CANADIAN Taxpayers FEDERATION

Fighting for taxpayers

DIVIDING CANADA

The Pitfalls of Native Sovereignty

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About the Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a federally incorporated, non-profit and non-partisan, advocacy organization dedicated to lower taxes, less waste and accountable government. 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. Today, the CTF has over 61,000 supporters nation-wide.

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 in Calgary dedicated to monitor, research and provide alternatives to current aboriginal policy and 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 interests of taxpayers. The CTF's flagship publication, *The Taxpayer* magazine, is published six times a year. An issues and action update called *TaxAction* is produced each month. CTF offices also send out weekly *Let's Talk Taxes* commentaries to more than 800 media outlets and personalities nationally.

CTF representatives speak at functions, make presentations to government, meet with politicians, and organize petition drives, events and campaigns to mobilize citizens to effect public policy change.

All CTF staff and board directors are prohibited from holding a membership in any political party. The CTF is independent of any institutional affiliations. Contributions to the CTF are not tax deductible.

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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 – Indian and non-Indian – who will pay the bill: the taxpayers.

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1.0 Overview

For more than 100 years the *Indian Act* has segregated Indians from Canadian society. By targeting one segment of Canadian society, the Act isolates Indians from other Canadian citizens by placing them on reserves; thus the system limits their ability to fully participate in the economy.

Clearly, treating one group of Canadians differently is wrong both morally and intellectually. For the last 50 years the world has seen human rights legislation passed in a number of countries. All of this legislation has equality of rights and responsibility at its core. Nevertheless, Canada continues to move down the path of segregation and balkanization. If not reversed, this trend toward division, will only serve to weaken our cultural, political and economic fabric.

The Canadian Taxpayers Federation (CTF) strongly encourages the federal government to eliminate the *Indian Act.* It will only be through the elimination of the *Indian Act* that all Canadians – native and non-native – will be treated with the same degree of equality and enjoy the same rights and responsibilities. The CTF believes one way to achieve this goal is for the Canadian government to abolish the Indian reserve system, thus allowing individual native Canadians the freedom to choose how and where they wish to live. These arguments are precisely what the Canadian Taxpayers Federation detailed in our last two studies, "The Lost Century – Moving Aboriginal Policy from the 19th Century to the 21st Century" and "Apartheid – Canada's Ugly Secret."

This paper outlines two recommendations that would provide native communities with greater certainty and accountability. Each recommendation challenges the foundation of the current system of native affairs in Canada.

Given that the typical native band has only a few hundred or thousand members, a far better approach than the idea of sovereignty that many native leaders seek would be the more limited model presented by municipalities. The CTF believes a municipal style of government would provide a way for natives to hold their local governments accountable. Native bands would be able to tax community members and property owners in the same way as other local governments. Like taxpayers everywhere, natives would demand to know how their money is spent.

Native 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 status quo of native affairs in Canada must end for native communities to have the chance at becoming truly self-sustaining.

1.1 Summary of Recommendations

Recommendation 1: Define "Third Order" of Government
The outstanding Constitutional question as to whether a "third order" of government is constitutional must be decided prior to any new treaties being finalized. The federal government must ask the Supreme Court of Canada to determine if the "third order" of government being established is constitutional.

Recommendation 2: Establish Municipal System of Government
Since native Canadians have a unique place within our Constitution, the municipal governance model should be modified so that the powers of native governments are delegated directly from Ottawa, rather than from the provinces.

2.0 What does the Inherent Right to Self-Government Mean?

According to native leaders and the Royal Commission on Aboriginal Peoples (RCAP), the inherent right to self-government means the right of native peoples to govern themselves by laws passed by their own institutions to the exclusion of laws passed by other governments in Canada (i.e., a quasi-sovereign status.) This assertion of exclusive authority to make laws affecting native peoples includes the right to be exclusively governed by their own laws.

Sovereignty, in our constitution, is divided between the Parliament of Canada and the legislatures of the provinces. The division of legislative powers and proprietary rights contained in sections 91 and 92 of the Constitution determines which of the two levels of the government has sovereign power. Under this constitutional arrangement there is no room for a third level of government. Both the Appeal Courts of Ontario and British Columbia have explicitly rejected the concept as being inconsistent with our constitution.

That said, the British Columbia and federal governments established a *de facto* "third order" style of government within the Nisga'a Treaty. It is worth mentioning, a group of Nisga'a people opposing this style of governance are challenging its constitutionality in court.

According to the RCAP the core jurisdiction of native self-governments should include "all matters that are of vital concern to the life and welfare of a particular Aboriginal people, do not have a major impact on adjacent jurisdictions, and are not otherwise the object of transcendent federal or provincial concerns." In other words, the RCAP envisions a native government wielding a tremendous amount of power and influence over the people they govern, for example: child and family services, citizenship, adoption, marriage, divorce, property rights – including succession and estates, health, language, and pre-school to Grade 12 education and the right to apply their laws to their own people regardless of where they live in Canada.[1]

It is true that the native leadership who advocate this concept foresee some laws of other governments applying to them but, in their view, which other laws apply, is a matter for themselves to decide. Former Assembly of First Nations Grand Chief Ovide Mercredi puts it this way, "We will not allow some other society to decide what we can do and determine the limits of our authority."[2]

Fraser Institute Senior Fellow Gordon Gibson illustrates the ultimate authority native governments currently enjoy, "Imagine you live in a municipality where the mayor and council have an absolute veto over whether you have a house or not, whether your plumbing gets fixed, whether you have access to the transportation pool, whether your child can get a scholarship to university, and whether you have a government job when such jobs are about the only ones available. Imagine further, that the system is set up to deliberately minimize citizen contact with other governments, in terms of services or financial payments and receipts."[3]

Regrettably, this scenario is all too familiar on many reserves. From 2002-2004, the Department of Indian Affairs reported 984 allegations of criminal or complaints of non-criminal wrongdoing by their native government bodies or organizations.[4] Sweeping powers with limited accountability have lead to mismanagement and corruption on reserves. Providing more powers with less accountability is not the answer.

Currently, aboriginal governments rely heavily on fiscal transfer payments from government. There is little evidence that this trend would cease if a third order government were created since only a few band governments have the economic resources to be self-sufficient. The RCAP suggests that the federal and provincial governments provide unconditional grants to native governments rather than having bands raise their own revenues through taxes.

In other words, the right to run our own affairs does not apparently include the cost of doing so. Native governments' "inherent right" must be matched by the "inherent responsibility" of the Canadian taxpayer to forever foot the bill.

Municipal style government used successfully in Canada for the governance of communities is far more appropriate than a third order style of government. Local government also has limitations on its power and has checks and balances, which provide a degree of certainty and accountability. The recommendation of municipal style governments will be explored further in the next section.

Political accountability and a growing economic base will be more important ingredients to the viability and success of native communities, than recognition of sovereignty could ever be. Yet that does not stop the Indian lobby from continuing to fight for sovereignty.

There are several reasons the Indian lobby continue to fight for sovereignty. One belief is that Indians are different from other Canadians, and because of this difference they must have their own system of governance. Another reason suggests that because the ancestors of native Canadians were here prior to

European contact, the systems of governance in place at the time of contact should be re-implemented. Also, there is the belief that any other systems of governance implemented would lead to the elimination of aboriginal language and culture.

The Canadian Taxpayers Federation believes all Canadians are fundamentally alike and therefore should be subject to the same laws and systems of governments. In addition, communities that enjoy good governance and accountability tend to promote and cherish differing languages and cultures.

2.1 The Fight for the Inherent Right to Self-Government

Is the inherent right to self-government contained within the *Constitution Act of 1982*? Sections 25 and 35 of the *Constitution Act of 1982* are directly related to Aboriginal rights. A review of these sections do not reveal the words, "inherent right to self-government". These sections read as follows:

> **Section 25 Aboriginal rights and freedoms not affected by Charter** – The Guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
> (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
> (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.
>
> **Section 35 (1) Recognition of existing aboriginal and treaty rights** – The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> **(2) Definition of "aboriginal peoples of Canada"** – In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> (**3) Land claim agreements** – For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> (**4) Aboriginal and treaty rights are guaranteed equally to both sexes** – Notwithstanding any other provision of this Act, the

> aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
>
> **Section 35.1 Commitment to participation in Constitutional conference –** The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "Constitution Act, 1867", to section 25 of this Act or to this Part,
> (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
> (b) The Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussion on that item.

For clarity Class 24 of section 91 of the "Constitution Act, 1867", reads as follows:

> **Section 91 Legislative Authority of Parliament of Canada –** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, -
>
> **Class 24 –** Indians, and Lands reserved for the Indians.

The word "existing" in section 35(1) of the Constitution Act, 1982, was meant to ensure that aboriginal rights which may have been extinguished in the past could not be said to have been revived by this provision. The term "existing" makes no attempt to give content to the term "aboriginal rights."

Again, nowhere in the Constitution Act is the inherent right to self-government explicitly mentioned. This fact has lead to debate that has been ongoing since the 1982 Constitution Act was finalized. Native leaders and advocates have argued for years that the inherent right to self-government is implied in the constitution.

If the inherent right to self-government was intended to be implied in the constitution, one must ask the question, why were four constitutional conferences held to have the inherent right to self-government spelled out in the constitution?

2.2 Constitutional Conferences

Four constitutional conferences – attended by the Indian Brotherhood now know as the Assembly of First Nations – took place between 1983 and 1987. At three subsequent conferences, native leaders and advocates lobbied for an amendment that would give constitutional recognition to the aboriginal inherent right to self-government.

In March, 1984, Prime Minister Trudeau recommended government allow for institutions of aboriginal self-government provided they were in accordance with federal and provincial legislation. Meaning, aboriginal governments would have their powers delegated to them from a senior level of government. This proposal was rejected by native leadership.

The rejection of the 1984 recommendation lead to the "contingent right" proposal developed by Prime Minister Brian Mulroney's government in 1985. The Assembly of First Nations rejected the proposal which would have created a general right of aboriginal peoples to self-government that would have been added to the Constitution on the condition that the contents of the right be worked out in negotiated agreements.

Another rejection lead to yet another proposal. The "explicit right" proposal was unveiled at the 1987 constitutional conference. The "explicit right" proposal would have specifically recognized the right to self-government, but would have required that the actual powers of aboriginal government be the subject of negotiated agreements. In what appears to be a pattern, the native leadership rejected the proposal. The native leadership took the position that the right of self-government must be free-standing and independent from a requirement for negotiated agreements. In other words, quasi-sovereignty.

The conferences ended without any agreement on the inherent right to self-government. However, the struggle to have the inherent right to self-government affirmed in the constitution continued.

2.3 Charlottetown Accord

The Charlottetown Accord came about in August of 1992, after the failure of the Meech Lake Accord.

Below is a partial list of benefits, prepared by constitutional lawyer, the late Mel Smith, *that would have become* part of the Constitution had the Charlottetown Accord not been defeated in a national referendum.

- "specific mention of aboriginal peoples in the Canada Clause, with the right to promote their languages, cultures and traditions;
- a provision that would make aboriginal governments one of three orders of government in Canada;
- a provision to permit "aboriginal, treaty or any other aboriginal rights" to override the Canadian Charter of Rights and Freedoms;
- special seats in the Senate for aboriginal peoples: the number to be negotiated;
- the role of the aboriginal people in relation to the Supreme Court would be negotiated, including having a Council of Aboriginal Elders that could make submission to the Court. In the meantime, aboriginal groups would be constitutionally entitled to submit lists of candidates to fill Supreme Court vacancies;
- special aboriginal representation in the House of Commons would be considered;
- a general non-derogation clause to ensure that changes to the division of powers between senior governments would not affect aboriginal peoples and their governments;
- an amendment to recognize that aboriginal peoples "have an inherent right of self-government in Canada;"
- the exercise of this right of self-government would include the rights of aboriginal peoples' own legislative bodies to pass laws to safeguard their languages, culture, economies, identities, traditions; and to develop, maintain and strengthen their relationships with their lands, waters and environment;
- governments would be committed to undertake negotiations with the aboriginal peoples to implement self-government, including issues of jurisdiction, lands and resources, and economic and fiscal arrangements;

- although aboriginal peoples would be precluded from enforcing their "inherent right" of self-government in the courts for a period of five years, no restriction would prevent aboriginal legislatures from commencing to legislate forthwith;
- the federal and provincial governments were committed to providing "the governments of aboriginal peoples with fiscal or other resources, such as land to assist those governments to govern their own affairs;"
- Governments would agree not to reduce their present spending levels on aboriginal peoples as a result of this Accord."[5]

Not only did the majority of Canadians vote against ratifying the Accord in the 1992 referendum, but representatives for aboriginal women's groups, specifically status Indian women, rejected the Accord due to the uncertainties of self-government and concern of collective rights over-riding individual rights. They questioned whether the Charter of Rights and Freedoms would be maintained within self-government legislation.

In addition, grassroots natives feared the enormous concentration of power that would result in the hands of their ambitious "leaders". The Nisga'a Treaty of British Columbia is an example of a treaty that provides "self-government" powers that are akin to federal and provincial powers. Some view these powers to be unconstitutional.

2.4 Chief Mountain – The Nisga'a Challenge

The Nisga'a treaty was negotiated by the federal government, the British Columbia government and negotiators for the Nisga'a Indian band located in northwestern BC. The treaty involves the transfer of land, resources, and cash payments to the Nisga'a government known as the Nisga'a Lisims government.

During negotiations and the subsequent signing of the Nisga'a Land Claims Agreement, both the federal and British Columbia provincial government lead Canadians to believe the Nisga'a level of government would be based on a municipal or local government model. This is not the case since other municipalities do not possess power over citizenship, culture, health services, children and family services, adoption, elementary, secondary and post-secondary education, cultural property, management of fishing resources and ownership of mineral and timber resources. To the contrary, the Nisga'a government has authority over all the above.

Furthermore, there are 17 examples contained with the Nisga'a Treaty that state in the event of an inconsistency between a particular Nisga'a law and federal or

provincial law, the Nisga'a law or treaty prevails to the extent of the conflict. Meaning Nisga'a law supersedes federal or provincial law.

Contrary to popular belief, the Nisga'a government is not subject to the *Charter of Rights and Freedoms.* Section 25 of the Charter expressly states that the guarantee of Charter rights shall not be construed so as to abrogate or derogate from any treaty rights that pertain to the aboriginal peoples of Canada, including any rights that may be acquired by way of land claims settlement.

By doing so, Nisga'a laws would be immune from a Charter challenge. In other words, Nisga'a laws could discriminate between residents of Nisga'a land based on their race, religion, or gender and the victim of discrimination could not use the Charter to strike down the offence.

Immunity from the Charter would also enable the Nisga'a government to pass legislation which violates freedom of expression, religion and association, and such laws could not be challenged in court as violating those fundamental rights.

Chief Mountain, also known as James Robinson, holds the ancestral title to one of the Nisga'a houses, the Kinkolith band. Chief Mountain and the people in his House want to be governed by Canada and British Columbia, not by the Nisga'a government empowered by the treaty. Chief Mountain, who is represented by John D. Weston of the Access Law Group of Vancouver, BC, believe the act of granting the Nisga'a government authority under the treaty creates a "third order" of government in Canada which is unconstitutional. Furthermore, they argue the treaty took away some rights that Chief Mountain and his people have as Canadians. Rights guaranteed by Canada's Constitution.

The Chief Mountain case alleges the issue of Nisga'a leadership has not been settled. Chief Mountain believes he has a hereditary right to govern his people, and that the Lisims government does not.

The question about a "third order" of government is crucial and one that must be determined prior to any new treaties being signed. Since the Chief Mountain case is a constitutional challenge it will likely take years before a decision is known.

However, the federal government can reference a question to the Supreme Court of Canada (SCC) to determine how the court would rule. Take for example the questions in 2004 asked of the SCC regarding same sex marriage. The same thing could be done to determine whether or not the "third order" system of government was indeed constitutional.

> Recommendation 1: Define "Third Order" of Government
> The outstanding Constitutional question as to whether a "third order" of government is constitutional must be decided prior to any new treaties being finalized. The federal government must ask the Supreme Court of Canada to determine if the "third order" of government being established is constitutional.

The federal government admits to the uncertainty that surrounds the inherent right to self-government and a "third order" of government. For example, the Westbank Self-Government Agreement states, "This Agreement is not intended to constitute an expression by the parties of any definitive legal views with respect to how an inherent right of self-government may ultimately be defined at law. "[6] Nonetheless, the federal government continues down this path.

3.0 The Drawback of Reserve Governments

As a result of their small size, often remote locations and requirements of the Indian Act, reserve governments depend heavily on fiscal transfers from the federal government. Furthermore, the federal government restricts most of Indian Affair's programs to on-reserve Indians as an incentive to remain on reserves. Unfortunately, many natives live in virtual isolation with no real economic base and, in a number of instances, a disintegrating social fabric. No matter how uneconomic the community, the federal government has seen it as a duty to sustain them.

There are more than 2,300 reserves that cover approximately 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 entitlements and specific claim settlements.

The populations of Indian reserves are small. Of 629 Indian bands, 75 per cent consist of less than 1,000 registered Indians. Band sizes range from two members to over 21,000. The average band population on-reserve is 641.

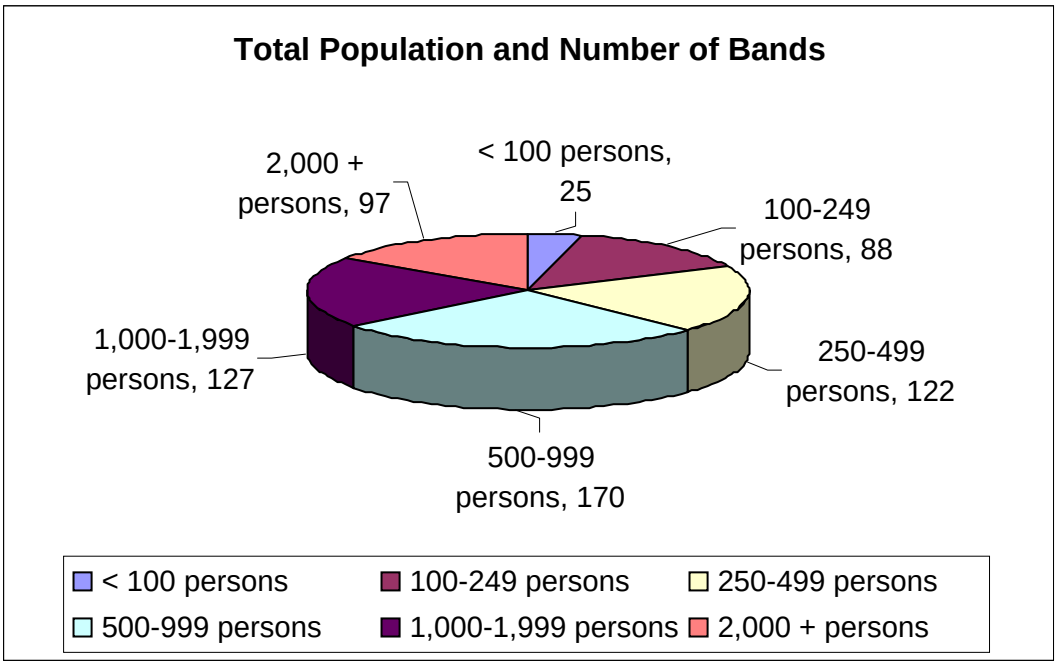

Figure: Department of Indian Affairs: Number of Bands and Size of Bands, December 31, 2002.

The federal government spends approximately $8 billion annually on Indian Affairs. As indicated earlier, approximately 80 percent of the money is

transferred directly to Indian band councils to disperse within their communities as they see fit. Under the *Indian Act,* there is no requirement for Indian governments to reveal their financial records to their members, let alone to the federal auditor general or taxpayers. Clearly, this loophole must be closed. Good governance, accountability and transparency are minimal requirements for native communities to improve.

Under the current system, the delivery of programs is in the hands of the chiefs and councils. Since there is no separation between politics and administration on reserves – and there is no requirement to do so – everything on a reserve that is in any way related to band administration is politicized. This scenario provides the chief and council with tremendous power and control over community members.

This power has often been abused. Many Canadians are familiar with media accounts of corruption and mismanagement of reserve funds. For example, as per band financial documents, leaders of the Alexander Indian Band of Alberta authorized at least $108,868 in cheques to dozens of voters on the eve of the September 12, 2002 election. Six members of the Alexander Indian Band swore affidavits in Federal Court saying they were paid on the understanding they would vote for incumbent candidates for chief and band council. Three of them received $150 or $200, according to the band administration's general cheque ledger.[7]

So how did we get to this point? Until the late 1950s, the federal government's paternalism was all-encompassing – it funded, delivered and administered all aboriginal programs and services. By the 1970s, the department's philosophy shifted toward devolving administration and governance to Indian band councils. As a result, the Department of Indian and Northern Affairs Canada morphed into a more traditional styled bureaucracy allocating funding and enforcing a set of regulations to govern the conduct of band affairs.

Due to years of increased administrative autonomy which enabled native communities to deliver federally-funded services without government oversight or audit, the powers exhibited by current native governments reach almost as high as what is envisions by the RACP. Rather it is the lack of accountability. According to recent auditor general reports show the extent to which native government fail to account properly for existing responsibilities and funding is overwhelming. Additional authority without better accountability first, may well lead to further corruption and abuse.

What has transpired on reserves since their creation is that the poorest and most powerless bear the weight of the entire Indian Affairs bureaucracy, Indian

political organizations and the army of consultants they both employ. The problems will not be fixed because their very neediness is absolutely essential to sustaining the whole system. There is no escape.[8]

The Canadian Taxpayers Federation believes there is an escape. The escape lies in the federal government's willingness to abolish the reserve system. Thus allowing individual native Canadians the freedom to choose how and where they wish to live.

Many native leaders would also like to see the end of the current reserve system. However, many of these same leaders would like to see a system of self-government implemented that is akin to sovereignty. The Canadian Taxpayers Federation would also like for the current reserve system to be abolished. However, we suggest adopting a municipal style of government for native communities rather than a form of "sovereignty".

3.1 Municipal Government

As referred to earlier in this paper, we believe under the constitutional arrangements set out by the Constitution, there is no legislative room for a third level of government. Furthermore, there is little evidence that the dependency for such massive cash transfers would cease if a sovereign model of government were established, since only a few bands have the economic resources to be self-sufficient.

Given that the typical native band has only a few hundred or thousand members, a far better idea than the grandiose conceit of "sovereignty" would be the more limited model presented by municipalities. Local governments have their powers delegated from the provinces, and much of their funding comes from property taxes. Since native Canadians have a unique place within our Constitution, the municipal governance model might be modified so that the powers of native governments are delegated directly from Ottawa, rather than from the provinces.

Such a model would provide a way for natives to hold their local governments accountable. Native bands would be able to tax community members in the same way as other local governments. Like taxpayers everywhere, natives would demand to know how their money is spent.

Native leaders and advocates will say such recommendations will lead to cultural genocide. This rhetoric is based on an emotional argument with little merit. When someone becomes a Canadian of full status they do not stop being Cree, Mohawk or Ojibwas. Under a municipal system which provides the communities members with more autonomy and control over day-to-day

operations will provide an environment where Indian language and culture would more than likely flourish – not vanish.

While not as glamorous as the Royal Commission's plan to provide aboriginals with sweeping powers, a plan that would include land reform and incorporate a municipal style of governance would do far more to improve the life of ordinary aboriginals. Whether in regard to the allotment of special sovereign powers or restrictions on land use, treating one group of Canadians differently from all others is morally wrong, and bad policy.

> Recommendation 2: Establish Municipal Style of Government
> Since native Canadians have a unique place within our Constitution, the municipal governance model should be modified so that the powers of native governments are delegated directly from Ottawa, rather than from the provinces.

This recommendation requires no constitutional amendment. Furthermore, the type and style of government is much more in tune with the Canadian landscape than an all encompassing "third order" style of government.

4.0 Conclusion

Currently, the federal government spends approximately $8 billion annually for Aboriginal Affairs. The process of providing a plethora of programs and services to reserve communities at someone else's expense – Canadian taxpayers – has produced a system which lacks accountability and transparency.

This paper argues the "inherent right" to self-government is not contained within the Canadian Constitution. Until the Supreme Court of Canada rules on the constitutionality of the "third order" of government, self-government agreements and treaties should not be finalized.

Providing more powers with less accountability, as advocated by Indian lobby groups, is not the answer to reduce mismanagement and corruption on reserves. Municipal-type governments successfully manage communities all over Canada and are conducive to the small population base of many native bands. This model should be implemented for native reserves rather than an ill-defined "third order" style of government.

Aboriginal issues are a growing area of public policy and perhaps the most important moral dilemma facing Canada. The federal government has an opportunity to establish a form of governance that can work for native communities. To aid the federal government along the path of change, the Canadian Taxpayers Federation has provided the government with recommendations to aid its path. Let's hope they begin the journey soon.

6.0 Footnotes

[1] Royal Commission on Aboriginal Peoples, 1996.
[2] Ovide Mercredi and Mary Ellen Turpel, "*In the Rapids: Navigating the Future of First Nations*," Viking, 1993, 95.
[3] Gordon Gibson, "Public Policy Sources #38: Small Governments, Large Powers", Fraser Institute, 1999.
[4] Access to Information Request, Department of Indian and Northern Affairs "Number of Allegations and Complaints about the conduct of Indian and Inuit government bodies and organizations were received by the department between the years 2002-2004".
[5] Melvin H. Smith, "*Our Home or Native Land,*" Stoddard, 1996, 156-157.
[6] Westbank Self-Government Agreement, Part II Fundamental Principles, 2003
[7] Perreaux, Les. 2002. "Cheques issued on eve of election." National Post. December 2002
[8] *Ibid*