Analysis of the First Nations Fiscal and Statistical Management Act

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About the Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a federally incorporated, non-profit, non-partisan, education and advocacy organization. The CTF was founded in Saskatchewan in 1990 when the Association of Saskatchewan Taxpayers and the Resolution One Association of Alberta joined forces to create a national taxpayers organization. In twelve years it has grown to become a national organization with supporters nation-wide.

The CTF's three-fold mission statement is:

1. To act as a watchdog on government spending and to inform taxpayers of governments' impact on their economic well-being;

2. To promote responsible fiscal and democratic reforms, and to advocate the common interest of taxpayers; and

3. To mobilize taxpayers to exercise their democratic responsibilities.

The CTF maintains a federal office in Ottawa and offices in the five provincial capitals of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. In addition, the CTF has a Centre for Aboriginal Policy Change dedicated solely to monitor, research and provide alternatives to current aboriginal policy and analyze the impacts of court decisions. Provincial offices and the Centre, conduct research and advocacy activities specific to their provinces or issues in addition to acting as regional organizers of Canada-wide initiatives.

CTF offices field hundreds of media interviews each month, hold press conferences and issue regular news releases, commentaries and publications to advocate the common interest of taxpayers. The CTF's official publication, *The Taxpayer*, is published six times a year. CTF offices also send out weekly *Let's Talk Taxes* commentaries to more than 800 media outlets nationally.

CTF representatives speak at functions, make presentations to government, meet with politicians, and organize petition drives, events and campaigns to mobilize citizens and effect public policy change. The CTF staff and Board of Directors are not permitted to hold memberships in any political party. The CTF does not receive any form of government funding and contributions are non-tax receiptable.

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About the Centre for Aboriginal Policy Change

The Centre for Aboriginal Policy Change (the Centre), was founded in 2002, under the auspices of the CTF to provide a permanent and professional taxpayer and democratic advocacy presence to monitor, research and offer alternatives to current aboriginal policy and analyze the impacts of court decisions under the guiding principles of support for individual property rights, equality, self-sufficiency, and democratic and financial accountability.

The Centre's five-fold mandate is:

1. *Demand Accountability for Money Spent:* Billions of tax dollars are spent by governments each year – with little accountability – in a seemingly futile attempt to help improve conditions for Canada's aboriginal people;

2. *Thoroughly Examine Proposed New Treaties:* New treaties being signed along the lines of the Nisga'a template will cost taxpayers untold billions of dollars. In addition, existing treaties are being reopened. Land ownership and resources in Canada are increasingly becoming a Pandora's Box;

3. *Support the Equality of Individuals:* Commercial fishing, hunting, paying tax and voting are increasingly being assigned on the basis of racial ancestry;

4. *Track Government Policies and Court Developments:* Aboriginal-related legislation and court decisions with significant long-term ramifications are coming down virtually every day; and

5. *Offer Positive Alternatives:* Efforts to watchdog and critique are of little value without providing positive, proactive alternatives to the status quo.

In addition to fulfilling its mandate, the Centre will publish a minimum of one position paper each year, make presentations to government committees and legislative hearings, and be available for media comment.

Aboriginal issues are a growing area of public policy. Billions of tax dollars are spent each year of which little seems to be properly accounted for or find its way to people it is intended to help. The implication of treaties, in particular, will change the landscape of Canada for all time. The Centre is dedicated solely to examining current aboriginal policy and court decisions from the perspective of those – native and non-native – who will pay the bill: the taxpayers.

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Overview

The social and economic problems facing native Canadians did not emerge overnight. For more than 130 years, native Canadians have been segregated from Canadian society by the *Indian Act.* By having a piece of legislation that targets one segment of Canadian society, the Act today still segregates native Canadians from other Canadian citizens by their placement on reserves; thus the Act limits their ability to fully participate in an economy. Furthermore, treating one group of Canadians differently is wrong both morally and intellectually. However, Canada continues to move down the path of further favouritism, balkanization and racism.

Unfortunately, the recently introduced *First Nations Fiscal and Statistical Management Act* (FNFSMA) is another example of legislation that is targeted to one segment of Canadian society – native band governments. This legislation merely props up the oppressive *Indian Act*, thereby limiting economic growth. Moreover, it continues the segregation and unequal treatment of native Canadians.

If passed, the FNFSMA will enable native bands to issue municipal-style bonds to borrow funds for local infrastructure such as water and sewage. Native bands will collectively guarantee each other's credit using future revenue from the federal government and from funds raised through property taxes and revenue from natural resources. The FNFSMA is mirrored after the highly successful Municipal Finance Authority of BC which permits municipalities to collectively guarantee each other's credit worthiness. To fully participate in the Canadian economic mainstream native governments should compete within the existing municipal financing system. To establish a separate bureaucracy and program is not an efficient use of tax dollars.

While this legislation may be to reduce the dependency native bands currently have on federal government subsidies and financing, in reality, it is more likely that a "cake and eat it too" environment will be created. This is because revenue generated through property taxes, or revenue from natural resources will not be deducted from the current federal funding received by native bands.

Double Dipping

Slightly more than 700,000 Canadians are considered to be registered status Indians as defined in the *Indian Act.* There are more than 2,300 reserves that cover more than 7.5 million acres. These reserves were set aside for the use and benefit of status Indians. The vast majority of these lands are administered under the *Indian Act*. The extent of reserve lands is continuously expanding as a result of: Treaty land entitlement settlements, return of unsold surrendered lands, and specific claim settlements.

Of 630 native bands, 75 per cent consist of less than 1,000 registered Indians and almost 50 per cent have fewer than 500 members. Band sizes range from two members to over 17,000. The average band population on-reserve is 500. The small population base of reserves makes economic self-sufficiency nearly impossible to achieve.

The federal government spends approximately $7-billion annually on Indian affairs. From 1990 to 2000, the amount of federal funding increased by approximately 49 per cent. Federal spending on a per capita basis has increased during the same time

period. For registered Indians living on reserves, spending increased (figures adjusted for inflation) from $6,801 in 1990 to $9,623 in 2000, an increase of almost 30 per cent.

The Department of Indian Affairs is the primary agent of federal spending on aboriginal programs and services. Some of the areas the Department funds are: health, education, social support services, aboriginal government support, social maintenance, construction and maintenance of houses, schools, roads, bridges, sewers and other community facilities, management of lands, oil and gas management and development, resources development management of trust funds, community economic development, commercial development and Indian taxation services.

There are 12 other federal departments which also fund status Indians: Canadian Heritage, Defense, Environment, Fisheries and Oceans, Foreign Affairs International Trade, Health, Human Resources Development, Industry, Justice, Natural Resources, Privy Council, and Solicitor General. In addition to federal government support, provincial and municipal governments spend approximately $3-billion per year various aboriginal programs.

At present only 90 of the 630 native bands levy property tax. Most of the property tax is levied against non-native leaseholders. The estimated revenue generated from taxing non-native leases is $90 million annually.

Current native governments rely heavily on fiscal transfer payments from government. There is little evidence that this trend would cease if the FNFSMA is passed, since only a few band governments have the economic resources to be self-sufficient.

Since revenue generated through property taxes, or revenue from natural resources will not be deducted from the current federal funding received by native bands, it is more likely that a “cake and eat it too” environment will be created. The intent here is explicit: let the Canadian taxpayer continue to foot the bill.

Municipal Style of Government

If the ultimate goal is to eventually have all Canadians treated with the same rights and responsibilities regardless of race or ancestry, then creating another separate institution for native Canadians may not be the best route to achieve the goals or the best use of tax dollars.

The FNFSMA is mirrored after the highly successful Municipal Finance Authority of BC which permits municipalities to collectively guarantee each other’s credit worthiness. In an attempt to reduce the dependency native governments have on federal transfer payments, the federal government and native governments have developed an initiative that reflects that used for municipal-style government. To fully participate in the Canadian economic mainstream native governments should compete within the existing municipal financing system. To establish a separate bureaucracy and program is not an efficient use of tax dollars.

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FNFSMA is passed, since only a few band governments have the economic resources to be self-sufficient.

The small population base of reserves makes economic self-sufficiency nearly impossible to achieve. Municipal-style governments throughout Canada successfully govern small communities, and are far more appropriate than a "third order" style of government often recommended for native governments. Local government is delegated from the provincial government. If changes are needed, they can be implemented in the light of actual experience. Local governments also have clear limitations on the powers they can exercise, thus providing a greater degree of certainty and accountability.

Of course, individual property rights are integral to a viable municipal style of government. This is because property rights generate wealth, wealth that can be taxed. Native local governments would be able to tax their community members in the same way as other local governments in Canada. This taxing also provides a degree of accountability because taxpayers demand to know how their money is spent. A growing economic base and political accountability will do far more to ensure the viability and success of native governments.

Private Property

The FNFSMA also attempts to address the problem of high rates of interest bands face. The reason the interest rates are so high is due to the risk involved. This is because the *Indian Act* under section 89 shelters native property and assets located on reserves from any process of garnishee, execution or attachment for debts, damages and other obligations. Lenders and investors rightfully demand a risk premium to deal with this lack of security. But rather than address *why* the bands face such high interest rates – lack of property rights – the federal government continues to avoid the issue.

Further, the land on a native reserve is treated differently than private property and it is merely one of many different rules that apply to native people in Canada. The land which comprises a reserve is owned by the Crown and is controlled collectively by the native band council, not by individuals. This treatment of native people under the *Indian Act* is unfair and is the reason why many people in native communities live in poverty.

In order for an individual, to have secure private property rights three things must be present. First, there must be an exclusive right to use one's property. Second, there must be legal protection against invaders. Finally, the owner(s) must have the right to freely transfer ownership of the property to another person or legal entity.

The *Indian Act* provides for the right to exclusive use of Indian reserves, collectively by native governments and their members. However the Crown is the true owner of the land and it is the Crown which provides the right to exclusive use to Indians. Section 89 of the Act provides legal protection of native property and assets located on reserves by sheltering them from any process of garnishee, execution or attachment for debts, damages and other obligations, including taxes, however justly due and owing. Due to Crown ownership of reserve land, the right to transfer is extremely limited, as will be explained below.

The communal arrangement imposed by the *Indian Act* produces problems for aboriginal entrepreneurs. Business owners typically raise capital by providing their home or other real property as collateral. But since on-reserve aboriginals do not own their property in fee simple, it cannot be sold, mortgaged or otherwise used as a source of debt financing.

The key to generating wealth and prosperity is easily identifiable individual property which can be leveraged for loans and wealth creation. Most Canadians can borrow against their own private property and thus capital is gained to invest in new business ventures. Capital formation allows the expansion of the economy and accumulation of wealth. But without property as collateral, individuals on reserves have difficulty getting credit or doing deals with outside investors. Therefore the wealth of the land is under utilized.

Taxation Without Representation

In addition to the federal government transfer payments, bands will use revenue generated from property taxes. At present only 90 of the 630 native bands levy property tax. Most of the property tax is levied against non-native leaseholders. These non-native leaseholders, although contributing to the coffers of the native communities in which they live, have no vote in community elections. Where's the accountability for them?

If someone is a full-time resident of a municipality, voting rights are assumed. Under aboriginal governance, non-aboriginals living on reserves have no democratic right to participate in the local political community, even though they may pay property taxes to the local native band.

Since 1884, under what was called the *Indian Advancement Act*, band councils have had the power to tax the real property of all band members on reserves. This was later incorporated into the *Indian Act* under section 83, in 1951. To date, most of this revenue is created by taxing non-native businesses operating on reserves, and non-natives living on reserves, but all taxation occurs to increase native government revenues.

Under section 83 of the *Indian Act,* native bands may collect property taxes, and fees and levies from non-aboriginal leaseholders residing on reserve land and from non-aboriginal businesses operating on reserves. Native bands that exercise this right use the monies collected to fund a variety of public works, community projects and services that benefit the entire reserve community – aboriginal and non-aboriginal alike.

On some reserves, non-natives exist in greater numbers than natives. Voting rights are not extended to the non-natives due to the fear that if non-aboriginals were granted the right to vote, they may vote *en masse* and swamp the governing band council.

Native governments may bestow the right to vote to non-aboriginals and provide them with "citizenship", as is the case within the Nisga'a Treaty. But as of yet, no such "citizenships" have been granted.

Since it is a fundamental right for citizens to participate in meaningful decision-making in Canada, some bands have established advisory boards as a means to allow for non-aboriginal participation. For example, the Sechelt reserve located on British Columbia's

west coast, provides an advisory council for non-aboriginal residents. It will be interesting to see in the long-run if it offers an adequate form of participation for non-aboriginals, or if it simply serves as a way to pacify non-natives.

In British Columbia, there are over 50 land claims. The issue of democracy for non-aboriginals affects approximately 20,000 non-aboriginal British Columbians who live on native reserves. Further, it also affects people who may one day live or operate a business in a treaty jurisdiction as these land claims are settled. This issue is not isolated to British Columbia. According to Indian and Northern Affairs Canada, as of March 31, 2002 there were 491 specific land claims under review in Canada. Given the trend towards increasing the scope and depth of powers of native self-governance, this is an issue that may affect tens of thousands of Canadians now, and even more Canadians in the future.

Granting non-aboriginals voting rights on reserves would not entitle a non-aboriginal to explicit benefits negotiated for aboriginals themselves, i.e., cash transfers from other level of governments. It would, however, grant equal voting rights in a manner that is standard in any other jurisdiction in Canada.

Accountability

According to Auditor General reports, 80 per cent of the Department of Indian Affairs total expenditures are transferred directly to native bands. How these funds are disbursed is decided by the Chiefs and their band councils.

In 1999, the Department of Indian Affairs reported that it had received some 300 allegations ranging from nepotism to mismanagement of 108 Indian bands. That same year, the federal Auditor found the Department's data to be "incomplete" at best. "The Department does not have an overall picture of the nature and frequency of the allegations… One regional office reported it did not know how many allegations it had received during the past two years."

The report also said: "The Department is not taking adequate steps to ensure that allegations of wrongdoing, including complaints and disputes related to funding arrangements, are appropriately resolved." Despite previous warnings about accountability problems, in his April 1999 report, the federal Auditor General found the Department of Indian Affairs relied too heavily on "self-assessments" by bands evaluating their own fiscal management, without determining whether those internal band reviews were accurate.

Another goal of the proposed FNFSMA legislation is to set up a financial management board to help the bands produce budget documents that gain the confidence of investors and increase the likelihood of attracting financing. This board will provide peer reviews of native bands' budget documents.

The Auditor General of Canada has indicated that in the Department of Indian Affairs, self-assessments are not the best way to ensure accountability. Therefore, to properly ensure investor confidence in this scheme, external audits would be preferred to peer reviews, as peer reviews are often likened to the 'fox guarding the hen house'.

Conclusion

As long as the *Indian Act* remains and native bands continue to receive federal government handouts, the legal straightjacket that prevents native Canadians from assuming all the rights and responsibilities allowed other Canadian citizens, will remain firmly fastened.

Although well intended, the proposed legislation does nothing to amend the lack of genuine property rights for native Canadians living on reserves that the *Indian Act* currently ignores. The most imperative ingredient for native communities to have long-term economic viability is individual private property rights. The key to generating wealth and prosperity is easily identifiable individual property that can be leveraged for loans and wealth creation.

Most Canadians can borrow against their own private property and thus capital is obtained to invest in new business ventures. Capital formation allows the expansion of the economy and accumulation of wealth. But without property as collateral, individuals on reserves have difficulty obtaining credit or doing deals with outside investors; therefore the wealth of the land is under-utilized.

The Canadian Taxpayers Federation believes Canadians – all Canadians – are fundamentally alike. Therefore all legislation and government policy must be based on fairness and equality – not race. Developing additional legislation, such as the *First Nations Fiscal and Statistical Management Act,* only serves to extend the strangle hold of the *Indian Act* does nothing to further the socio- or economic well being of native Canadians. As former Prime Minister Trudeau once stated, “The time is now to decide whether the Indians will be a race apart in Canada or whether [they] will be Canadians of full status.” In other words, the time for equality is now.