

Respectfully Submitted



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POLICY REPORT for Parliamentarians Courtesy of the Association for Reformed Political Action (ARPA) Canada

La version française de ce document est aussi disponible en prenant contact avec ARPA aux coordonnées ci-haut.

Help That Hurts

The plight of Canada's First Nations was forced into the spotlight in late 2011 as the media descended on the small community of Attawapiskat to broadcast pictures and stories of third-world housing conditions. MP Charlie Angus (who represented the riding for seven years) joined in condemning the government of Canada: "What we are witnessing is the inevitable result of chronic under-funding, poor bureaucratic planning and a discriminatory black hole that has allowed First Nations people to be left behind as the rest of the country moves forward," wrote Angus.¹

For over a century Mr. Angus' proposed solution of more money and government assistance has characterized Canada's response to the multitude of problems facing Canada's Aboriginal peoples. Yet their health, housing, education, employment, and highly disproportional presence in the criminal justice system (see Chart 1)² testify to the reality that money and bureaucracy may appease political interests in the short term, but they certainly have failed to improve lives long term. If we truly care about the wellbeing of the Aboriginal peoples we need to seriously re-examine our approach.

Beginning with the 1876 *Indian Act* and continuing until the present, Canadian Aboriginal policy has focused on quick-fix political solutions, failing to see that we are only exacerbating the situation. Our confused secular humanist landscape claims to oppose discrimination and inequality and yet clings to policies that: 1. justify racial segregation (through reserves); 2. maintain economic barriers (making it difficult for Aboriginals to meaningfully participate in our economy); and 3. create a separate justice system with different sentencing standards. Canadian policy makers fail to see the absurdity of being one of the only countries in the world that promotes laws and policies based strictly on ethnicity.³

What is the answer? We respectfully submit that three essential ingredients for effective Aboriginal affairs policy are **opportunity, responsibility, and forgiveness**. These concepts provide much-needed parameters and vision to policy-making decisions. From these guidelines flow our specific policy recommendations, chief among which is to make it possible for bands to opt out of the *Indian Act* in favour of a municipal style of governance. These recommendations are premised on the condition that the onus is on Aboriginal peoples themselves to take hold of the new opportunities that arise. These changes should not be required or forced. Change will take place only when the desire for change comes from the Aboriginal peoples.

The title of this publication is based on Romans 13: "Everyone must submit himself to the governing authorities, for there is no authority except that which God has established... Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor."

Chart 1: Canada's Aboriginal Population Profile²

Unemployment on reserves: 4 times higher than national rate

Youth incarceration rate: 8 times higher than non-Aboriginals

40% (on reserve) attain high school certificate

Fewer than 10% of students (on reserve) graduate in 12 years

Pregnancy rate for girls under 15: 18 times higher

Life expectancy for Status Indians: 7 years lower than the Canadian average

Children under 15 living in married-couple family: < 50%

Aboriginal Affairs

June 2012

Ingredient #1: Equal Opportunity

Current Aboriginal Affairs policy makes it very difficult for Aboriginals to take hold of the opportunities from which other Canadians benefit daily. The most inhibiting law that shackles the Aboriginal community is the massive *Indian Act*. Shawn A-in-chut Atleo, National Chief of the Assembly of First Nations hits the nail on the head (see quote on right).⁴ The *Indian Act* controls their lives from cradle to grave and it has done so for far too long.

Property rights are essential for economic productivity and thereby have a direct impact on employment rates, which in turn impacts the living standards, housing conditions, health, and morale of an entire community. Yet the reserve system, as legislated in the *Indian Act*, forbids private property ownership. Reserves are owned by the Crown and controlled by the band council. The land can't be sold. It can only be leased with permission of the federal government. And mortgaging it is very difficult because it isn't owned fee-simple, a freedom most Canadians take for granted.⁵ Without the ability to mortgage property, starting a business becomes very difficult.

If a reserve collectively decides to be industrious and to use their reserve land entrepreneurially, it has to be approved by Aboriginal Affairs and Northern Development Canada. Although band members are given certificates of possession, leases, and landholdings within reserves, none of this compares with the opportunities associated with private property. The *Indian Act* is the epitome of constrictive paternalism.

In 1999, the Federal Government passed the *First Nations' Land Management Act (FNLMA)*, which allows bands to opt out of the large parts of the *Indian Act* pertaining to land rights. The current government committed \$20 million to promoting this, and it seems to be paying off. The interest level has spiked to the point where 60 nations are now operating under the *FNLMA* regime.⁶ The interest is also due to a 2009 study by the accounting firm KPMG which analyzed the bands then living under the *FNLMA* regime and found that:

*"Many of the operational First Nations reported a 40 per cent increase in new business overall by band members and a 45 per cent increase into different types of businesses, including supplier and spin-off businesses. These First Nations attracted approximately \$53 million in internal investment and close to \$100 million in external investment... More than 2,000 employment opportunities had been generated for band members and more than 10,000 jobs for non-members. ...This has significantly reduced dependence on social programs and pumped hundreds of millions of dollars into local economies."*⁷

Yet, as optimistic as the federal government is about the *FNLMA*, the fact remains that the title of the land is still held by the Crown, making mortgages difficult to obtain and off-reserve property sales illegal. What the *FNLMA* teaches us is that there is a hunger among Aboriginals to be emancipated from the *Indian Act*. Canada, a nation built on the premise of equality, should allow complete freedom for bands that choose to take on the responsibilities associated with leaving the *Indian Act*. Nothing short of fee-simple land ownership will suffice. This radical move should not be mandated. It should be up to the bands to decide if they want to avail themselves of this freedom. Those that do will likely serve as an example to the others, who will be sure to notice the short and long term benefits. Private property will not only allow for wealth creation and employment but also instill stewardship and responsibility. Without private property, is it any wonder why housing conditions would deteriorate to the conditions seen in Attawapiskat? The same would be true for any community structured this way.

Shawn A-in-chut Atleo

National Chief, Assembly of First Nations

"The Indian Act was created in 1876 to control our lives, our lands and our governments. It didn't work then and it doesn't work now. The Act treats First Nation citizens as "wards of the state" — like children who need their decisions made for them. The Indian Act controls us from cradle to grave. When we are born, the act lets the government decide who is and is not an Indian. When we die, the act gives the government control over our wills and estates. In fact, it gives the government power over pretty much everything in between. It allowed the government to apprehend our children and place them in residential schools. It holds our political and economic development hostage to an ever-growing and burdensome bureaucracy at Indian Affairs.

*This is why many First Nations want to break free from the Indian Act to create a new era of governance where they are responsible and responsive first and foremost to their own people."*⁴

Removing the Indian Act – Three Options

The willingness to eradicate the *Indian Act* is broad and extensive, but that doesn't mean that there is a consensus on what to replace it with or how to remove it. In January 2012, Prime Minister Harper stated, "Our government has no grand scheme to repeal or unilaterally rewrite the *Indian Act*. After 136 years, that tree has deep roots. Blowing up the stump would leave a big hole."⁸ The current federal government seems intent on a slow incremental approach that would give more freedom to those on reserves. At this rate, it will be a very long time before the *Indian Act* is gone. What are the options?

Option 1: Slow and Incremental Approach – Increasing funding for the *FNLMA* regime, crafting legislation to improve accountability of band finances, and promoting fairness in band elections are positive initiatives that deserve commendation. However, these are relatively small steps to take given the devastating statistics in Chart 1 (above) and the desire shown by almost all stakeholders to make significant changes. These steps taken by the current government in themselves will not necessitate further steps to phase out the *Indian Act*; the temptation will be to allow the status-quo to continue as it has for 136 years. For those who accept the premise that the *Indian Act* is fundamentally flawed and accept that we must work towards its elimination, this approach is insufficient.

Option 2: Legislation to Scrap the *Indian Act* – Member of Parliament Rob Clarke, himself an Aboriginal Canadian, is rumoured to be introducing a private member's bill that would scrap the *Indian Act* completely. Details are short on what will replace it. A move this radical may be rightly motivated, but it raises the question how generations of Aboriginal Affairs policy can be struck aside overnight. Attempts have been made through the past four decades to reform or repeal the *Indian Act*. A common ingredient in the failure of these efforts has been the lack of buy-in from Aboriginal leaders, even if a majority of Aboriginals supported the changes.⁹ It is crucial that the change comes from the Aboriginal peoples themselves, band by band, and that it is not mandated from the top down.

Option 3 [Recommended]: Phasing Out the *Indian Act* – Bands could be given the option of opting out of the *Indian Act* completely and accepting the privileges (e.g., private property) and responsibilities (e.g., taxes) that come with it. Likely some bands will embrace this and many won't. Over time, however, we will be able to see the massive impact and benefits this will have on those bands that opted out. The others will then have to decide if they also want to seize the same opportunities and responsibilities. It may be wise to set a threshold (e.g., 80 per cent) after which the remaining bands would have to follow suit within an established amount of time.

Governance Beyond the Indian Act – Three Options

If a band opts out of the *Indian Act* there must be a new model of governance available for them.

Option 1: Replace with Nisga'a Model of Self-Governance – The Nisga'a land claim was historic in that, among other things, it granted a level of authority to the Nisga'a nation that goes far beyond municipal and even provincial governments. The Nisga'a were given authority over taxation, justice, health care, and other matters that the Canadian Constitution specifies are within the domain of the federal and provincial governments. Aside from questions about the legality of such a move, a much bigger concern should arise from the fact that the treaty only amplifies the segregation of Aboriginal peoples, allowing them to operate under a different order of governance than all other citizens of Canada. In many ways it is a glorified reserve system. It may look attractive on the surface but the reality of having over 600 separately functioning political entities is a bureaucratic nightmare. However, one notable achievement is that the Nisga'a are now allowed to convert their land to fee-simple property.

Option 2: Treat Aboriginals the same as all other Canadians – The 1969 "White Paper" by then Indian Affairs Minister Jean Chrétien was premised on the statement that "the course of history must be changed." "To be an Indian must be to be free – free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians."¹⁰ The White Paper proposed to not only scrap the *Indian Act* but also end the land claim process and integrate Aboriginals into society just like all other minorities. On the one hand, the White Paper is a breath of fresh air in that it proposes what it truly believes is in the best interests of Aboriginals and all Canadians. However, beyond the reality that it would never stand under

Charter scrutiny today, the most serious defect is that of ignoring treaty responsibilities; the White Paper was a forfeiture of a promise that Canada made to many Aboriginals. It is our duty to keep our word and to resolve outstanding claims while honouring existing ones. Wiping the slate clean may be convenient, but it is fundamentally unjust.

Option 3 [Recommended]: Municipal-Style Government Under Federal Jurisdiction – Replacing the governance structure in the *Indian Act* with a municipal style of government would allow bands to continue to govern matters unique to their peoples. It would come with the freedom of private property, and the responsibility of fair elections, fiscal accountability, and taxes (see Sechelt Indian Band example on right).¹¹ While encouraging cultural distinctiveness, this style of governance would still be within the context of the broader Canadian nation, including the provincial and federal governments. As there are hundreds of municipalities, likewise there would be the addition of hundreds of Aboriginal communities. Although other municipalities fall under the jurisdiction of provincial governments, it only makes sense to put Aboriginal governments under the federal government, in light of the past century of Aboriginal Affairs being under the oversight of the federal government.

Sechelt Indian Band – The Sechelt, who live on over 1,000 hectares of land north of Vancouver, lobbied for a system of self-governance for 15 years. In 1986 the *Sechelt Indian Band Self-Government Act* was passed in Parliament. It gave the Sechelt the freedom to buy and sell property, invest, borrow, create its own membership code and accountability standards, pass laws pertaining to education, health services, and local taxation, and even possess fee-simple title to the land. It is seen as a municipality under British Columbia provincial legislation.¹¹

Just as the federal government has devoted a substantial amount of time, money and effort to promote the *First Nations' Land Management Act*, a similar effort would be needed to promote the merits of municipal-style governance to the bands.

What ought not to be an option is maintaining the status quo, that is, a system built on bureaucracy, handouts, and irresponsibility. Decisive steps need to be taken, and soon. As an Ottawa Citizen editorial noted, “The problems that face many Aboriginal communities are extreme. They cannot be solved without fundamentally altering the relationship between First Nations and the federal government. This is no time for political timidity.”¹²

Ingredient #2: Equal Responsibility

Democracy can function, and a nation can flourish, only when members uphold their individual responsibilities for the civic good. The responsibilities expected and demanded of the general population must also be expected of Aboriginal Canadians. Absolving Aboriginals of equal responsibility may be the expected norm, and may even be welcomed by those who will benefit, but it only exacerbates the inequality and increases the probability of harm and corruption that are bound to affect any political structures that lack transparency and accountability.



Figure 2: Base spending, not including indirect costs, such as health and justice, which are proportionally much higher for the Aboriginal community. The annual budget for the Department of Aboriginal Affairs alone is \$6,900,000,000.¹³

Fiscal Transparency – Unfortunately, the combination of the problem-filled *Indian Act* and over \$10 billion given by the federal government annually to Aboriginal programs and services is a sure-fire recipe for corruption and abuse. The *Indian Act* requires these funds to be channeled through the bands, many of which lack accountability and transparency. It took a non-profit organization, the Canadian Taxpayers Federation (CTF), to open the public’s eyes to this. The CTF has been working with band members to publicize the amount of money going to their chiefs. They discovered that “in 2008-09 approximately 50 reserve politicians made more than the Prime Minister of Canada. Approximately 160 reserve politicians made more than their respective provincial premiers.”¹⁴ Although the average population on a Canadian reserve is 1,142, there are an astounding 634 reserve politicians who make a taxable equivalent of over \$100,000.¹⁵

Transparency often leads to accountability. As these facts became public, more band members spoke up about their local situations. At least one, Janette Peterson, a member of the Annapolis Valley Reserve in Nova Scotia, went so far as to run for office herself on a pledge of ending the corruption. In her community of 112 residents, the chief and councillors were raking in massive six-figure salaries. She successfully ousted the chief and now allows band members to determine her salary.¹⁶ The transparency that came from the CTF report, combined with the electoral accountability made possible in that band was not enough. It took a determined individual to change things for the good of all on the reserve.

Seemingly in response to the public outcry, and over a hundred years overdue, the government has introduced Bill C-27, an act “to enhance the financial accountability and transparency of First Nations by requiring the preparation and public disclosure of their audited consolidated financial statements and of the schedules of remuneration paid by a First Nation... to its chief and each of its councillors...”¹⁷ Transparency and accountability of this nature are long overdue. Those who cry foul or argue that this is a form of paternalism miss the point that paternalism comes from accepting the money to begin with, not the accountability that must go along with all government assistance. Excluding some Canadians from the protection provided by government transparency because of their race must end.

But Bill C-27, on its own, is a very small step. It adds more bureaucracy to a system filled with paper shuffling. Left on its own, the bill implicitly suggests that the answer is still money – as long as the money is fairly distributed. The reality is that we need a much more meaningful answer than that. Having all finances channelled through band councils, many of which function with little accountability, must be changed.

Fair & Democratic Elections – Another good step by the current federal government is the *First Nations Elections Act (Bill S-6)*. The current system, again as stipulated by the *Indian Act*, has numerous problems including terms that are too short, a ballot system that is vulnerable to abuse, an ineffective appeals system, and a lack of offenses and corresponding penalties.¹⁸ The proposed *Elections Act* suggests changes that should be basic to any democracy. In addition to increasing the term of office to four years, the bill puts limits on fees to run as a candidate, imposes penalties for offenses, and provides regulations for mail-in ballots, advance polls, and recall.

Income Taxes & Sales Taxes – The *Indian Act* mandates that Aboriginals on reserve should be exempt from income taxes and sales taxes. This is not required by a treaty or court. Like all legislation, it can be repealed. Tax exemption results in another motivation to keep Aboriginals on reserves, segregated from the rest of Canada. It has long been established that reserves have a detrimental impact on education, health, life expectancy, suicide rates, and employment. If the tax exemptions are motivated by a desire to give Aboriginals on reserves a break, this can be done in a much more effective way that promotes long-term solutions to their living conditions (such as opting out of reserves, allowing private property, and promoting industry). If Aboriginals who live off reserve have to pay taxes, the same should be true for all Aboriginals.

Ingredient #3: Remorse and Forgiveness

Many Canadians, along with our Supreme Court, have accepted the proposition that having Aboriginal ancestry entitles someone to a status of victimhood. With this reasoning, every Canadian can point to their past to get the same label. Historian Alan Cairns has explained how history can become adversarial when it is used to “search for a new past,”¹⁹ that is, an account of the past that will support the group's current political goals. There is no doubt that Aboriginals in Canada have a very difficult history. And there is good reason why the past has to be remembered and understood. But as long as we view Canada's Aboriginals only as victims and nothing more, we will never be able to move forward. If Canada's Aboriginals are going to be seen as more than victims there must be acknowledgement of wrong, apology, forgiveness and new direction.

For Canada to move forward we need to acknowledge that the struggles many Aboriginals are facing are not only materialistic. Like all humanity, spiritual brokenness is at the root. As Steve Corbett and Brian Fikkert identify in their book *When Helping Hurts*, the ultimate goal of poverty alleviation is not to see our standards of wealth or prosperity applied to others but “to see people restored to being what God created them to be: people who understand that they are created in the image of God with the gifts, abilities, and capacity to make decisions and to effect change in the world around them; and people who steward their lives, communities, resources, and relationships in order to bring glory to God.”²⁰ Granted, it is not the role of civil government to promote spiritual restoration. But this point still has to be made because government needs to

acknowledge that government itself is not the ultimate answer. It must make room for Aboriginal peoples, and all Canadians, to take their own steps towards healing and flourishing.

The federal government does have a responsibility to show remorse for actions it has taken that have hurt the Aboriginal peoples. On June 11, 2008 Prime Minister Harper stood up in Parliament and said, “The treatment of children in Indian Residential Schools is a sad chapter in our history... Today, we recognize this policy of assimilation was wrong, has caused great harm, and has no place in our country. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.”²¹ These are genuine words of remorse and apology but when we look at the broader harms over the past two centuries, including those caused by the *Indian Act*, it is evident that we need to apologize for far more than residential schools. Further, a true apology is accompanied by a change in direction. Moving away from the *Indian Act* and dealing with land claims in a timely manner demonstrates a repentant heart on the part of the government and people of Canada.

Our government should require accountability and transparency of Aboriginal leadership, allow bands to opt out of the *Indian Act*, settle land claims quickly and in good faith, and demonstrate true remorse for past wrongs. But moving forward also requires forgiveness by Canada’s Aboriginal peoples. This is a spiritual act, not a political one. The Aboriginal organization *Gathering Nations* understands this well: “Expressing sincere forgiveness founded on the unconditional love of our Father and Creator is the key to unlock greater doors to healing, and a strong and prosperous future that is right for all people of Canada... Forgiveness brings renewed hope and life to our common desire for an improved vision of a shared future in our nation.”²²

There is much that we can hope for. Both through political decisions and personal choices, Canada’s Aboriginal peoples can embrace a bright future filled with healing, freedom, opportunity, health, wealth, education, and peace. We are not going to get there by continuing with the status quo. We are looking to you for courageous leadership.

Respectfully submitted,

The Association for Reformed Political Action (ARPA) Canada

Note: We have a lot to learn about this matter. We welcome your feedback, concerns, and requests for research. Email mark@arpacanada.ca or call 1-866-691-2772.

¹ Charlie Angus, “What if They Declared an Emergency and No One Came?,” *Huffington Post*, November 21, 2011. Available at http://www.huffingtonpost.ca/charlie-angus/attawapiskat-emergency_b_1104370.html?ref=tw#s487212.

² Gordon Gibson, “A New Look at Canadian Indian Policy: Respect the Collective-Promote the Individual,” *Fraser Institute*. 2009. pp 7-9.

³ Tanis Fiss, “Road to Prosperity: Five Steps to Change Aboriginal Policy,” *Canadian Taxpayers Federation Centre for Aboriginal Policy Change*. September 2005. Available at <http://taxpayer.com/sites/default/files/downloadable/99.pdf>. p. 1.

⁴ Shawn A-in-chut Atleo, “Breaking Free of Tattered Indian Act,” *Toronto Star*, November 18 2010. Available at <http://www.thestar.com/article/892557--breaking-free-of-tattered-indian-act>.

⁵ Fiss, *supra* note 3, at 15.

⁶ Aboriginal Affairs and Northern Development Canada, “The Harper Government Welcomes 18 First Nations to the Framework Agreement on First Nation Land Management “ April 13 2012. Available at <http://www.aadnc-aandc.gc.ca/eng/1334322825667>.

⁷ Aboriginal Affairs and Northern Development Canada, “Frequently Asked Questions - First Nations Land Management Regime.” Available at <http://www.aadnc-aandc.gc.ca/eng/1327092399232>.

⁸ Laura Payton, “Voices from the Crown-First Nations Gathering,” *CBC.ca* January 24 2012. Available at <http://www.cbc.ca/news/politics/story/2012/01/24/pol-indian-act-voices.html>.

⁹ Affairs and Northern Development Canada, “Attempts to Reform or Repeal the Indian Act,” Available at <http://www.aadnc-aandc.gc.ca/eng/1323350306544>

¹⁰ Aboriginal Affairs and Northern Development Canada, “Statement of the Government of Canada on Indian policy (The White Paper, 1969).” Available at <http://www.aadnc-aandc.gc.ca/eng/1100100010189>.

¹¹ Jill Wherrett, “Aboriginal Self-Government,” Library of Parliament. June 1999. Available at <http://www.parl.gc.ca/Content/LOP/researchpublications/962-e.htm>

¹² Ottawa Citizen Editorial, “The Indian Act Must Go,” January 26, 2012. Available at <http://www.ottawacitizen.com/news/Indian+must/6053096/story.html#ixzz1kby5CA29>.

¹³ Aboriginal Affairs and Northern Development Canada, “Frequently Asked Questions - Departmental Expenditures and Accountability,” Available at <http://www.aadnc-aandc.gc.ca/eng/1100100016458>.

¹⁴ Canadian Taxpayers Federation, “Disclose Reserve Politicians’ Pay,” Available at <http://taxpayer.com/issues/federal/disclose-reserve-politicians-pay>.

¹⁵ Colin Craig, “New jaw-dropping reserve pay numbers,” Canadian Taxpayers Federation, November 21, 2010. Available at <http://taxpayer.com/federal/new-jaw-dropping-reserve-pay-numbers>.

¹⁶ Colin Craig, “Three Cheers for the Chief,” Canadian Taxpayers Federation, January 4, 2012. Available at <http://taxpayer.com/federal/three-cheers-chief>.

¹⁷ Parliament of Canada, “Bill C-27,” Available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5267339>.

¹⁸ Aboriginal Affairs and Northern Development Canada, “Backgrounder - First Nations Elections Act,” Available at <http://www.aadnc-aandc.gc.ca/eng/1323203585807>.

¹⁹ Cairns, Alan. *Reconfigurations: Canadian Citizenship and Constitutional Change*. Toronto: McClelland & Stewart Inc. 1995. p. 27.

²⁰ Steve Corbett and Brian Fikkert. *When helping hurts: Alleviating Poverty Without Hurting the Poor...and Yourself*. Chicago: Moody Publishers. 2009. pp 78, 81.

²¹ Aboriginal Affairs and Northern Development Canada, “Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system,” June 11, 2008. Available at <http://www.aadnc-aandc.gc.ca/eng/1100100015644>.

²² Gathering Nations International, “Forgiven Summit 2010,” Available at http://www.gatheringnations.ca/en/index.php?option=com_content&view=article&id=147&Itemid=428.