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POLICY REPORT for Parliamentarians

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

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

Mr. Angus' proposed solution of more money and government assistance characterizes Canada's decades-long response to the multitude of problems facing her indigenous population. 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 employed primarily quick-fix political solutions that only exacerbate the situation. We

claim to oppose discrimination and inequality, but cling 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. preserve a separate justice system with different sentencing standards. Canada is 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. Our recommendations rest on the principle that Aboriginal peoples are free and responsible to take hold of the new opportunities that good policy changes would create.

Aboriginal Affairs

Updated: July 2016

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%

Ingredient #1: Equal Opportunity

Current Aboriginal Affairs policy makes it very difficult for Aboriginals to take hold of the opportunities that other Canadians benefit from 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 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 the land 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 is very difficult.

If a reserve collectively decides to use their reserve land entrepreneurially, it must be approved by Indigenous and Northern Affairs 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 constrictive and paternalistic.

In 1999, the Federal (Liberal) Government passed the *First Nations' Land Management Act (FNLMA)*, which allows bands to opt out of large parts of the *Indian Act* pertaining to land rights. The subsequent Conservative 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 A 2009 study by the accounting firm KPMG 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 beneficial as the *FNLMA* has been, the Crown still holds title, making mortgages difficult to obtain and off-reserve property sales illegal. Aboriginals' use of the limited land rights under the *FNLMA* demonstrates their desire to be emancipated from the *Indian Act*. Canada should allow complete freedom for bands that choose to take on the challenges of leaving the *Indian Act* regime. Nothing short of fee-simple land ownership will suffice. But this radical move should not be mandated. It should be up to the bands to decide. Those that choose to leave the *Indian Act* behind will serve as an example to the others. Private property will not only assist with wealth creation and employment but also instill stewardship and responsibility. Private property rights would help to avoid the deterioration of housing conditions witnessed in Attawapiskat.

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

Canadians broadly agree that the *Indian Act* should be replaced, but that doesn't mean that there is consensus on what to replace it with. In January 2012, then Prime Minister Stephen 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 Conservative government was intent on an 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 other options?

Option 1: Scrap the *Indian Act* – A move this radical may be rightly motivated, but overly disruptive. 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 most Aboriginals supported the changes.⁹ It is crucial that the change comes from Aboriginal peoples themselves, band by band, and that it is not mandated from the top down.

Option 2 [Recommended]: Phasing Out the *Indian Act* – The previous Conservative government deserves commendation for increasing funding for the *FNLMA* regime, crafting legislation to improve accountability of band finances, and promoting fairness in band elections. However, these are relatively small steps given the devastating statistics in Chart 1 (above) and the desire shown by almost all stakeholders to make significant changes. Bands could be given the choice to opt out of the *Indian Act* completely and accept 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 impact and benefits of opting out. It may be wise to set a threshold (e.g., 80 per cent of bands opting out) after which the remaining bands would have to follow suit within a certain 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: Nisga'a Model of Self-Governance – The Nisga'a land claim was historic in that it granted a level of authority to the Nisga'a nation far beyond that of 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 constitutionality of such a move, a much bigger concern is that the treaty further segregates Aboriginal peoples. 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 and independent polities 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 like all other Canadians – The 1969 "White Paper" by then Indian Affairs Minister Jean Chrétien declared that "the course of history must be changed." And, "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 was a breath of fresh air in that it proposed what Chrétien truly believed was in the best interests of Aboriginals and all Canadians. However, beside the fact that it would never withstand *Charter* scrutiny today, the most serious defect is that it ignores treaty responsibilities. The White Paper was a forfeiture of the promise that the Crown made to many Aboriginals. The state must honour its word and resolve outstanding claims. Wiping the slate clean may be convenient, but would be fundamentally unjust.

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

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 people. 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 As there are hundreds of municipalities, so there would be hundreds of Aboriginal communities. However, whereas municipalities fall under the jurisdiction of provincial governments, Aboriginal governments should fall under federal jurisdiction in light of the long history of federal governance of Aboriginal affairs.

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

Maintaining the status quo should not be an option. The status quo is a system built on bureaucracy, handouts, and paternalism. Decisive steps need to be taken, and soon. As one commentator explains, “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 functions well and a nation flourishes only when members uphold their individual responsibilities for the civic good. Absolving Aboriginals of equal rights and responsibilities only exacerbates inequality.



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 recipe for corruption and abuse. The *Indian Act* requires these funds to be channeled through 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 reserve in Canada is 1,142 people, an astounding 634 reserve politicians make a taxable equivalent of over \$100,000.¹⁵

Transparency promotes accountability. As the above facts became public, more band members spoke up about their local situations. 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.

The previous government introduced Bill C-27 “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 was long overdue. Sadly, it did not last long. The new Minister for Indigenous Affairs, Carolyn Bennett announced in December 2015 that the Act would no longer be enforced and the funds that were being held back from bands who refused to comply with the Act would be released. This is a move backward to an era of secrecy and corruption. Refusing to enforce the transparency legislation is unjustifiable and will only harm Aboriginal peoples and hamper Aboriginal self-governance.

Fair & Democratic Elections – Another good step by the previous government was the *First Nations Elections Act (Bill S-6)*. The system established by the *Indian Act* has numerous problems including terms in office that are too short, a ballot system that is vulnerable to abuse, an ineffective appeals system, and a lack of penalties for breaking the law.¹⁸ Bill S-6 increases terms in office to four years, limits fees to run as a candidate, imposes penalties for offenses, and provides regulations for mail-in ballots, advance polls, and recalls. It should be enforced.

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. Reserves have a detrimental impact on education, health, life expectancy, suicide rates, and employment.¹⁹ 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 must pay taxes, the same should be true for all Aboriginals.

Ingredient #3: Remorse and Forgiveness

Aboriginals in Canada have a difficult history, which we ought to remember and respect. But as long as we see Aboriginals only or primarily as victims, they will never be able to move forward. To get beyond the patronizing treatment that accompanies perennial victim status, there must be acknowledgement of wrong, apology, forgiveness, and new direction.

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.”²⁰ These are commendable words, but when we look at the broader harms over the past two centuries, including those caused by the *Indian Act*, it is evident that there is more to apologize for than residential schools. Further, true remorse is accompanied by change. Phasing out the *Indian Act* and addressing land claims in a timely manner would demonstrate true remorse on the part of the government and people of Canada.

The Truth and Reconciliation Commission (TRC) focused on hearing the stories of residential school survivors, determining the truth, and working towards reconciliation. These are admirable goals, and hearing the stories of victims is essential to ensuring that Canada remembers and learns from its past. However, the TRC final report and recommendation (2015) perpetuate the cycle of blame and never-ending demands for increased state support. Many of the report’s recommendations would do nothing to promote equality and reconciliation. Instead, they would merely advance the social and political ideologies of present day activists. For example, it is a sad irony that one of the TRC calls to action is to scrap the section of the *Criminal Code* which allows parents to employ loving and appropriate physical discipline to their children. When Sweden criminalized physical discipline, it resulted in thousands of children being forcefully removed from loving homes and a massive spike in cases of assault against children.²¹ Such are the very problems the TRC commission was set up to address.

Many Canadians, along with our Supreme Court, have accepted the proposition that having Aboriginal ancestry entitles someone to a status of victimhood. Historian Alan Cairns has explained how history can become a political tool when it is used to “search for a new past”²² – for an account of the past that will support the group’s current political goals.

The struggles many Aboriginals are facing are not merely material. Like all people, Aboriginals suffer from spiritual brokenness. As Steve Corbett and Brian Fikkert explain in *When Helping Hurts*, the ultimate goal of poverty alleviation is not to see others achieve great material prosperity, 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.”²³ Clearly, the state cannot achieve all this. We need to acknowledge that the civil government is not the ultimate answer.

Moving forward also requires forgiveness. 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.”²⁴

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.

The Association for Reformed Political Action (ARPA) Canada

Note: we welcome your feedback, concerns, and requests for research on this topic. 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. Online 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 See, for example, Joe Sawchuk, “Indigenous People: Social Conditions”, *The Canadian Encyclopedia*, (October 31, 2011, revised March 4, 2015), online: <<http://www.thecanadianencyclopedia.ca/en/article/native-people-social-conditions/>>; Geordon Omandt, “Canada’s failing reserve schools jeopardize aboriginal students: study”, *The Star*, (January 28, 2016), online: <<https://www.thestar.com/news/canada/2016/01/28/canadas-failing-reserve-schools-jeopardize-aboriginal-students-study.html>>; Kristy Kirkup, “60% of First Nation children on reserve live in poverty, institute says”, *CBC News*, (May 17, 2016), online: <<http://www.cbc.ca/news/indigenous/institute-says-60-percent-fn-children-on-reserve-live-in-poverty-1.3585105>>.

²⁰ 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>.

²¹ For more information, see ARPA’s policy report on physical discipline, available at <https://arpacanada.ca/publications/#76-policy-reports>.

²² Cairns, Alan. *Reconfigurations: Canadian Citizenship and Constitutional Change*. Toronto: McClelland & Stewart Inc. 1995. p. 27.

²³ Steve Corbett and Brian Fikkert. *When helping hurts: Alleviating Poverty Without Hurting the Poor...and Yourself*. Chicago: Moody Publishers. 2009. pp 78, 81.

²⁴ Gathering Nations International, “Forgiven Summit 2010,” Available at http://www.gatheringnations.ca/en/index.php?option=com_content&view=article&id=147&Itemid=428.