build the capacities required and to realize the desired economic development. Each case or situation needs to be considered on its own and whatever path is taken must incorporate the identified strengths such that a successful outcome is more likely.

## **HEALTH CARE**

Health is linked to a number of factors, namely, education, income, sanitation, nutrition, housing, environmental quality and health care access. It cannot be denied that First Nations people living on reserves are woefully underserved in all of the above. According to Health Canada, First Nations people face much higher rates of chronic and communicable diseases than Canadians in general.

Type 2 diabetes for First Nations and Métis people is five times more than the general public. The incidence of infectious diseases, such as tuberculosis, is ten times greater. One of the distressing facts that emerged from the lack of mental health services is the incidence of substance abuse and suicide. The suicide rate among Aboriginal youth is seven times higher than that of other Canadian youth. Suicide impacts on the entire community. The ripple effect of trauma is disastrous in close-knit reserve communities and among off reserve populations. The initiatives of Health Canada are to be commended and specifically, the development and implementation of the National Aboriginal Youth Suicide Prevention strategy. However, research did not reveal any data as to its effectiveness. Another distressing statistic that has shocked thinking fair-minded Canadians is the fact that a large number of new born Aboriginal infants die within the first 48 hours of birth due to poor nutritional and pre-natal care. A related and disturbing fact is that 30% of children in foster care are of Aboriginal background.

The life expectancy of First Nations men is on average seven years less than other Canadian men. First Nations women live five years less than their Canadian counterparts. These statistics are particularly telling when we take pride in Canada's standing on the UN Human Development Index. Canada has consistently been rated at the very top of the scale. To be fair, the chronic conditions described do not exist across the board. It is the responsibility of the federal government to provide health care services on remote and isolated reserves where provincial or territorial insured services are not available. First Nations people who live off-reserve fall under the umbrella of the Provincial Health services in the province of residence. Research revealed that much effort is being made to provide culturally sensitive health care at the provincial level.

Provincial health care providers are commended for this effort, although it seems that much has yet to be done. In spite of extensive media coverage of conditions on some reserves, improvements are way too slow in coming. The appalling and distressing statistics of Aboriginal health issues are untenable and in large part stem from living conditions similar to those in the developing world. The enormous gap between the provision of health services on and off reserves must be addressed.

### **Recommendation**

**That agreement is reached to facilitate the participation of First Nations as full partners in federal, provincial and territorial decisions related to their health.**

### **Recommendation**

**That the Government of Canada revisits the Kelowna Accord recommendations concerning healthcare.**

## **ABORIGINAL JUSTICE SYSEM**

There is something radically wrong when 3% of the Canadian population accounts for more than 30% of those incarcerated in Canadian penitentiaries. This figure is rising although many of the crimes committed by Aboriginal peoples are minor offences. There are many causes that are widespread and inherent to Aboriginal communities, such as drug abuse and lack of family support for those off who live off reserve. The reality is that those accused are less likely to be granted bail and spend more time in pre-trial detention. In addition, Aboriginal prisoners are less likely to have legal representation. They are often charged with crimes against the system, such as missed hearings.

In remote northern communities where court schedules are infrequent and poorly planned, judges have limited time to spend in the community. The court flies in the day of the hearing and the accused has little time to spend with a lawyer. Too often, Aboriginal peoples plead guilty because they are intimidated by the court and simply want the proceedings to be over. Criminologists Mary Hyde and Carol LaPrairie reported that Aboriginal crime is very different from that of Non-Aboriginals. Aboriginals have a higher proportion of violent and social order offences against their own people, usually family members. Almost no crimes for profit are committed, such as drug trafficking, fraud and armed robberies. These findings indicate that Aboriginal offenders were incarcerated for minor infractions at great cost to the State. The solutions are not obvious.

The Government of Canada is to be commended on recent legislation pertaining to Family Law on reserves. Until recently, jurisprudence pertaining to divorce and family break up property rights did not cover individuals living on reserves. This caused much uncertainty and hardship.

## Recommendation

**That “Sentencing Circles” continue to be used for minor infractions that contravene the Criminal Code of Canada.**

## LEARNING FROM EXPERIENCE

The challenge that faced South Africa’s government and the abused Aboriginal peoples under apartheid was that the government was fearful of any action that would threaten its electoral and governance powers. Over time, the fear of consequences, including economic, for not moving forward became the stronger force and apartheid became history. Wise leaders on both sides worked to allay the fears. Aboriginal leaders strengthened their ability to listen to their own and to the government’s constituency. They built a future and reconciliation on the ‘concerns and aspirations’ of their populations. Significantly, they eventually instituted a ‘Truth and Reconciliation Commission.’

The challenge for Canada is to ensure that the will of First Nations people is accurately identified and reflected in the decision-making and treaty process. It is widely accepted that frustration and subsequent negative actions grow when an unfair and static state of affairs exists. True consensus becomes difficult to gather and discern.

## CONSENSUS BY CIRCLES

Canada’s First Nations, through the Aboriginal Circle model, a basic democratic tradition, reach a consensus opinion and the freedom to act on that consensus. Without undertaking a costly academic study, it was concluded that one hundred and forty seven years of Confederation has adversely affected the ‘consensus model’.

The *Indian Act* removed the freedom from Aboriginal peoples to own property and to make many personal life and living-related decisions on their own. The Minister of Aboriginal Affairs and Northern Development had to first approve them. In effect, those under the *Indian Act* and 62 other Acts became ‘wards of the state’. This situation has led to a socially destructive dependency on the government for decision-making and social support revenues.

By design, political power within band and reserves moved from the population and the hereditary chiefs to elected chiefs and councils. With the exception of certain bands and reserves, representations to the Canadian government became unwieldy. The power to negotiate and to enter into agreements became diffused throughout the various Aboriginal leaders and their supporters. Meanwhile, the all-invasive *Indian Act* and other government oversight saddled the First Nations population with no property rights and with only limited authority and freedom to govern their own lives. As did legalized slavery, this Act negatively permeates the very being of each person and community under its sway.

The strong grass roots consensus delineating the major concerns and aspirations of each community is too often diluted or subverted. The community leadership, elected council or other, act on the undermined consensus. Other factors have grown to play a role as well. They include nepotism, oligarchy, favoritism, a lack of information and deliberate misinformation. Aboriginal leaders, despite good intent, are too often viewed as acting on their own perceptions and serving their own interests. In effect, in many communities, there is a lack of unfettered grass roots consensus and it is this adulterated consensus that determines the actions required to better negotiate with governments. When the major concerns and aspirations identified are not clarified at the grassroots level, the diligent efforts of those who work to defend and promote the rights of Aboriginal peoples and communities are undermined. (See Appendix D)

## **Recommendation**

**That First Nations use their traditional democratic consensus Circle to better express concerns and aspirations and to propel positive change.**

## **WHO IS IN CHARGE?**

The 1996 report of the 1992 Royal Commission on Aboriginal Affairs stated, “Perhaps the most frustrating aspect of our research is the fact that numerous Acts are in existence dealing with specific issues applicable to specific bands that have rendered a comprehensive national consensus impossible to achieve.” The challenge is greater than that. Many thousands of Aboriginal peoples live off-reserve. The resources are not widely available to determine how they may best voice their concerns and aspirations. They often do have options to participate by returning to their communities, via electronic means or through organizations such as the Assembly of First Nations and the Congress of Aboriginal Peoples.

The concern of the Royal Commission respecting ‘comprehensive national consensus’, seems to have failed to consider the option that many issues do not require such a consensus. Some bands with superior leadership skills have developed a local comprehensive consensus on issues. Some bands have proceeded to meet the challenges head on and resolved them. For instance in 2002, the Grand Council of the James Bay Cree negotiated through and past the strictures of the *Indian Act* and signed an agreement with the Quebec government. This agreement gave them a share of the resource revenues derived from their traditional territories. The result is the replacement of the past uncertainties and a destructive lack of trust with a new era of improved mutual trust and faith. This agreement continues to increase prosperity and political and financial stability.

New community assets, such as schools, housing, medical clinics, community centres, businesses and resource development greatly benefit both the indigenous population and other Canadians. The leadership of Grand Chief Matthew Coon Come and others has clearly demonstrated that responsible leadership at the appropriate level of authority is a major contributor to mutual success.

### **Recommendation**

**That the Aboriginal leadership develops a consensus as to what is best resolved at the national level and at the band or treaty level with a provision for the national leadership to play a role in resolving each non-national issue.**

A building of a comprehensive national consensus as to what is best resolved at the national, local or treaty level would facilitate the resolution of many outstanding issues. Authority must be authoritatively represented. Shawn Atleo, National Chief of the Assembly of First Nations, in his opening address to the AFN's 2013 annual General Assembly stated, "First Nations must empower and support one another...this is a call to unity. It is a time to stand strong together." Early in life he was taught that his destiny is to, "serve his people and to protect the land." Echoing this theme, Joseph Quesnel, Frontier Centre for Public Policy, recently wrote, "The AFN also needs to resolve the lack of grassroots involvement in selecting the national chief." There is no doubt that if this issue was resolved, the authority of the national leadership would be greatly strengthened.

### **Recommendation**

**That First Nations elect the national leader by a process that utilizes a direct democratic methodology.**

National consensus has not yet been achieved because the Minister of Aboriginal Affairs and Northern Development has too great a control over First Nations people. They lack full freedom of decision-making. This state of affairs must by its very nature condemn the 'wards' to a life of restricted freedom. As did legalized slavery, it permeates the very being of every person who is subject to the dictates of the *Indian Act* and the Minister responsible for its operation.

### **Recommendation**

**The Government of Canada ensures that all freedoms available to Non-Aboriginals are equally available to Aboriginal peoples.**

## **ROYAL PROCLAMATION**

The Royal Proclamation of 1763 has been described as the Indian's "Bill of Rights" and no research of Aboriginal issues would be complete without consideration of this important document. At first blush, this appears to be a worthy, magnanimous document designed to ease the fears of First Nations people and protect their property rights and way of life. Nothing could be further from the truth. In fact, it was a quintessentially politically expedient document. Whatever the motivation for the Proclamation, it legitimized the Rights of First Nations people to lands and confirmed the many Treaties signed with individual Aboriginal nations.

At the formation of Canada, the Proclamation was incorporated into the *Constitution Act* of 1867. In 1982, Lord Denning offered the following legal opinion, “The Proclamation is as binding as if there had been included in the statute a sentence: ‘The aboriginal peoples of Canada shall continue to have all their rights and freedoms as recognized by the Royal Proclamation of 1763.’” Parallels can be drawn between the conditions in 1763 and 2013 where northern development, pipeline routes and environmental concerns are the contentious issues of our times.

Legislation that weakens environmental issues is of grave concern to First Nations people given their dependence on the land. When water is polluted (sic Grassy Narrows) and when fish are poisoned, the simple statements in the Proclamation pertaining to the protection of culture and way of life seem to be insufficient in today’s enlightened times. A Canadian Proclamation should contain language that recognizes our current understanding of environmental issues.

Canada is constitutionally required to uphold the terms of the Proclamation of 1763, but a new Canadian Proclamation would reflect 21<sup>st</sup> century language and issues. It would also help to educate the average Canadian and newcomers alike because they do not view Aboriginal issues in legal or constitutional terms.

### **Recommendation**

**That the Government of Canada reaffirms the Royal Proclamation of 1763 by issuing, in consultation with the Aboriginal peoples, a modern Canadian Royal Proclamation that reflects 21<sup>st</sup> century language and issues.**

### **INDIGENOUS CULTURAL AND HERITAGE CENTRE**

Review and analysis of Aboriginal issues through the written document, face-to-face discussions and Circle dialogue revealed an undercurrent, though unspoken theme, of a cry for respect. It became clear that there is a need for respectful recognition of Indigenous peoples, their culture and our shared history in the national dialogue. It was impossible to ignore the ethical and moral failures of successive governments and the intransigence of both government and First Nations leadership. They missed the many opportunities to resolve issues over the years. Many of these issues continue to confound us today. While the past can never be recaptured or rectified, an appropriate climate in which other pressing and difficult issues can be resolved should be created.

Aboriginal representatives made a submission for the development of ASINABKA-National Indigenous Centre, Victoria Island, Ottawa.<sup>1</sup> Victoria Island is located in the shadow of Parliament Hill in the Ottawa River. It has been from time immemorial an historical meeting place for First Nations people during their annual migrations. It is imbued with spiritual connotations for them similar to those felt by Canadians of European extraction for ancient sites,

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<sup>1</sup> Dr. William Commanda, “Proposal for a Special National Historic Centre at Asinabka/Chaudiere Falls, Ottawa Canada.” [www.circleofallnations.ca](http://www.circleofallnations.ca), 16/1/07.

such as Westminster Abbey, the Cathedral of Notre Dame and Canterbury. Documentation was viewed that defined the late William Commanda's vision for the development of the site on Victoria Island. William Commanda was a revered Elder and spiritual leader. He was the most senior representative of the Algonquin nation and carrier of the sacred Wampum Belts. He was held in high regard by both Aboriginals and Non-Aboriginals due to his exemplary life and his outreach to all Nations and people. The possibilities for the island's prospects were impressive, especially the architectural concept designed by Douglas Cardinal.

The proposed development will include a Museum showcasing Aboriginal culture and artifacts, outstanding architecture, a centre for preserving Aboriginal languages, a Spiritual and Educational Centre and a Meeting Place for Aboriginal peoples. If developed as proposed, it will enhance the appeal of the National Capital Region to both Canadian and foreign tourists and provide a meeting place for Aboriginal peoples from around the world. The following facts are enumerated in support of the project going forward.

- Victoria Island is on the traditional territory of the Algonquin people.
- The National Capital Commission has agreed in principle to the proposal.
- The City of Ottawa supported the original proposal.
- It will showcase the culture and history of First Nations, Inuit and Métis peoples as well as bring together people of many nations.
- It will be a fitting gesture to celebrate Canada's 150<sup>th</sup> Anniversary.

### **Recommendation**

**That Victoria Island be ceded to First Nations people for the express purpose of developing the site according to William Commanda's vision.**

### **Recommendation**

**That the Government of Canada commits financial resources to the development and construction of the site and structures so that it may be completed and dedicated on or before July 1, 2017.**

### **CIRCLE OF HOPE**

The PACT committee held two dialogue circles titled the Circle of Hope. They were set up as a communication tool to elicit the opinions of participants, drawn from the First Nations, the PACT Think Tank members and other Canadians, with a view to enhancing the understanding of all. The second circle consisted of a Blanket Exercise. It graphically demonstrated the reasons for the major plummet in the numbers of Indigenous people in the Americas since the arrival of the European. Several attendees, survivors of the residential schools in Canada, clearly brought home to all the damages imposed on First Nations people by that disgraced

system. The committee intends to continue to host such ‘circles’, to increase the knowledge and understanding of all. The incorporation of the Blanket Exercise into all grade level education programs is an initiative that would have a positive effect on all participants.

## **CONCLUSION**

The recommendations and sentiments in this report are believed to be widely shared across the Canadian spectrum. Numerous organizations and faith groups have openly expressed similar ones. The recommendations are ‘A Way Forward’ toward just and ethical resolutions of First Nations issues. They focus on education, economy, health, economic development and governance. Many of them have been made before in Acts, laws, treaties, agreements, papers and scholarly material. Repetition may be viewed as a sign of good judgment. If implemented, they should serve to bring First Nations people closer to the socio-economic standards enjoyed by other Canadians. They should ease the strain of prolonged negotiations between governments and Aboriginal peoples. Aboriginal peoples should hold much more sway over their lives and livelihood. Mutual respect is a powerful tool. The changes should bring Canada into compliance with the UN Declaration on the Rights of Indigenous Peoples.



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## APPENDIX A

### **Acts for which the Minister of Aboriginal Affairs and Northern Development has sole responsibility:**

- British Columbia Indian Cut-off Lands Settlement Act
- British Columbia Indian Lands Settlement Act (settlement of 1920)
- British Columbia Treaty Commission
- Canada-Yukon Oil and Gas Accord Implementation Act
- Caughnawage Indian Reserve Act
- Claim Settlements (Alberta and Saskatchewan) Implementation Act
- Cree-Naskapi (of Quebec) Act
- Department of Northern Affairs and Northern Development Act
- Eeyou Marine Region Land Claims Settlement Act
- First Nations Jurisdiction over Education in British Columbia Act
- First Nations Land Management Act
- First Nations Oil and Gas and Moneys Management Act
- Fort Nelson Indian Reserve Minerals and Revenue Sharing Act
- Grassing Narrows and Islington Indian Bands Mercury Pollution Claims Settlement Act
- Gwchin Land Claim Settlement Act
- Indian Act
- Indian Land Claims Agreement (1986) Act
- Indian Oil and Gas Act
- Indian (Soldier Settlement) Act
- James Bay and Northern Quebec Native Claims Settlement Act
- Kagnesatake Interim Land Base Governance Act
- Kelowna Accord Implementation Act
- Labrador Inuit Land Claims Agreement Act
- Land Titles Repeal Act
- Maanulth First Nations Final Agreement Act
- Mackenzie Valley Resource Management Act
- Micmaq Education Act
- New Brunswick Indian Reserve Agreement Act
- Nelson House First Nations Flooded Act
- Nisqga'a Final Agreement Act
- Northern Canada Power Commission (Share Issuance and Sale Authorization) Act
- Northwest Territories Act
- Northwest Territories Waters Act

## A Way Forward

- Nova Scotia Indian Reserves Agreement Act
- Nunavut Inuit Land Claims Agreement Act
- Nunavut Waters and Nunavut Surface Rights Tribunal Act
- Ontario Indian Lands Settlement Act 1924
- Pictu Landing Indian Band Agreement Act
- St. Peters Reserve Act
- St. Regis Islands Act
- Sahtu Dene and Métis Land Claims Settlement Act
- Saskatchewan Treaty Land Entitlement Act
- Sechelt Indian Bands Self-Government Act
- Songhee Indian Reserve Act
- Specific Tribunal Act
- Specific Claims Tribunal Act
- Split Lake Cree First Nations Flooded Land Act
- Territorial Lands Act
- Tlitcho Land Claims and Self-Government Act
- Tsawwassen First Nations Final Agreement Act
- Western First Nations Self-Government Act
- Western Arctic (Inuvialuit) Claims Settlement Act
- York Factory First Nations Flooded Lands Act
- Yukon Act
- Yukon Environmental and Socioeconomic Assessment Act
- Yukon First Nations Self-Government Act
- Yukon Surface Rights Board Act

## **APPENDIX B**

### **Acts for which the Minister Shares Responsibility with Parliament:**

- Alberta Natural Resources Act
- Arctic Waters Pollution Prevention Act
- British Columbia Indian Reserves Mineral Resources Act
- Canada Lands Survey Act
- Canada Oil and Gas Operations Act
- Canada Petroleum Resources Act
- Canadian Polar Commission Act
- Condominium Ordinance Validation Act
- Manitoba Natural Resources Act
- Manitoba Supplementary Provisions Act
- Natural Resources Transfer (School Lands) Amendment Act
- Railway Belt Act
- Railway Belt and Peace River Block Act
- Railway Belt Water Act
- Saskatchewan

## APPENDIX C

### ECONOMIC DEVELOPMENT

#### Issue

There remain too many legislative, historical, cultural and social barriers that impede Aboriginal peoples generally from improving their standard of living. Economic development is the primary means by which their living standards can be improved. Economic development issues and opportunities facing Canadian Aboriginal groups are extremely diverse and complex and their ability to address these varies greatly. There are compelling economic and social reasons to bring these communities into the mainstream of economic activity as soon as possible. However, any policy or program response must be tailored to fit a variety of circumstances.

A number of realities that bear highlighting are as follows.

- a) Aboriginal voices are calling for the means to share the lifestyle and benefits that most Canadians take for granted while at the same time retaining the more important aspects of their traditions.
- b) If the existing legislative framework and fragmented irregular approach remains in place, the growth and legitimate expectations of Canada's Aboriginal communities would require unsustainable levels of federal funding and involvement.
- c) The drawbacks of the *Indian Act* are well-known and while amendments have been made, major flaws remain in place. In economic development terms, the Act impedes ownership of land and resources on reserves such that the access to capital is severely restricted limiting development opportunities.
- d) Within the First Nations there are 600 plus communities of greatly varying size. Two-thirds have a population of less than 500 and about one-third of these have fewer than 100 people. They run from highly urban to extremely remote requiring an in-depth look at all to focus on their costs and needs.
- e) Reserves are Crown land. As such, access to capital is limited as providers are leery of investing in lands held in trust only.
- f) There are a number of boards and organizations which focus on governance, capacity, education and land ownership. They include Aboriginal members. However, their effectiveness is yet uncertain.

#### Legislative Review

A major focus of the *Indian Act* was land management. The Crown retains title to all reserve lands, "For the use and benefit of the respective bands for which they were set apart."<sup>1</sup>

<sup>1</sup>

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<sup>1</sup> Section 18 (1)

It also states, “The Governor in Council may determine whether any purpose for which lands in a reserve are used or to be used is for the use and benefit of the band.”<sup>1</sup> In short, the band does not own the land and cannot use it as collateral. If it so desires, the Crown can also take the reserve land for some other public purpose.<sup>2</sup>

A band member can be granted a Certificate of Possession for land on the reserve by the band Council.<sup>3</sup> Granting of the Certificate is subject to the approval of the Minister, Aboriginal Affairs and Northern Development. The member can only pass the land to another band member<sup>4</sup> or it reverts to the band for reallocation. Individuals have no access to capital based on land ownership. Others provisions are as restrictive. For example, unless approved by a departmental official or the Minister grants a band an exemption<sup>5</sup>, the band cannot benefit financially from goods produced. Bands are responsible for the upkeep of roads, bridges, ditches, water supplies and maintaining the health of reserve residents. Since bands have limited latitude for raising income, the federal government must subsidize the costs. Several pieces of federal legislation have been developed to circumvent limitations of the *Indian Act* without negating the Act entirely. A useful review of legislative changes was prepared by the Library of Parliament<sup>6</sup>.

The issue of land management has long been recognized and the *First Nations Land Management Act* (1999) was passed to address it. Those First Nations that develop their own land code, as described in this Act, become the owners of the reserve land they occupy. This gives them authority over development, conservation protection, management, use and possession of the land. All of the provisions in the *Indian Act* related to land, resources and environment cease to apply in these cases. Currently, 76 First Nations are signatories to this Act but due to insufficient funding, an additional 65 are on the waiting list<sup>7</sup>. While this Act transfers control of the reserve land to the band, it does not provide for individual band member ownership. First Nations cannot benefit from the natural resources on their land unless an environmental protection regime and an environmental assessment process are established and that are acceptable to the Minister.

The infrastructure on reserves is deteriorating and cannot be adequately maintained by the current cash-based model used by the federal government. To address this, the *First Nations Fiscal and Statistical Management Act* was enacted.

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<sup>1</sup> Section 18 (1)

<sup>2</sup> Section 35

<sup>3</sup> Sections 20 (1) and (2)

<sup>4</sup> Section 24

<sup>5</sup> Section 32

<sup>6</sup> The Indian Act, Library of Parliament, PRB 09-12E, Mary C. Hurley, Social Affairs Division, November 23, 2009.

<sup>7</sup> Addressing the Barriers to Economic Development on Reserve, a report by the National Aboriginal Economic Development Board, April 2013.

It created four fiscal institutions to support First Nations in accessing tools to attract private investment and promote economic development. They are the First Nations Financial Management Board, the First Nations Tax Commission, the First Nations Finance Authority (FNFA) and the First Nations Statistical Institution.

The primary purpose of these institutions is to help First Nations communities develop a financial management structure and levy taxes which can be used to securitize bonds. The bonds are issued by the FNFA and used to build community infrastructure, a prerequisite to economic development. In order to take advantage of this Act, First Nations must request to be included in the Schedule to this Act through Order-in-Council. To date, 95 First Nations are listed.<sup>1</sup>

In a 2012 report, the NAEDB made a number of recommendations for improvements to the Act and to the institutions it created.<sup>2</sup> Nine members of the Board are Aboriginals and Order-in-Council appointments. These recommendations have not yet been implemented. If approved, they would require competent and experienced people in the areas of community planning, creating partnerships, financial controls, communications and regulatory oversight. First Nations people would require considerable mentoring, interim support and ongoing training to be able to take full advantage of these and other mechanisms that foster and support development.

Of particular relevance to economic development are the calls for greatly enhanced funding for the FNFA. The additional funds are required for the development of community plans. They include infrastructure projects, steps to increase the capacity to develop and administer long-term financial plans, infrastructure partnerships and asset management.

Some First Nations could possibly develop large-scale commercial or industrial projects, but until 2006, such projects were not subject to provincial regulation and the reserves were under federal jurisdiction. In 2006, the *First Nations Commercial and Industrial Development Act* was enacted. This Act allowed the federal government to incorporate, by reference, provincial rules and regulations that apply to similar projects outside of reserves. This provides greater certainty for developers, investors and the public. The process remains somewhat cumbersome and the resulting regulations are generally project specific. However, a few First Nations have applied this Act successfully.

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<sup>1</sup> Addressing the Barriers to Economic Development on Reserve: A Report by the National Aboriginal Economic Development Board, April 2013.

<sup>2</sup> Recommendations on Financing First Nations Infrastructure, National Aboriginal Economic Development Board, February 8, 2012

## Legislative Review

The Royal Commission report included a total of 52 recommendations covering all aspects of economic development. They incorporate steps required for an orderly transition to Aboriginal land ownership, capacity development, integration into all resource-based projects and institutional development, e.g. Aboriginal capital corporations, venture capital entities and a national Aboriginal development bank. Funding aspects of both large and small enterprises are addressed as are topics of employment development, education and training and the creation of social programs, including child care. These support the efforts in economic development. The recommendations were never implemented, at least not in any concerted manner. The underpinnings of the report, the conditions and statistics provided and the rationale for taking the very broad and comprehensive approach proposed, all still apply in 2013.

In its most recent Annual Report,<sup>1</sup> the Assembly of First Nations (AFN) argues for a clear plan to replace the *Indian Act* following the approach articulated in the Royal Commission report and that is consistent with the UN Declaration of the Rights of Indigenous peoples.

The major impetus for this change is to get greater control over governance, education, health and economic development. Specific recommendations were made by the AFN in its pre-budget submission to the government in August, 2011<sup>2</sup> and in a previous background paper.<sup>3</sup> The aims of the economic opportunities component were fairly modest – increase employment levels by 30% over five years, increase employment income and bring broadband access to 250 more communities. The regulatory regime of the *First Nations Commercial and Industrial Development Act* was also to be made faster and more efficient. However, only \$200 million of the \$5 billion commitment was identified for these objectives.

## Land Ownership

A major impediment to all economic development is the lack of land ownership. Only those groups that have extricated themselves from the strictures of the *Indian Act* have made real progress. This situation and requirement is clearly stated in, *Beyond the Indian Act: Restoring Aboriginal Property Right*.<sup>3</sup> The authors propose that new legislation, a *First Nations Property Ownership Act*, would clarify land ownership and provide a more certain environment for potential investors. Outside people or organizations could be allowed to own reserve land. To avoid the loss of such land, a stipulation could be included that the land reverts to First Nations land subject to First Nation laws.

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<sup>1</sup> Assembly of First Nations Annual Report 2010/11, *It's Our Time: A Vision for the Future*.

<sup>2</sup> Assembly of First Nations submission to the House of Commons Standing Committee on Finance, Structural Transformation & Critical Investments in First Nations on the Path to Shared Prosperity, August 12, 2011.

<sup>3</sup> Tom Flanagan, Christopher Alcantara, André Le Dressay, "Beyond the Indian Act: Restoring Aboriginal Property Rights." McGill-Queen's Press, 2010.



## Lessons from the James Bay Cree

The experience from the James Bay Cree over the past 40 years offers many lessons on both what not to do and on what can be achieved.<sup>1</sup> The James Bay Cree learned that huge hydro-electric projects were being proposed that would inundate enormous areas of their lands. Since they had not been consulted on the project, they initiated legal action. They were not successful but this did precipitate negotiations that culminated in the 1975 James Bay and Northern Quebec Agreement.<sup>2</sup> This agreement provided for funding, addressed social and economic development and stipulated protection for the environment. In 1981, a federal review<sup>3</sup> showed that neither level of government lived up to its commitments.

This lack of commitment prompted the Cree to highlight their situation, conditions and objectives on the international stage, especially through the UN. In 1990, the contacts that evolved through these efforts were instrumental in convincing New York and other states to back out of tentative contracts for electricity with Hydro-Québec. This stopped the development of Phase II of the James Bay hydro-electric project.

Both the province and the Cree wanted development to proceed. In 2002, a new agreement was signed. This transferred responsibility, for the areas of provincial jurisdiction stipulated in the 1975 Agreement, to the Cree, defined a revenue stream to handle those commitments. It also built an additional revenue stream based on present and future development. Perhaps most importantly, this Agreement incorporates many important recommendations from the 1996 Royal Commission. It gives the Cree the direct involvement in new development by requiring their prior consent before projects can proceed.

In 2007, the Government of Canada signed a new agreement with the Cree Grand Council<sup>4</sup>. This agreement aims to resolve many of the claims and grievances from the 1975 Agreement and transfers most of the areas of federal responsibility to the Cree with appropriate funding. There are several other agreements, amendments and offices or joint bodies that have been and continue to be part of the evolution of the development of the Cree of Northern Quebec. It is a story of innumerable steps forward and back over much too long a period of time. However, the result has been very significant improvements in the living conditions, employment, self-government and local involvement in economic development. This experience is worth examination.

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<sup>1</sup> Michael Gnarowski, General Editor, "I Dream of Yesterday and Tomorrow: A Celebration of the James Bay Cree." Golden Dog Press, 2002.

<sup>2</sup> James Bay and Northern Agreement, signed in 1975 by the Cree and Inuit of Northern Quebec, Province of Quebec, Government of Canada, Hydro-Québec, James Bay Development Corporation and the James Bay Energy Corporation, and ratified by Canada and Quebec, 1977.

<sup>3</sup> James Bay and Northern Quebec Agreement Implementation Review. Indian Affairs and Northern Development, 1982.

<sup>4</sup> *Agreement Concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee, ratified by the Cree and the federal government in 2008.*

## Energy Aspects

Any ideas, plans or proposals for enhancing or improving the economic and social conditions of our First Nations, Métis, and Inuit peoples will be hugely affected by the availability and cost of electricity and transportation fuels. For most Canadians, access to adequate and relatively affordable energy is not an issue but for northern and remote communities, energy supply is a critical factor.

A recent analysis of the efforts by Aboriginal groups across Canada to develop their own clean energy sources,<sup>1</sup> highlights the fact that about 300 such communities are not serviced by an electrical grid. They are dependent on diesel-powered generators for their electricity year round. The cost of the fuel and the transport by road or air is huge. The environmental implications are not only entirely negative but potentially extremely costly in terms of health impacts and clean up requirements.

There are far more approved and proposed clean energy projects involving Aboriginal groups than most Canadians realize. These projects are mainly small and medium sized hydro developments but some larger ones are being considered. As well, biomass, solar and wind turbine projects are up and running or being developed. However, Henderson,<sup>2</sup> clearly articulates the need to proceed cautiously and deliberately with any form of energy development to address the capacity issues that face all of the Aboriginal groups. He argues convincingly that these groups must be involved in the development of such projects from the beginning. In order to obtain their support and approval, this requires the capacity to define current and future energy needs, to develop appropriate plans, to negotiate funding and development partnerships and to communicate the plans, approach, benefits and impacts to the people affected. Building such capacity will take time and money. Henderson counsels a systematic approach that incorporates understanding the specific issues and requirements, the options available to reduce or limit energy demand, the actions needed to use energy more efficiently and the steps to be taken to install more efficient infrastructure to ultimately better and cleaner energy systems.

This approach is proposed for any energy project involving Aboriginal groups including those that are on the grid or that have ready access to energy now. The energy usage is growing in native communities by 2% to 5% per year and the population is increasing at a faster rate than in the rest of Canadian Society. It is therefore imperative for all the Aboriginal groups to develop their capacity to plan, finance, install and operate such energy facilities that will bring economic and social benefits on an on-going basis.

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<sup>1</sup> Chris Henderson, "Aboriginal Power, Clean Energy and the Future of Canada's First Peoples." Rainforest Editions, 2013.

<sup>2</sup> Ibid.

## A Way Forward

It is also a reality that clean energy projects will be appropriate or feasible for only a portion of the Aboriginal communities that consider such developments. Henderson estimates that such projects would be possible for 20% to 40% of the northern and remote communities that now rely on diesel-powered generators. Presumably, the rest will have to continue to depend on this method and take whatever steps they can to enhance the efficiency of their systems until such time as reliable and affordable alternatives are developed. However, with the significant number of clean energy projects realized to date, it would be useful to consolidate the lessons learned and the best practices developed for others to consider.

There will be some communities that have few options, are too far from any electrical grid system, that have no rivers on which small hydro facilities are feasible and that have poor conditions for either wind turbines or solar arrays. Besides diesel-powered generators, new and alternative possibilities should be considered.

## APPENDIX D

### CONSENSUS OF CIRCLES

What individuals and communities think and believe is necessary to create and support effective leadership. The increasing diversity and mobility of people, coupled with misinformation provided by the burgeoning social media and other information delivery vehicles, has made precise determination of what people think more difficult. Leaders must rely on opinions as much as on information. Poll results based on questions formulated by strangers are always qualified by a statement, such as “accurate 18 times out of 20 within a margin of three percentage points.”

The use of the traditional Circle offers the whole community, the grassroots, the opportunity to raise and clarify issues otherwise not fully considered and to formulate their own questions while democratically and feely expressing their hopes and aspirations. The result is a better-informed community and leadership.

The Circle Process does vary from community to community but the principles of inclusiveness and freedom of expression are strong common values. It is a traditional practice by some not to permit note-taking during proceedings. It is suggested that this may be modified so that those who will be representatives to the Remedial Policies and Reform Circle may be permitted to do so.

The two tables below are only guidelines intended to demonstrate this process as it may be practiced in current circumstances.

Table 1: Major Concerns and Aspirations Grand Circle

1. Establish a Grand Circle to determine the ‘Major Concerns and Aspirations’ of the community.
2. Appoint one or more representatives to compile a priority list of concerns and aspirations.
3. The Grand Circle representative(s) then carry the priority list of concerns and aspirations to the Remedial Policies & Reforms Circle.

A Way Forward

MAJOR CONCERNS AND ASPIRATIONS GRAND CIRCLE			
Participants	Major Concerns & Aspirations (in order of priority)	Findings: Priority List - Concerns	Findings: Priority List - Aspirations
On-Reserve Status Indians			
Off-Reserve Status Indians			

Table 1: Major Concerns and Aspirations Grand Circle

Table 2: Remedial Policies and Reforms Circle (necessary and feasible)

Establish the Remedial Policies and Reforms Circle. It may include the following

- Representatives from the Grand Circle
- Respected traditional leader
- Representative(s) from the elected Council
- Heredity Chief
- Such other persons as the foregoing may collectively appoint to provide additional knowledge and experience.

This creates a grassroots and political forum that encompasses a wide range of knowledge and tradition. The purpose is:

- a) To review the Findings from the Major Concerns & Aspirations Circle;
- b) To prepare responses to the Findings of the Major Concerns & Aspirations Circle;
- c) To draft a 'Findings Discussion Report';
- d) Optional - to invite representatives from nearby or adjacent communities to provide input on mutual matters of concern;
- e) To prepare the Final Findings Report;
- f) To submit the Final Findings Report to the leadership of the Assembly of First Nations and others as deemed appropriate.

## A Way Forward

The AFN leadership may produce a National Findings Report after considering all of the input received from the above process. Use the ‘Findings’ as a reference to build principled good faith discussions as ‘Nations within Canada’.

REMEDIAL POLICIES AND REFORMS (necessary and feasible)						
Participants	Indian Act & Treaties	Practices & Traditions	Provinces & Territories	Constitution of Canada	Relations with near-by communities & corporate interests	Other
AFN CAP Other						

Table 2: Remedial Policies & Reforms Circle (necessary and feasible)