



**Five  
STEPS  
TO  
CHANGE  
ABORIGINAL  
POLICY**

# ROAD TO PROSPERITY



**Tanis Fiss, director  
Canadian Taxpayers Federation  
Centre for Aboriginal Policy  
Change**

**Suite 1580, 727 7th Ave SW  
Calgary, AB T2P 0Z5  
Ph: (403) 263-1202  
Fax: (403) 777-1578**

**[www.taxpayer.com](http://www.taxpayer.com)  
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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 interest 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 affect 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.

The head office of the Canadian Taxpayers Federation is located in Regina at:

Suite 105, 438 Victoria Avenue East  
Regina, Saskatchewan  
S4N 0N7

Telephone: 306.352.7199  
Facsimile: 306.352.7203  
E-mail: [canadian@taxpayer.com](mailto:canadian@taxpayer.com)  
Web Site: [www.taxpayer.com](http://www.taxpayer.com)

## **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.

The office of the Centre for Aboriginal Policy Change is located in Calgary at:

Centre for Aboriginal Policy Change  
Suite 1580, 727 – 7<sup>th</sup> Street SW  
Calgary, Alberta, T2P 0Z5  
Tel: (403) 263-1202

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## 1.0 Overview:

Since opening in 2002 the Centre for Aboriginal Policy Change has produced three studies. These studies focused on broad, long-term policy reforms that included:

- Abolition of the Indian Act;
- Abolition of the current native reserve system; and
- Individual private property rights.

While these aims remain a primary policy objective we realize that broad changes may take years, even generations to achieve. There are entrenched interests and indeed there will be continued debate.

However, we should all be able to agree that current policy – with few exceptions – is not improving the prosperity of native Canadians. Study after study; illustrate the failure of the native reserve system. Yet, Canada continues to be one of a few countries of the world to maintain and promote laws based on ethnicity.

Increased government spending has not improved the conditions for native Canadians living on reserves. Procrastination and excuses are failing native Canadians and taxpayers.

Billions of tax dollars are spent each year, of which little seems to be properly accounted for or find its way to the 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.

This study looks at simple policy alternatives that meet two tests:

1. Simple passage by parliament; and/or
2. Can be piloted with sunset clauses.

This paper discusses five recommendations the government can implement with relatively minor legislative changes, to increase the level of accountability for native Canadians and to provide good governance and transparency. Each step challenges the foundation of the current system of native affairs in Canada.

When native Canadians are enabled to succeed in the same way as other Canadians, they will be no less Indian. In fact, by doing so, they will render the entire paternalistic mechanisms of the Indian Act, and the Department of Indian Affairs irrelevant.

## *1.1 Summary of Recommendations*

### Recommendation 1: Reallocate Funding

In order to increase the level of accountability on reserves, the payments currently transferred to native band councils should be re-directed to individuals. The money necessary for native governments could then be taxed back by the local native government. To ensure appropriate community support, this recommendation should be implemented on a pilot basis on one or more reserves over a set time-frame.

### Recommendation 2: Expand Auditor General's Mandate

A system of independent annual financial audits and operational audits of Indian governments – similar to how the federal and provincial auditors conduct their audits of government departments and programs – should be implemented. Expansion of the current auditor general's mandate to include native bands is imperative for greater accountability and transparency.

### Recommendation 3: Establish an Ombudsman for Aboriginal Affairs

The Indian Act does not sufficiently address the concerns of native Canadians. As an interim measure to ensure native Canadians receive appropriate redress, an Ombudsman for Aboriginal affairs needs to be established.

### Recommendation 4: Better Utilize Certificates of Possession

As a way to promote private property ownership and prosperity in native communities, Certificates of Possession should be better utilized.

### Recommendation 5: Amend Indian Act to Include Matrimonial Property Rights

Since the Indian Act does not deal with matrimonial property rights, parliament should amend the Indian Act to enable applicable provincial matrimonial law to apply to native reserves.

## 2.0 Increasing Accountability on Reserves

Canadians spend approximately \$10 billion each year, in federal and provincial funds, on aboriginal affairs. Regrettably, there is little to show for all this spending. On many reserves, there is poor housing, poor schools, poor health care, and a third world standard of living.

The Department of Indian Affairs is the primary agent of federal spending on Indians. It provides a range of services to status Indians and Inuit. Some of the areas the Department funds are: education, social support services, Indian 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 on Indian, Inuit and Métis programs.

The extent of duplication, and the overlap of expenditures and resources, is enormous. This is because the expenditures by federal departments, and many provincial and municipal agencies, are generally not properly tracked or cross-referenced.

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 the April 1999 report, the federal auditor 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.

Accountability on native reserves is lacking but there are ways to solve that problem. One possibility is to have native governments collect taxes in the way other levels of government collect taxes: through income taxes, property taxes and a multitude of other measures. This would have an immediate effect on the size of government on reserves, which is unreasonably large in comparison to non-native communities of similar sizes.

For example, for the year ending March 31, 2002, there was one native politician for every 175 people. These politicians earned salaries and honoraria of approximately \$101 million tax-free. The travel expenses for the native politicians were another \$30 million.<sup>1</sup> That same year, the city of Calgary had 15 elected officials; meaning one politician for every 60,000 Calgarians. The salaries and honoraria of Calgary's elected officials were approximately \$1.1 million.

The Samson Cree Reserve in Alberta provides a tragic example of the power and lack of accountability displayed by some native chiefs and councils.

Samson Reserve near Edmonton sits on one of the largest oil and gas fields in the country; it accounts for 75 percent of total oil and gas production on Canada's reserves. In 1996, band revenue was nearly \$100 million, about half of it coming from the federal and provincial governments.<sup>2</sup> Since the reserve system is based on a communal arrangement, reserve resources are to be shared among the band members. The Samson Reserve has approximately 5,000 members. Unfortunately, sharing doesn't readily occur on the Samson Reserve. Nearly 80 percent of the residents are on welfare, and unemployment is approximately 85 percent.

On the other side, there is a small group of band leaders and connected insiders that control the reserve's affairs and finances. Some collect tax-free compensation packages that place them in the top few percent of the country's income earners. These leaders travel to Geneva, London, Paris, Turin, Tokyo and countless other places. They attend events across Canada and the United States. They hold meetings in Las Vegas.<sup>3</sup>

Because the ruling elite on the reserve control all aspects of reserve life, they can punish and they can reward. And at election time, they can use the reserve's money to buy support. In 1998, the Samson Band had a budget of \$100,000 to cover the costs of band members seeking favours and money in return for

electoral support. An audit revealed, however, that the chief and council handed out \$1.29 million in election goodies.<sup>4</sup>

To avoid a repeat of the Sampson experience, the entire funding structure needs to change. Federal payments should be directed to the individual band members for whom the support is needed, not band governments and their chiefs.

Different arrangements may be needed. For example, if the federal government withheld money from a cheque directed to an individual native (and so noted on the cheque), and transferred the money to the native government in question -- that alone would inject better accountability into the system than now exists. After all, it works now to a degree for local, provincial and federal governments. As the French Finance Minister Colbert once remarked that the art of taxation consists in plucking feathers from the goose with the least amount of hissing. Reserve governments should be subject to the discipline of hissing taxpayers. This would gradually reduce the excessive size of government on reserves.

**Recommendation 1: Reallocate Funding**

**In order to increase the level of accountability on reserves, the payments currently transferred to native band councils should be re-directed to individuals. The money necessary for native governments could then be taxed back by the local native government. To ensure appropriate community support, this recommendation should be implemented on a pilot basis on one or more reserves over a set time-frame.**

Rearranging federal transfers to Indians will not reduce dependency. It is however, a small step forward in the provision of greater freedom of choice and personal responsibility. It will be up to the individuals to decide what types of services their local government will provide with their tax dollars. Individual natives may wish for their band governments to improve housing or sewage rather than continuing to subsidize local businesses. The process of individuals deciding which services they wish to receive over others will provide natives with a greater sense of responsibility.

## ***2.1 Auditor General of Canada***

The auditor general of Canada is an independent audit office serving parliament and Canadians, and is widely respected for the quality and impact of its work. The auditor promotes accountable government, and an ethical and effective public service.

The auditor general's office is able to achieve its goals by conducting independent audits and studies that provide objective information, advice, and assurance to parliament, government, and Canadians by working collaboratively with legislative auditors, federal and territorial governments, and professional organizations.

Unfortunately, once the federal government transfers money (tax dollars) from the federal departments to native bands, the auditor general of Canada no longer has the authority to audit how and where the money is spent. No checks and balances foster inefficiencies, redundancies, corruption and even abuse.

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 office of the auditor general may not be the best route to achieve the goals or the best use of tax dollars. The expansion of the existing auditor general's mandate to include native bands would not require as many tax dollars to operate due to the economies of scale that could be utilized, and the standard of audits, mandates and scrutiny would remain consistent. The audits would uncover waste, mismanagement, and corruption and will provide band members and taxpayers with an indication of the efficiency, effectiveness and quality of services being offered with tax dollars on reserves.

### **Recommendation 2: Expand Auditor General's Mandate**

**A system of independent annual financial audits and operational audits of Indian governments – similar to how the federal and provincial auditors conduct their audits of government departments and programs – should be implemented. Expansion of the current auditor general's mandate to include native bands is imperative for greater accountability and transparency.**

Both taxpayers and native Canadians would benefit from the increased accountability, transparency and scrutiny. The increased knowledge would enable native community members to adequately evaluate the programs and services offered in their community in order to decide which programs and services should be continued, and which ones should be terminated. This process will ultimately save taxpayers and native communities valuable time, money and resources.

## ***2.2 Ombudsman for Aboriginal Affairs***

Every office of the Canadian Taxpayers Federation receives calls from native Canadians on occasion, frustrated with their local council, or frustrated with the Department of Indian Affairs.

## ROAD TO PROSPERITY – Five Steps To Change Aboriginal Policy

Presently, the delivery of programs is in the hands of the chief and council. Since there is little 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 is often 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 Native 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 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.<sup>5</sup>

In January 2005, it was reported the Labrador Innu Band Council of Natuashish could not account for \$3 million in a recent audit. The band later indicated only \$300,000 could not be accounted for. Band members allege alcohol was distributed during the last band council elections.

As a result of the poor accounting practices and allegation of "vote-buying" Natuashish community members organized a petition calling for the chief to be fired and sent the petition to the Department of Indian Affairs. Regrettably, Indian Affairs Minister Andy Scott did not launch an investigation, but passed the buck to the RCMP to lay charges upon receipt of a complaint. Thus, the concerned band members are caught in a vicious circle with little hope of redress in sight.

Unfortunately, these are not isolated incidents.

Access to Information documents obtain by the Canadian Taxpayers Federation show in 2003 the Department of Indian Affairs received 297 allegations of corruption, nepotism or mismanagement by native band councils.

As an interim measure to ensure native Canadians receive appropriate redress, an Ombudsman for Aboriginal affairs needs to be established. In keeping with the CTF's objectives of the eventual elimination of the Indian Act and the Department of Indian Affairs, the Ombudsman for Aboriginal affairs would eventually become redundant.

That said, the ombudsman would have authority to investigate complaints and propose changes to be made in a band's administrative practices or the administrative practices of the Department of Indian Affairs. If the band or the

Department fails to make those changes, a report would be brought before Parliament.

**Recommendation 3: Establish an Ombudsman for Aboriginal Affairs**  
**The Indian Act does not sufficiently address the concerns of native Canadians. As an interim measure to ensure native Canadians receive appropriate redress, an Ombudsman for Aboriginal affairs needs to be established.**

Under the current system, native Canadians are caught between a rock and a hard place when they raise concerns over their chief and councils performance. In many cases, neither the native band nor the Department of Indian Affairs wishes to address the concerns. An Ombudsman for Aboriginal affairs – with a sunset clause – would provide native Canadians with an independent investigative authority to address concerns over alleged native band misconduct.

### **3.0 Wealth Creation Through Property**

Millions of Canadians take the right to buy and sell their own home for granted. Yet on Canada's reserves, where land is held communally, aboriginals have been systematically denied this fundamental economic right for generations.

The news from Natuashish is bleak. In 2002, the federal government spent \$152-million relocating Labrador's Mushuau Innu to the newly constructed community, hoping the epidemic of unemployment, suicide and substance abuse that had plagued their decrepit Davis Inlet settlement would abate. But a recent in-depth investigation performed by the CBC shows conditions among the Innu are worse than ever. Drug and alcohol use is still rampant, the local economy is virtually non-existent, and now it is reported that \$3-million in band funds have gone missing.

Sadly, Natuashish is all too typical of other aboriginal communities. Under the Indian Act, natives have been encouraged to remain on reserves, where land is held in trust by the Crown and controlled collectively by band councils, not by individuals. This communal arrangement, which resembles the collective farming model implemented disastrously under Soviet communism, stifles individual entrepreneurship: Because landholders do not own their property in fee simple, they may not obtain mortgage financing, the most common method for small business owners to raise start-up capital.

Indeed, the arrangement gives landowners little motivation to improve their property or build equity of any kind within their community. The policy thereby stifles economic development, and promotes unemployment and idleness - as well as the ills that follow in their wake.

Some reserves have attempted to promote economic development through so-called "customary" or "hereditary" rights. Under such an arrangement, some band councils allot parcels of reserve land to families and individuals who have lived on that land for a long period of time. However, such informal rights are more limited than the outright fee-simple ownership most Canadian property owners take for granted. In many cases, customary rights may be exercised only for residential or agricultural use, not commercial purposes. Moreover, although holdings can be passed on to heirs and subdivided among family members, they cannot be sold to an unrelated third party. Nor can they be seized by banks or other financial institutions, which explains why they cannot be used as mortgage collateral.

Since it's the band that assigns customary rights, it's the band that handles any disputes that arise over ownership. (The federal government does not recognize customary rights, as such rights lie outside the purview of the Indian Act). Since owners cannot invoke the powers of the Canadian legal system to protect their interest in a given parcel of land, they are liable to dispossession based on arbitrary or even corrupt decisions emanating from band councils.

The link between land ownership and prosperity is well-known to economists. Yet land reform remains elusive because Canadian governments and native leaders remain wedded to the idea that reserve land should be owned collectively. Courts have played a role as well. In 2001, for instance, the B.C. Supreme Court ruled in the case of *Lower Nicola Indian Band v. Trans-Canada Displays Ltd.* that a band council holds a fiduciary obligation to all band members, and must therefore consider the rights of other band members in decisions involving the use of property.

In the Nicola case, a band member had claimed possession of 80 acres of reserve land based on customary use, and had entered into an agreement with a company to display billboards on that land. After his death, his estate claimed the property. The court, however, held that customary use did not create a legal interest in the land; and that until permission was given by the band or the government, the company displaying billboards would be deemed to be trespassing on reserve lands.

It is also common for disputes to arise over property rights during divorce proceedings. Courts trying to divide up on-reserve property have no recourse

to provincial family law, but must instead rely on the federal Indian Act, which contains no provisions for distribution of property upon the breakdown of a marriage. In normal situations that arise off-reserve, a house can be sold and the proceeds split between divorced parents. That is usually impossible on reserves. And because tribal councils often side with the ex-husband in domestic disputes, it is not uncommon for wives to be turfed out of their homes, and off the reserve entirely.

For all of these reasons, it is clear that customary rights are a poor way to manage the private use of land on aboriginal reserves.

### ***3.1 A Step Toward Better Native Housing***

Pride of ownership provides a powerful motivation for individuals to improve their property. It explains why homeowners are willing to spend their weekends fixing their houses and mowing their lawns. The reason they do so is because the property is theirs and theirs alone. They own it in "fee simple" - that is to say, outright. As the well-known expression goes, no one ever paid money to wash a rented car.

As a visit to a typical Canadian reserve reveals, such pride of ownership is absent in many native communities. Housing is dilapidated, and there is little evidence that occupants care much about their properties.

Needless to say, this is not a reflection of aboriginals themselves, but rather an indictment of our government's native policy: Federal law does not permit those who live on Indian reserves to own their homes in fee simple. Since they cannot sell their houses to recover their investments, residents have no economic incentive to spend money on improvements. For the same reason, there is no reason for housing developers and other entrepreneurs to create new building stock for private buyers.

This explains why a 2003 federal auditor general (AG) report found there was a shortage of 8,500 houses on Canada's Indian reserves - despite the fact the federal government spent \$3.8-billion over the past decade on native housing.

As things currently operate, the Department of Indian Affairs and the Canada Mortgage and Housing Corporation (CMHC) transfer federal housing money directly to native band councils. From there, it is up to the chief and council to determine who gets a new house or repairs. As one would expect in any system in which material benefits are dolled out by unaccountable leaders, bald-faced favouritism is common. In many cases, reserve residents complain, one must be

connected to the band council in some way in order to obtain new or improved housing.

Even well-intentioned native leaders have difficulty fulfilling their oversight responsibilities. For instance, band councils are supposed to ensure that any new housing meets National Building Code standards. But bands often have no way to ensure new housing meets these codes, which helps explain the high percentage of substandard housing.

The average non-native homeowner can walk away from a housing purchase if the dwelling is poorly constructed: In a free market, he has a thousand other homes from which to choose. But on reserves, residents have no choice: Like the citizens of some bygone communist regime, they must take what their political masters give them, whether it's falling apart or not.

Because fee-simple ownership of reserve land is forbidden, systems of what may be called "quasi-ownership" have emerged. One such system, customary rights, was discussed earlier (along with its various flaws). Another more promising alternative is the allotment of "Certificates of Possession" (COP). When a band issues a COP, the landholder is deemed to have an interest in the property he inhabits. This interest may then be used to apply for mortgage financing, which is otherwise unavailable to reserve residents.

In return for a loan, a holder of a COP transfers his certificate back to the issuing band as collateral. The band then enters into an agreement with CMHC by which it pledges to assume the mortgage in the event of a default. Since COP holders can be dispossessed if they do not meet their repayment schedule, they will generally be motivated to comply with the terms of their loan. Once the mortgage is paid off, the certificate is transferred back to the individual.

Certificates of Possession are a stronger and more valuable form of property rights than customary or hereditary ownership: Canadian courts will enforce the rights and obligations associated with COPs, whereas they typically will not in the case of customary rights. And since land held under a COP can be subdivided, left to an heir or sold to another person having a right to reside on that reserve, certificate holders tend to assume the mindset and habits of a true property owner.

Many native bands across Canada have been motivated to issue Certificates of Possession because they are a means to bring more funding to the reserve. Moreover, the economic value that inheres to COPs provides an enticement for younger band members to stay on-reserve. In some parts of Canada, internal real estate markets powered by COPs are thriving. The Six Nations Band in

Ontario, for instance, has issued over 10,000 COPs.

**Recommendation 4: Better Utilize Certificates of Possession**

**As a way to promote private property ownership and prosperity in native communities, Certificates of Possession should be better utilized.**

In sum, Certificates of Possession are win-win-win: Bands are able to secure more income; residents become eligible for mortgage financing; and Canadian taxpayers are relieved of some of the burden associated with the constant replenishment of native housing stock. One can only hope that more of Canada's reserves follow the example of the Six Nations Band.

### ***3.2 Matrimonial Property Rights***

Whether it is a Canadian government sanctioned report or a United Nations' study, native Canadian women and children living on Indian reserves, are the most disadvantaged of all Canadian citizens. The lack of matrimonial property rights is one reason for the disparity.

Throughout Canada, provincial family law governs the division of assets and child custody upon dissolution of marriage. Yet because Canada's constitution stipulates the federal government has exclusive jurisdiction over "Indians and lands reserve for the Indians," the federal Indian Act is the law that ultimately governs native Canadians living on reserves.

Canadian courts have ruled that only the Indian Act can apply to property on reserves – regrettably, the Indian Act is mute on the subject of matrimonial property rights. According to the Department of Indian Affairs, native bands operating under the Indian Act can adopt policies to govern the granting of allocations of land that take into account matrimonial real property considerations.

It is true the First Nations Land Management Act does deal explicitly with the division of matrimonial property, however the development of land codes are a community responsibility. In many cases this is little if any improvement over the status quo.

The land possession system of the Indian Act does not prohibit women from possessing property on reserves, however, the Department of Indian and Northern Affairs has indicated most certificates of possession are held by native men. This is an important point since property rights on reserves determine

child custody and access rights. Native men have the upper hand when it comes to child custody and divorce settlements.

Women must ask their band council if they may stay in their family house and if they may retain custody of their children. As indicated earlier, property rights on reserves determine child custody and access rights, leading to many native women to not only become homeless, but lose custody and access to their children.

There are several ways to alleviate these situations. Two solutions would be to amend the Indian Act to incorporate the applicable provincial matrimonial law or provide for individual private property rights on reserves.

Since the Indian Act does not deal with matrimonial property rights, it would require a parliamentary amendment to change that. True, the constitution gives the federal government exclusive jurisdiction over native reserves; this does not mean however that the federal government can not delegate some of its jurisdiction. A simple parliamentary amendment could allow for the appropriate provincial marriage laws to apply on reserves.

Reserve land is now held in trust by the Canadian government and not by the native Canadian community members. This land needs to be transferred to the individuals of the native community. This would enable the native communities to establish individual private property rights, thereby providing women – and men – greater certainty over property ownership. This is a lofty goal; one the CTF has commented extensively on in other studies.

**Recommendation 5: Amend Indian Act to Include Matrimonial Property Rights**

**Since the Indian Act does not deal with matrimonial property rights, parliament should amend the Indian Act to enable applicable provincial matrimonial law to apply to native reserves.**

As more and more aboriginal women's organizations are established throughout Canada, Canadians will become more aware of the plight of native women and children who live on reserves. Given the speed at which politicians have dealt with native issues in the past, it will likely take a great deal of public pressure to force the politicians to act for the benefit of aboriginal women and children. For the sake of native women and children, let's hope they move quickly on this issue.

## 5.0 Conclusion

Currently, the federal government spends approximately \$8 billion annually on 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.

If the study's recommendations are implemented, native Canadians living in native communities will be empowered. They will have governments that are open, accountable and transparent. Native Canadians will have a place to turn when they need to seek redress in their communities. Most important, native Canadians will have the opportunity to own their home if they choose to.

Native leaders and advocates may say the CTF's recommendations will lead to "cultural genocide." This rhetoric is based on an emotional argument with little merit. When a native Canadian becomes a Canadian of full status, they do not stop being Cree, Mohawk or Ojibwas. What the native leaders and advocates reject to is the knowledge that when native Canadians become Canadians of full status, the entire system of Indian Affairs and the Indian Act will cease to exist.

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 stop ignoring the issue of accountability and transparency on reserves. To aid the federal government along the path of change, the Canadian Taxpayers Federation has provided the government with five steps to achieve greater accountability, transparency and prosperity within native communities. Let's hope they begin the journey soon.

## 6.0 Footnotes

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<sup>1</sup> Department of Indian Affairs, 2001-2002 Schedules of Salaries, Honoraria and Travel Expenses provided by First Nations

<sup>2</sup> Remington, R. 2000. "Cree band seeks \$1.4B in lawsuit against Ottawa." National Post. June, 2000.

<sup>3</sup> Cheney, P. 1999. "The money pit: an Indian band's story." The Global and Mail. April 1999.

<sup>4</sup> Cheney, P. 1998." The Global and Mail. October 24, 1998.

<sup>5</sup> Perreauz, Les. 2002 "Cheques issued on eve of election." National Post. December 2002.