Treaty negotiations at the turn of the last century

THE LOST CENTURY

Moving Aboriginal Policy from the 19th Century to the 21st Century

CANADIAN Taxpayers FEDERATION *Fighting for taxpayers*

November 2002

Tanis Fiss, Director

Centre for Aboriginal Policy Change
Canadian Taxpayers Federation
Suite 604, 1207 Douglas Street
Victoria, BC
V8W 2E7

Telephone: 250.388.3660
Facsimile: 250.388.3860

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.

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

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

Telephone: 306.352.7199
Facsimile: 306.352.7203
E-mail: canadian@taxpayer.com
Web Site: 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 – native and non-native – who will pay the bill: the taxpayers.

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

Tanis Fiss, director
Centre for Aboriginal Policy Change
Suite 604, 1207 Douglas Street
Victoria, British Columbia
V8W 2E7

Telephone: 250.388.3660
Facsimile: 250.388.3680
Web Site: www.taxpayer.com

THE LOST CENTURY – Moving Aboriginal Policy from the 19th Century to the 21st Century

TABLE OF CONTENTS

OVERVIEW **1**

SUMMARY OF RECOMMENDATIONS **4**

1.0 INTRODUCTION **6**

1.1 HEALTH AND SOCIAL INDICATORS 12
1.2 WHAT HAS THE FEDERAL GOVERNMENT DONE? 13
1.3 ABORIGINAL ONLY FISHERY 14

2.0 THE INDIVIDUAL V THE COLLECTIVE **17**

3.0 MOVE TO PRIVATE PROPERTY RIGHTS **19**

4.0 TAXATION **20**

4.1 URBAN RESERVES 21
4.2 TAX-FREE INVESTMENTS 22
4.3 TREATY 8 – COMPLETE TAX EXEMPTION 23
4.4 NATIVE GOVERNMENT INITIATED TAXATION 24
4.4.1 Sechelt Taxation Proposal of 1989 ..... *24*
4.4.2 The Nisga'a Model of Taxation *25*

5.0 ACCOUNTABILITY **26**

5.1 AUDITOR GENERAL OF CANADA 28

6.0 UNEQUAL LEGAL RIGHTS AND ENTITLEMENTS **29**

7.0 SELF-GOVERNMENT **30**

7.1 VOTES FOR NON-ABORIGINALS LIVING ON RESERVES 32

8.0 NEW AND PROPOSED FEDERAL LEGISLATION **34**

8.1 FIRST NATIONS LAND MANAGEMENT ACT 34
8.2 FIRST NATIONS GOVERNANCE ACT 35
8.3 SPECIFIC CLAIMS RESOLUTION ACT 36
8.4 FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT ACT 38

9.0 CONCLUSION **38**

OVERVIEW

It can be argued that the current plight of aboriginal people was created in 1867 when the Canadian Constitution gave the federal government explicit responsibility for "Indians and lands reserved for the Indians," thereby precluding provinces from legislating for Indians.[1] The myriad of programs available to any other citizen of a province are not available to Indians living on reserve land, thereby resulting in a separate level of federal bureaucratic overlap.[2] Consequently the federal government – by having programs specifically for Indians – treats Indians differently than other Canadians.[3]

It is important to understand the era in which the 1867 Constitution and subsequently the *Indian Act* were written. This was a time of great discrimination. Women, Jews and Catholics were not considered "persons" under the law and other visible minorities such as blacks, Chinese, and Indians were considered inferior. But rather than treat all Canadians as equal in the 21st century – women, Jews, Catholics and visible minorities receive all the rights and responsibilities as any other Canadian citizen – Indians are still segregated from the rest of society based entirely on their ethnicity.

In 1982 the Constitution of Canada was amended to provide that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." Unfortunately, the Constitution itself does not make it clear what this statement includes or excludes. The federal government and politicians seem reluctant to provide clarity. As a consequence, the power to legislate over Indians has been effectively stripped from the hands of the elected officials and placed in the hands of judges and ultimately the Supreme Court of Canada.

Fortunately there are no legal or constitutional barriers to ending federal jurisdiction over Indians, because the Constitution allows but does not require the federal government to legislate for Indians. Just because the federal government has sole jurisdiction does not mean it must exercise it. Therefore, the federal government can abolish the *Indian Act* and its policies of segregation at any time.

In 1969 Jean Chrétien, the Indian Affairs minister at that time, released the Trudeau government's White Paper on Indian policy. The main intent of the paper was to lead to the full free and non-discriminatory participation of Indian people in Canadian society. The White Paper illustrates a vivid example of why the *Indian Act* should be phased out. "…the separate legal status of

[1] Aboriginal peoples refer to the Indian, Inuit and Métis people of Canada.
[2] The Department of Indian and Northern Affairs is the primary federal department responsible for Indian, Inuit and Métis program funding. However there are 12 other federal departments that have Indian, Inuit and Métis programs.
[3] It is important to note that Indians living and working off reserve lands have the same rights and responsibilities as other Canadians. i.e., they pay the same taxes and are eligible for the same provincial programs and services.

Indians…[has] kept the Indian people apart from and behind other Canadians. The Indian people have not been full citizens of the communities and provinces in which they live and have not enjoyed the equality and benefits that such participation offers. The treatment resulting from their different status has been often worse, sometimes equal and occasionally better than that accorded to their fellow citizens. What matters is that it has been different."[4]

Throughout this paper the terms aboriginal, native and Indian are often used interchangeably to describe those peoples whose ancestors lived in North America before European contact and whose descendants live here now. Much of the government funding in Canada is directed towards status Indians, Inuit and Métis (though significantly more to the first and not the third group). There are native Canadians or aboriginals who are not status Indians; there are status Indians who do not live on reserves. The term "Indian" is used to refer to reserve-specific and *Indian Act* specific matters. At other times, the terms aboriginal and native are used interchangeably when discussing broader issues that affect aboriginal people of Canada.

This Position Paper, written by Tanis Fiss on behalf of the Canadian Taxpayers Federation's Centre for Aboriginal Policy Change, brings together a number of issues and positions the CTF has worked on since 1997. The paper was first released in November 2002; however, due to overwhelming interest, the position paper was re-printed in March 2003.

This paper shows that increased government spending has not improved health and other social indicators for native Canadians, and outlines the inequality current federal legislation and policy has created for Indians. Good governance, accountability and transparency are minimal requirements for native communities to thrive. In addition, for native communities to compete successfully within the Canadian economic mainstream, the *Indian Act* must be phased out. To begin the process of eliminating the *Indian Act,* the current exemption from taxation must be phased out over time. As it exists now, an artificial competitive advantage has been created.

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.

[4] Canada, Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy* (The White Paper), 1969.

There is a glimmer of hope. The federal government is slowly moving towards amending the existing *Indian Act*. The first piece of legislation to bring Indians to a more equal footing was the adoption of the *First Nations Land Management Act* in 1999. In the fall of 2002, the federal government re-introduced three pieces of draft legislation: *First Nations Governance Act, Specific Claims Resolution Act,* and *First Nations Fiscal and Statistical Management Act.* In the fall of 2002, the draft legislation will be subject to public debate and a series of reviews before passage. It is not likely the proposals will be proclaimed into law before June 2003. Thus, the federal government has an opportunity to stop ignoring the issue of private property rights, the lack of accountability and the distorting effects that freedom from taxation provides for native Canadians living on reserves.

This paper assumes that Canadians – all Canadians – are fundamentally alike. With the discovery of the human genome, science has shown that all humans share similar genetic codes. It is less than one per cent of the genetic code that differentiates us by determining visible traits such as skin, eye and hair colour. Therefore all legislation and government policy must be based on fairness and equality – not race. 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."[5] In other words, the time for equality is now.

[5] Prime Minister Trudeau, *Statement of the Government of Canada on Indian Policy*, Ottawa, 1969

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

To achieve equality for all Canadians, the *Indian Act* must be phased out over the next 20 years. By 2023 the *Indian Act* should no longer be part of the Canadian landscape.

Recommendation 2:

If native communities are to become economically self-sustaining, the reserve land which is now held by the Crown should be transferred to individual natives living on-reserve, and to band members living off-reserve. It will be up to natives themselves to decide if they want to transfer the land into a communal arrangement or allow for the property to be owned and managed individually.

Recommendation 3:

The tax exemption now provided for natives living and working on reserves is a provision of the *Indian Act,* not the Canadian Constitution. The *Indian Act* is like any other piece of legislation, capable of being amended and/or abolished at any time. Taxation at all levels (municipal, provincial, federal) should be phased in for natives over a period of ten years. As it is now, an artificial competitive advantage for native businesses has emerged.

Recommendation 4:

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.

Recommendation 5:

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 true accountability and transparency to occur.

Recommendation 6:

If native reserves are to become economically viable and compete within Canada, they must be subject to the same rules. The *Indian Act* must be changed to eliminate section 89 which shelters native property and assets located on reserves from any process of garnishee, execution or attachment for debts, damages and other obligations.

Recommendation 7:

Municipal-type governments successfully manage small communities all over Canada. This model should be implemented for native reserves rather than a constitutionally protected "third order" style of government. In addition, the development of individual property rights must be established and protected in order to generate the wealth needed for a self-financed municipal-style of government.

Recommendation 8:

Non-natives living on reserves and paying taxes in their local communities must be granted the democratic right to participate in the local political community by being granted the right to vote. In addition to a right to vote, non-natives living on reserves must be given the opportunity to serve as elected representatives on band councils.

1.0 INTRODUCTION

The social and economic problems facing Indian people in Canada did not emerge overnight. [6] For more than 130 years, Indians have been segregated from Canadian society by the *Indian Act.*[7] This archaic and paternalistic Act was drafted when Canada was an intolerant and racist nation. For example, women and Jews were not considered persons and did not have a right to vote. Visible minorities, including Indians, were often thought of as inferior.

By having a piece of legislation that targets one segment of Canadian society, the Act today still segregates Indians from other Canadian citizens by their placement on reserves; thus the Act limits their ability to fully participate in an economy which is now overwhelmingly in urban Canada. As Assembly of First Nation's National Chief Matthew Coon Come stated, "Our land base is largely isolated from markets and technologies…The costs of doing business on our lands are six times higher than they are in the rest of Canada. We have to go to Ottawa to approve a lease or dig a hole."[8]

The Department of Indian Affairs and Northern Development (INAC) assumes the lead on behalf of the federal government in exercising Canada's jurisdiction under section 91(24) of the Canadian Constitution. This section states that the federal Parliament is given the power to legislate specifically for "Indians and lands reserved for the Indians."

Registered Indians are under the legislative and administrative jurisdiction of the federal government as spelled out in the Constitution, and are regulated by the contents of the *Indian Act*. Slightly more than 700,000 Canadians are considered to be registered Indians. Being registered means that, with some exceptions, a native is attached to a band, which is on the band list in Ottawa. [9]

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 605 Indian 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

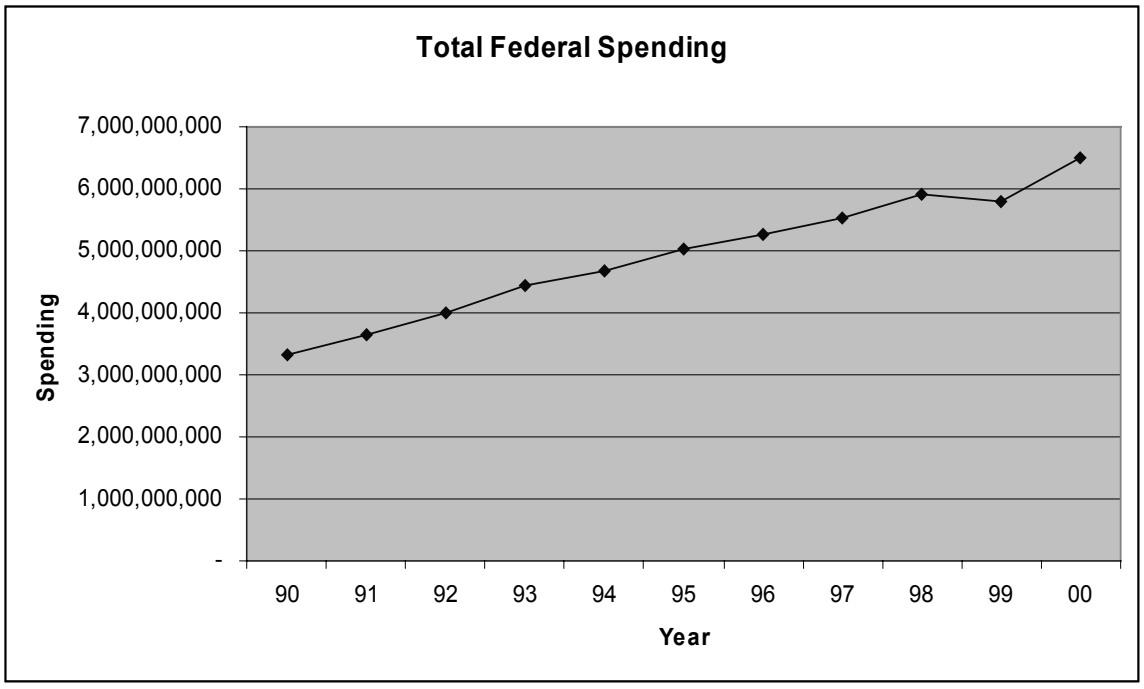
[6] Indian – an Indian person who is registered under the *Indian Act*. The Act sets out the requirements for determining who is a status Indian. *Métis* is a person of mixed blood, especially of French and North American Indian. *Inuit* is an Eskimo of North America who lives above the tree line in Nunavut, the Northwest Territories, Northern Quebec and Labrador. *Aboriginal* refers to Indian, Métis and Inuit people.
[7] *Indian Act* – federal legislation designed to give effect to the legislative authority of Canada for Indians and lands reserved for the Indians pursuant to s.91(24) of the *Constitution Act, 1867*.
[8] *Poverty Keeps First Nations in Chains*. Coon Come, Matthew. Calgary Herald October 25, 2002
[9] Band list is a list of persons that is maintained under s. 8 of the *Indian Act* by a band or by the Department of Indian Affairs.

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 services provided to status on-reserve communities include education, social assistance, housing and community infrastructure. Some programs, such as post secondary education and housing, are also available to off-reserve status Indians.

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.

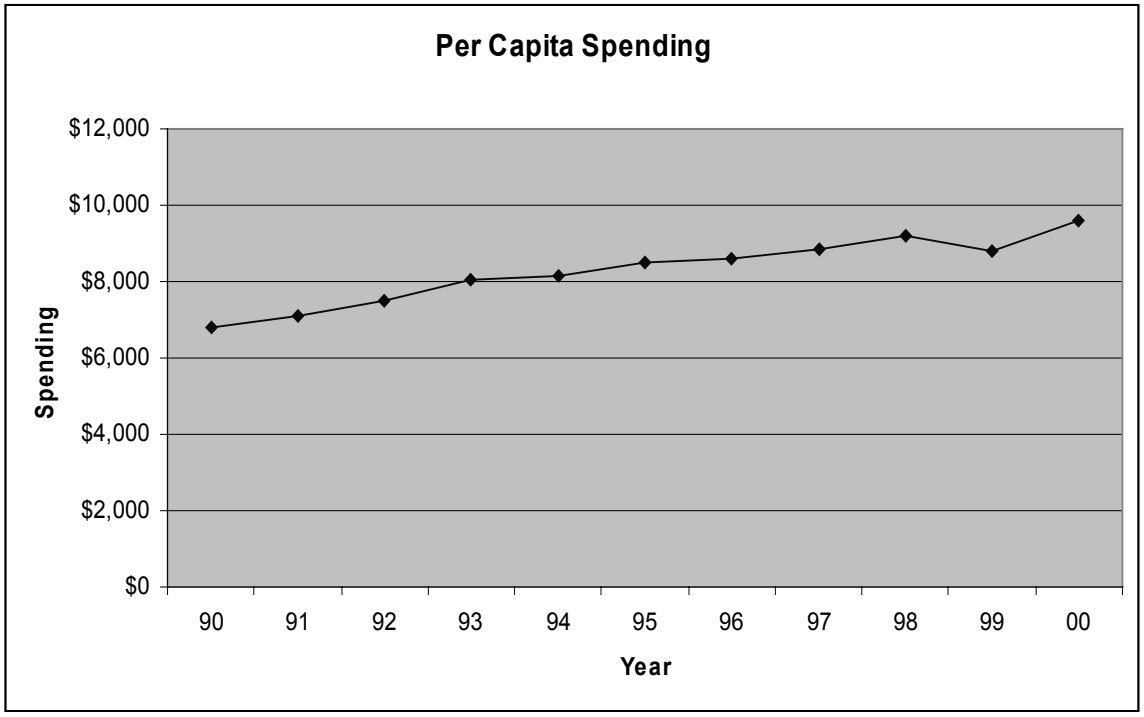
Figure 1: Total Federal Spending on Native Programs



Source: Indian Affairs and Northern Development Canada, Transfers to Indians and Inuit
Note: All figures adjusted for inflation

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.

Figure 2: Per Capita Spending



Source: Indian Affairs and Northern Development Canada, Transfers to Indians and Inuit
Note: All figures adjusted for inflation

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. [10]

The depths of duplication, and the overlap of expenditures and resources, are enormous. This is because the expenditures by federal departments, and many provincial and municipal agencies, are not generally tracked in a way for those directed toward Indian people to be easily identified.

According to federal Auditor General reports, 80 per cent of federal funding is transferred to Indian band councils to then distribute the funds. Unfortunately, the money is sometimes spent on excessively high salaries for the Chief and council, leaving little money for health care, housing, social services and education. For example, for the year ending March 21, 2000, there was one native politician for every 177 people. These politicians earned salaries and honoraria of approximately $91 million tax-free. Their travel expenses were another $29 million.[11]

To put the example in perspective, if all Canadians were as thoroughly governed as reserve Indians, there would be 295,000 politicians and Canadians would be paying them approximately $10 billion per year, plus travel. The average reported salary for an aboriginal politician in Canada is $24,000 a year. Since money made on reserve is tax-free, the equivalent off-reserve salary would be about $34,000. This varies widely from place to place. In the NWT the average aboriginal politician makes a tax-free $9,229 per year ($12,920 taxed equivalent), in Alberta the average is a tax free $40,424 per year ($56,593 taxed equivalent), and in Saskatchewan the average is $31,840 ($44,576 tax equivalent).

In practical terms, most Chief and council jobs are akin to being the Mayor and council of a small to medium sized town, most of which only make a few thousand dollars a year. A city councillor in Regina makes $17,000 but if Regina citizens were as “represented” as Indian band members, Regina would have approximately 1,200 city councillors, costing over $38 million.

Some salaries can be interpreted as excessive. As illustrated in the table below, the top salary and honoraria in Atlantic Canada is $218,000 tax-free. The top salary and honoraria of a native Chief in BC is $250,000 tax-free.

[10] Similar to federal government spending, provinces provide funding for Indian, Métis, and Inuit in the following areas: economic development, education, social services, water, sewer and resource development. Municipalities provide funding for water, sewer, roads and electricity. Therefore duplication of services is often three-fold.

[11] Department of Indian Affairs, 1999 to 2000 Schedules of Salaries, Honoraria and Travel Expenses provided by First Nations.

Table 1: Native Band Elected Officials' Salaries, Honorariums and Travel Expenses for Year Ended March 31, 2000

Region	Number of Elected Officials	Salary and Honoraria ranges (rounded to nearest $1000)	Total Salary, and Honorariums	Average Salary and Honorarium per Elected Official	Total Actual Travel Expenses	Average Travel Expenses per Elected Official
Atlantic	213	$3,000 to $218,000	$7,013,440	$32,927	$910,505	$4,275
Quebec	209	2,000 to 115,000	5,595,479	26,773	1,391,352	6,657
Ontario	830	0 to 90,000	15,903,320	19,161	4,755,766	5,730
Manitoba	417	0 to 129,000	12,853,777	30,824	5,448,914	13,067
Sask	551	0 to 152,000	17,543,836	31,840	7,557,729	13,716
Alberta	313	0 to 75,000	12,652,670	40,424	4,695,910	15,003
BC	996	0 to 250,000	16,798,188	16,866	4,144,062	4,161
Yukon	61	1,000 to 79,000	951,285	15,595	109,084	1,788
NWT	219	0 to 199,000	2,012,222	9,229	231,573	1,057
Total	3809		$91,324,217		$29,244,895	

Source: Department of Indian Affairs – 1999 to 2000 Schedules of Salaries, Honoraria and Travel expenses provided by native band councils. Only salaries, honoraria and travel expenses paid out to Chiefs and Councillors by native bands are included in this report. Self-governing native bands are not required to submit schedule of salaries, honorarium and expenses to the Department. Some salaries, honoraria and travel expenses may be topped-up in part by native band own-source revenues such as oil and gas or casino revenues. These additional salaries are not available and as such not included in these numbers.

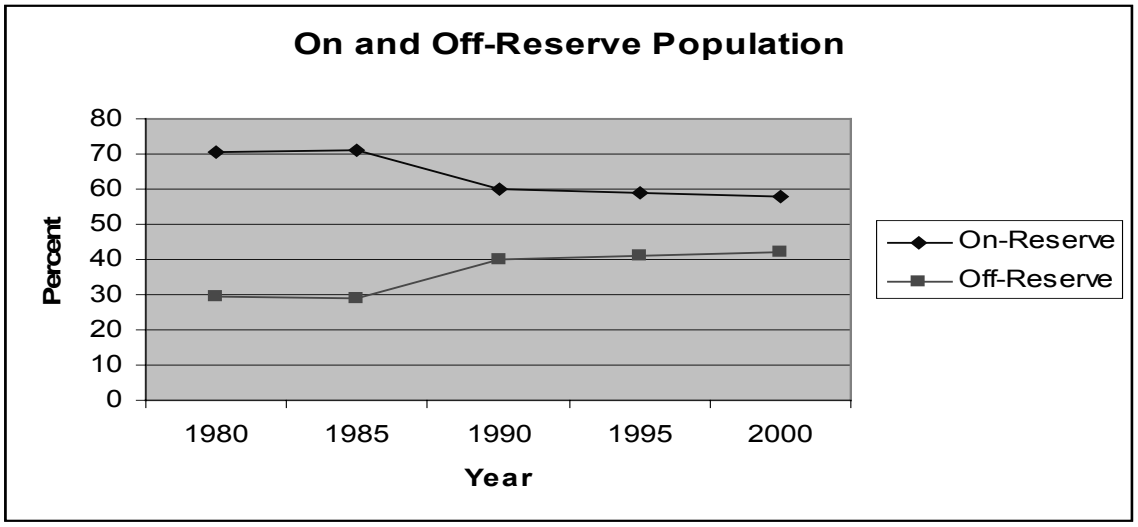
Indian bands are required by the Department of Indian Affairs to have their expenses audited; however, this information is not available to the general public or to the Auditor General. In other words the taxpayers – whose money is being used – are not able to assess how well, or poorly their money is spent.

As a result of the federal government's decision to restrict most of Indian Affair's programs to on-reserve Indians, many natives live in virtual isolation in reserve communities which have no real economic base and, in a number of instances, a disintegrating social fabric. This is because all the land and resources that comprise the Indian reserve are held communally and operated by the Chief and council. Therefore, when a native decides to leave the reserve they often leave – almost literally – with only the shirt on their back.

However, a positive trend is starting to emerge. Faced with social assistance rates as high as 90 per cent on some reserves in contrast to less than 50 per cent for natives in most urban centres, there is a growing tendency for natives to

leave the reserve and move to urban centres. According to the Department of Indian Affairs, the proportion of on-reserve registered Indians decreased from 71 per cent in 1980 to 58 per cent in 2000.

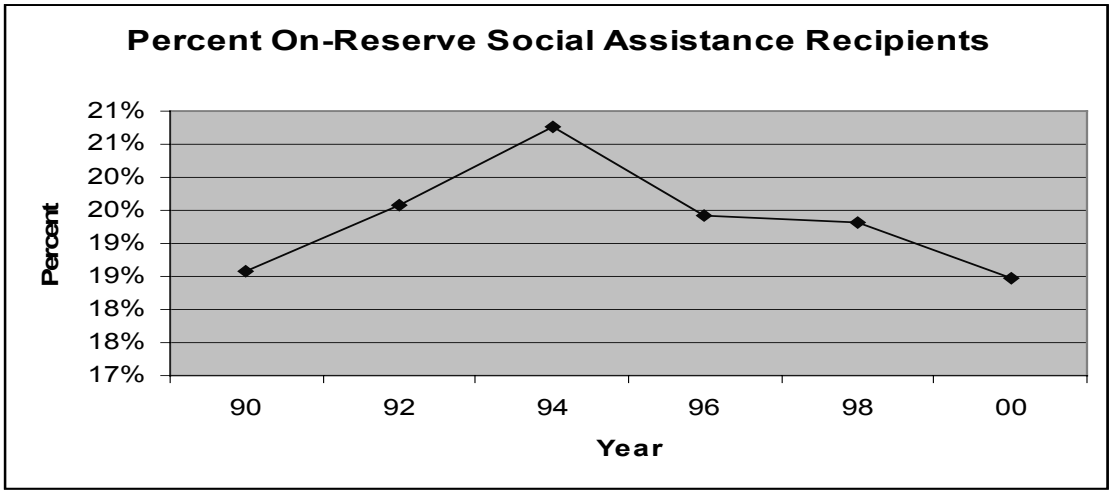
Figure 3: On and Off-Reserve Populations



Source: 1985-2000 Indian Register, DIAND, Population Projections of Registered Indians 1998-2008 (Annual Update), DIAND, 1999

The average per cent of on-reserve social assistance recipients reached a high of 21 per cent in1994. In the year 2000 this figure dropped to 18 per cent. On some reserves the level of aboriginals dependent on social assistance is greater than 90 per cent.[12]

Figure 4: Percent On-Reserve Social Assistance Recipients



Source: 1985-2000 Indian Register, DIAND, Population Projections of Registered Indians 1998-2008 (Annual Update), DIAND, 1999
Source: 1990-2000 Social Assistance, Information Management Branch, DIAND

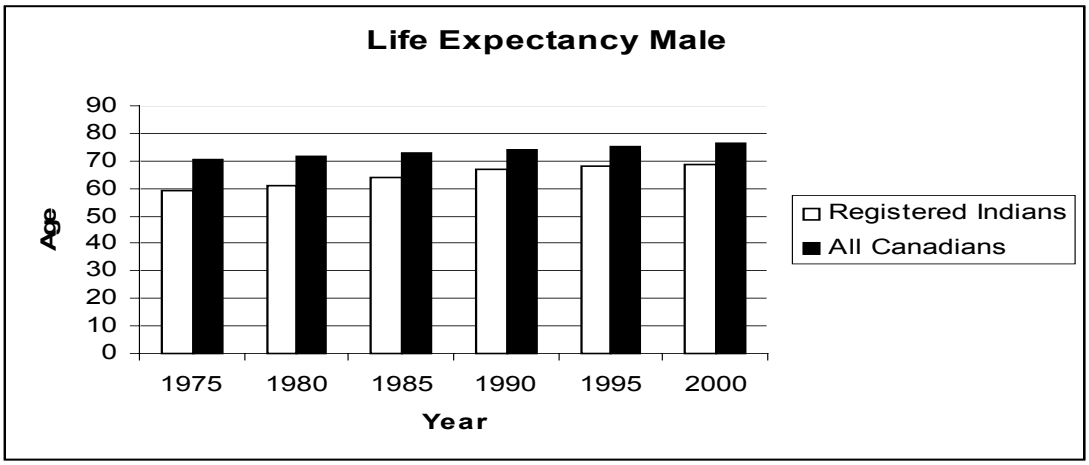
[12] Data figures obtained from the Department of Indian and Northern Affairs, 1980-2000 Indian Register.

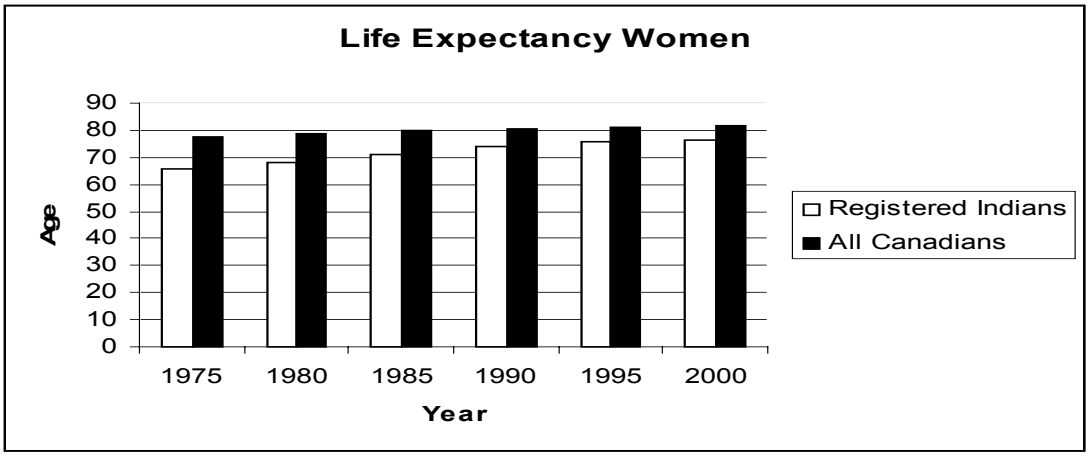
1.1 Health and Social Indicators

One might assume that increased spending on Indians would improve the living conditions on reserves. If there was ever an example of how increased spending does not necessarily solve problems, the following health and social indicators for Indians provide a sad one.

Despite gains in life expectancy, a gap of approximately 6.3 years remained between the Registered Indian and Canadian populations in 2000. The life expectancy gap between the male and female registered Indians in 1975 was 6.7 years in favour of females, and by 2000 the gap had climbed to 7.7 years.

Figure 5: On-Reserve Male and Female Life Expectancy





Sources: Population Projections of Registered Indians, 1998-2000, DIAND, 1999
Life Expectancy, Statistics Canada 2001

In 2000, the rates of suicide of registered Indian youth (ages 15 to 24) were eight times higher than the national rate for females and five times higher for males that same year.

That same year, the birth rate of registered Indians was twice the Canadian average with 27 births per 1,000 people compared to 13 for Canada as a whole. The infant mortality rates were twice as high for registered Indians when compared to the Canadian average.

Some of the additional government spending may have improved living conditions on reserves. However, since native band councils receive native-specific funding in addition to receiving the benefits of roads, universities and hospitals that other levels of government finance, then natives should live longer and be healthier than non-natives. As the above indicators illustrate, this is not the case. Clearly, the problem is with something other than money.

1.2 What Has the Federal Government Done?

Besides pouring more money into Indian Affairs with little or no accountability, the federal government has been changing government policy to compensate for the disparity between natives and non-natives. This is because Canadians believe that they, as a society, should try to right past injustices, make an apology when necessary, and pay appropriate compensation.[13] In an attempt to rectify past wrongs experienced by aboriginal peoples, politicians and bureaucrats have produced volumes of preferential legislation, and provided special exemptions and benefits for aboriginals.

In 1996 the Supreme Court of Canada justified the light sentence handed down to an aboriginal woman, Jamie Gladue, who fatally stabbed her common-law husband to death. Ms. Gladue received three years, only six months of which were served behind bars. As a result of a Supreme Court of Canada decision that denounced judges across Canada for their "over reliance on incarceration" for aboriginal offenders, Parliament amended the *Criminal Code*. Court sentences for aboriginals are no longer based on the severity of the crime, as they are for non-aboriginals. Now judges are to give due attention to a criminal's "Indianness".

On education, the Auditor General reports that "the record of education achievement of Indian students living on reserves continues to lag far behind [their non-native counterparts]." Rather than re-examine the curriculum taught at band schools, post-secondary institutions and professional schools have lowered their academic requirements for aboriginal applicants.

Every level of government has affirmative action policies designed to favour aboriginals with preferential hiring over non-aboriginals. In addition, government contracts are often written to ensure businesses enlist native groups – *any* native

[13] *Past injustices*: generally refers to Indian legislation and policy which prohibited Indians from voting until 1960, residential schools, assimilation policies and forced relocation to remote communities.

consortium, regardless of their expertise in such matters – if businesses want to be considered for such contracts.

Such preferential policies might be barely acceptable – though no less discriminatory – if they actually produced results, but as discussed in the previous section they do not. The statistics discussed are not new, nor are the public policies now administered. In fact, it is precisely some of these public policies that exacerbate the deplorable conditions for aboriginals.

The vast majority of native policies are intended to bridge the gap between the native and non-native standards of living. Unfortunately, the result has been to make aboriginals more – not less – dependent on government handouts and special treatment. Not only does this destroy the motivation and pride of aboriginal people, but it creates resentment and tension in the rest of society.

Most of the native policies have created new victims because they wrongly address group rights rather than individual rights. Thus, group-based laws can only be justified if one looks at the former and not the latter. In either case, it creates victims. For example, should a single mother who is non-native lose a possible job to a native male, just because of his ethnicity? What if the native male is the son of a Chief who earns $50,000 tax-free per year? Unfairness can only ever be justified by looking at the group and not the individual.

Canadians want what is just and equitable, and feel a tremendous amount of guilt for past wrongs inflicted on aboriginal people and the third-world conditions in which many live. But, the current system of awarding special treatment to one group of people while discriminating against another, only results in hostility and inequality in our society. As the African American, Thomas Sowell writes, "emphasis on promoting economic advancement has produced far more progress than attempts to redress past wrongs, even when those historic wrongs have been obvious, massive, and indisputable."[14]

1.3 Aboriginal Only Fishery

One of the best examples that demonstrate the folly of political and bureaucratic policy, that has produced unwelcome results, is the native-only fishing policy launched in 1992.

The Aboriginal Fishery Strategy (AFS) was first implemented on the Pacific coast by the Mulroney government in 1992. Since then it was expanded to include Quebec and Atlantic Canada. This new program, for the first time in Canadian history, destroyed the distinction between the commercial fishery and the native food fishery. Until 1992, natives could not sell commercially their allocation of

[14] *Preferential Policies: An International Perspective*, Sowell, Thomas. New York: William Morrow 1990

"food fish" for sustenance. Natives did however enjoy an equal right to participate in the commercial fishery.

In 1994 further changes allowed government to take voluntarily retired commercial fishing licences and the issuances of new licences and offer them to eligible native organizations. Other Canadian fishermen – commercial or recreational – are entitled only to the fragments that might remain. In other words, native Canadians fish first.

The federal government claims to have implemented this program as a way of complying with the 1990 *Sparrow* Supreme Court of Canada ruling. Unfortunately, the government justification is based on a false interpretation of that ruling.

In March 1995, when the Honourable John Fraser released the *Fraser River Sockeye Public Review Board Report* he stated, "The *Sparrow* decision did not, despite the fact that many people have acted as if it did, ever give authority for the sale – the commercial sale – of food fish. We know that some people in [the Department of Fisheries] and perhaps in other places in the government of Canada took the view that when one considered what might happen in the Supreme Court of Canada and what might happen in land claims settlements then they may as well move a bit ahead of the law and the settlement and establish a regime which would go part way to meeting what they anticipated what would happen….Now it wasn't our mandate to say whether that policy [the AFS] was right or wrong, but what we have to say is that it hasn't worked, but also there has to be a clear understanding that it is not the law today."[15]

The 1990 *Sparrow* decision did not give natives the "inherent" right to a native-only commercial food fishery. What the decision did do was affirm that native people have an aboriginal right – protected by the Constitution – to harvest fish for food, social and ceremonial purposes.[16]

For example, the British Columbia Court of Appeal rejected the claim to a native-only commercial fishery in 1993. "While I would not give effect to the defense that Mrs. Van Der-Peet was exercising an aboriginal right when she sold the fish that is not to say persons of aboriginal ancestry are precluded from taking part, with other Canadians, in the commercial fishery. But they must be subject to the same rules as other Canadians who seek a livelihood from that resource."[17] This decision was later upheld by the Supreme Court of Canada.

As stated earlier, natives have always enjoyed the same right of access to commercial fisheries as all other Canadians. In British Columbia prior to the

[15] Honourable John Fraser, comments at the news conference held for the release of the *Fraser River Sockeye Public Review Board Report* on March 7, 1995, Vancouver
[16] *Our Home OR Native Land*, Smith, Melvin H., 1995, Toronto Canada
[17] Reasons for Judgment of Mr. Justice Macfarlane in *Regina v Van-Der Peet*, Court of Appeal of BC, June 23, 1993, 92.

implementation of the AFS, native people participated in the commercial fishery at a rate ten times that of their ratio to the general population. There was no need for the Aboriginal Fishery Strategy then or now.

Based on the AFS's 2000-01 annual report, Canadian taxpayers spent approximately $35 million on 99 AFS agreements signed in British Columbia, Quebec and Atlantic Canada. Of this funding, over $19 million was spent on co-management and well over $14 million was spent on licences.[18]

The AFS was further expanded in 1999 when the Supreme Court of Canada interpreted, in the *Marshall* case, a 1760 treaty as granting the Mi'kmaq, Maliseet and Passamaquoddy natives the right to fish to secure necessaries, or to earn what the court calls "a moderate livelihood". In December that same year, the Department of Fisheries and Oceans received Cabinet approval for a $160 million budget for the Marshall Phase I program – $135 million for fisheries access and $20 million for capacity building, co-management and economic development.

It is interesting to note that in 1996, the Supreme Court of Canada rejected the claim of both the Sto:lo and the Nu-Chal-Nulth bands to exclusive native fisheries. In the 1998 *Thomas* case, the court ruled a native-only fishery to be illegal. Even more startling, in 2001 a federal parliamentary committee also found the fishing policy to be illegal. That said, the federal Liberal government continues to implement the program.

Not only is the AFS a source of escalating tension between native and non-native fishermen (Burnt Church and the Fraser River), but there is even growing tension between natives. A Newfoundland Mi'kmaq man is fighting his band over a communal fishing licence issued by AFS. And in B.C., due to alleged native over-fishing on the Fraser River, bands located upstream do not have enough fish for ceremonial purposes.

Even if one can ignore the blatant misinterpretation of the *Sparrow* court decision and the disregard for equality, it is difficult to pass over the fact that politicians have introduced racial tensions into an industry where few existed and where native Canadians already had a history of success.

Clearly, treating one group of Canadians differently – often with preferential treatment – 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. However, Canada continues to move down the path of further favouritism, balkanization and racism. If not reversed, this trend toward division, will only serve to weaken our cultural, political and economic fabric.

[18] Aboriginal Fisheries Strategy Annual Report 2000-2001, prepared for the Department of Fisheries and Oceans

Fortunately there are no legal or constitutional barriers to ending the exercise of federal jurisdiction over Indians; the Constitution allows but does not require the federal government to legislate for Indians. Though the federal government has sole jurisdiction, that does not also mean that it must exercise it. Therefore, the federal government can abolish the *Indian Act* and the policies of segregation at any time.

Recommendation 1:
To achieve equality for all Canadians, the *Indian Act* must be phased out over the next 20 years. By 2023 the *Indian Act* should no longer be part of the Canadian landscape.

To look at ways to successfully implement the phasing out of the *Indian Act*, one must look at some of the inherent problems that exist within the *Indian Act* and Indian policy in Canada. This position paper details several sections of the Act which need to be abolished immediately, making way for the eventual elimination of the entire Act.

2.0 THE INDIVIDUAL v THE COLLECTIVE

Markets work best when property is privately owned. As the economist Friedrich Hayek explained: the market is a process for bringing together disbursed knowledge, it functions most effectively when control over resources is also disbursed. Government ownership is too sluggish and too influenced by perverse political incentives to be effective in a market economy.[19]

For more than 130 years, Indians have been segregated from Canadian society and placed on reserves. Land on an Indian 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. It is true that other minorities over the years – women, Jews and Catholics – have also been treated unfairly in legislation; however they were not placed on reserves.

Montana State University professor Terry Anderson suggests, contrary to current popular myths, North American Indian society was not dominated by communalism. Most Indians understood the notion of private ownership. The Machiacan Indians of the Northeast passed hereditary rights to well-defined

[19] *Socialist Economic Calculation: The Present State of the Debate*, Hayek, Friedrich. University of Chicago Press 1942. Reprint 1972.

tracts of garden lands along rivers and marked beaver trapping territories by carving family symbols on trees.

Anderson writes, “In short, the native Americans encountered by European immigrants recognized the importance of incentives and allowed individuals to reap what they sowed.” All this shows that “Indians are no different than other people…Until Indians are willing to recognize that individual incentives matter, they are likely to remain in a relatively poverty-stricken state.” [20]

Developing workable systems of private property rights are necessary to facilitate market transactions to attain widespread prosperity on Indian reserves. Terry Anderson has demonstrated that individually allotted Indian lands in the American West are more productive than tribally or federally controlled Indian lands.[21]

Fraser Institute Senior Fellow Gordon Gibson has noted the importance of the individual over that of the group or collective, "I always come back to the individual. The key question is the individual versus the collective. I say that anyone can subordinate themselves to any collective, but it must be on their terms and without our incentives."[22]

An example of a group of individuals choosing to hold property in a communal manner is the Hutterites. As former CTF director Mark Milke illustrates, “Hutterites choose to hold property in a communal manner. That this matter should be up to communities themselves is fine, but there ought to be a negotiated requirement that at least such communities will vote on the private property provision soon after a treaty is finalized. This is not inconsequential. Private property rights that are stable and transferable are the foundation for wealth creation the world over and communally held property that produces wealth is the very rare exception, not the rule. This is true worldwide and we ought not to glide over that important fact. By overlooking this fact, all the treaties, tax monies, and resources given to native governments will mean little for the average native.”[23]

Anyone who doubts this need only look at the resource-rich countries in Africa or oil-rich reserves such as Samson in Alberta, to see that an abundance of resources does not guarantee prosperity. The connection between identifiable individual property rights and prosperity is not accidental.

Tom Flanagan, a University of Calgary political science professor, summarizes the individual v collective debate, “The teachings of economics and political

---

[20] *Dances With Myths*, Anderson, Terry. Montana 1997.
[21] *Sovereign Nations or Reservations? An Economic History of American Indians,* Anderson, Terry. San Francisco 1995
[22] Comments made by Fraser Institute Senior Fellow, Gordon Gibson. *Collective vs. Individual Rights: Debate over the future of First Nations in British Columbia*, CBC Radio News by Chris Brown. 2002.
[23] *Property, Prosperity, and Accountability*, Milke, Mark. Canadian Taxpayers Federation, 2001

science shows that in the long run, collective property is the path of poverty and private property is the path of prosperity."[24]

3.0 MOVE TO PRIVATE PROPERTY RIGHTS

The Peruvian economist Hernando de Soto argues that the collective ownership form of property regime promotes poverty. De Soto concludes that the key to generating wealth and prosperity is easily identifiable individual property rights that can be enforced in court. He writes, "the lack of legal property … explains why citizens in developing and former communist nations cannot make profitable contracts with strangers, cannot get credit, insurance or utilities services: They have no property to lose."[25]

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.

Even with the communal arrangements of reservations there are some provisions for individual property on reserves. More importantly, these provisions do not take the form of fee simple ownership, they are: customary rights, certificates of possession under the *Indian Act* and the land codes emerging under the *First Nations Land Management Act*. [26]

An example of customary rights or hereditary rights is when a native family or individual holds land as a form of customary private property. These holdings may be passed on to heirs and subdivided among family members. However,

---

[24] *First Nations? Second Thoughts*, Flanagan, Tom. McGill Queen's 2000.
[25] *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, de Soto, Hernando, Basic Books 2000
[26] *Fee simple*: is the most common type of ownership that allows the property owner to have almost unlimited control over property – most homes are held in fee simple. A property held in fee simple, unlike other types of ownership, can be included in a will for someone to inherit. Fee simple is also called an estate of inheritance or estate in fee.

due to the lack of fee simple ownership associated with customary rights, these lands cannot be mortgaged or sold.

The certificate of possession, provided for by the *Indian Act* can be subdivided, left to an heir or sold to another person having a right to reside on that reserve. Canadian courts will settle disputes and enforce the rights generated by these certificates. This land may have some economic value on the reserve but off the reserve it has little because it is virtually impossible to mortgage.

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.

Most Canadians can borrow against their own private property, which is how 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 getting credit or doing deals with outside investors. Economic development on reserves depends on public money funnelled through the band leadership. The few businesses and jobs on reserves are largely under the influence of the native government, rather than a source of vitality and diversity for native society.

Recommendation 2:
If native communities are to become economically self-sustaining, the reserve land which is now held by the Crown should be transferred to individual natives living on-reserve, and to band members living off-reserve. It will be up to natives themselves to decide if they want to transfer the land into a communal arrangement or allow for the property to be owned and managed individually.

4.0 TAXATION

Unless a tax exemption based on a specific statutory, treaty, or aboriginal right is available, off-reserve natives are already subject to the same taxation systems and rates as other Canadians. Currently, under Section 87 of the *Indian Act,* natives living and working on reserves are exempt from paying tax.

Taxation at all levels – municipal, provincial, and federal – should be phased in for natives. There are two reasons for this: artificial competitive advantage, and increased purchasing power.

As it is now, an artificial competitive advantage for native businesses is emerging. Take for example, native owned malls situated on reserve land. One half of the Park Royal Shopping Centre in West Vancouver is situated on Squamish reserve land. The other half, or north side of the mall, is situated on municipal land. The native employees who work in the south side of the mall are not subject to payroll tax. The employer can pay native employees less money and provide the native employees with the same after-tax income as non-native employees. Moreover, these stores – when owned by natives – are able to purchase their merchandise and supplies tax-free. As a result these businesses are able to provide goods and services at a lower cost than non-native businesses.

The Canadian Taxpayers Federation (CTF) strongly supports tax relief and tax reform for all Canadians. However, both must be based on the principle of fairness. Taxes should be based on income; meaning if people do not pay taxes, it should be because they are too poor to pay, not because of their ancestry.

4.1 Urban Reserves

Between 1871 and 1923, Canada concluded eleven Victorian Treaties, more commonly referred to as the "numbered" treaties, which cover the Prairie Provinces, most of Ontario, Northwest Territories and northeastern British Columbia. The purpose of these treaties was to open up the land for settlement, trade and agriculture. In addition, they sought to ensure peace and goodwill between Indians, settlers and the Crown.

As these treaties were signed, the government began to establish reserves. The size of the reserves where based on population figures. Unfortunately, some individuals were missed. Treaty Land Entitlements were created to negotiate shortfalls with native Canadians.

In 1976 the province of Saskatchewan agreed to do its best to provide unoccupied Crown land. Due to a shortage of unoccupied Crown land within the vicinity of most reserves, the province took the position that any Indian band not satisfied with its allocation of land in southern Saskatchewan would have to look to the federal government for a satisfactory settlement.

Due to the lack of available Crown land, the governments opted to provide cash settlements instead. The affected Indian bands were then able to purchase land that they found suitable. Some of the land purchased was farm land; other property included urban and commercial property.

Once the land was purchased by the Indian band, the band could have the land registered as a reserve. By doing such; the land would then be subject to all the

provisions of the *Indian Act*, including tax exemptions. The purchase of urban and commercial land has created what is referred to as "urban reserves."

Similar to the previous example of the Park Royal Shopping Centre in West Vancouver, retailers and service providers in Saskatoon have to compete against tax-exempt businesses across the street, owned and operated by natives. Again, these tax exemptions provide an artificial competitive advantage. For the free market system to work, all businesses and citizens must be subject to the same laws, and placed on an even playing field.

To add to the artificial competitive advantage, some "urban reserve" based businesses, including a service station in Saskatoon, actually received government funding to get started. The same level of government funding was not available to the business competitor across the street. Thus, such policies unfairly distort the economy, by awarding money and other advantages to one group of Canadians because of their ethnicity.

The tax exemption now provided for natives living and working on reserves is a provision contained within the *Indian Act,* not the Canadian Constitution. The *Indian Act* is similar to any other piece of legislation, meaning it can be amended and/or abolished at any time.

4.2 Tax-Free Investments

The main branch of the First Nations Bank of Canada is located in Saskatoon and the building that houses the bank is owned by the Yellowquill Band. Shortly after the bank opened, the Yellowquill Band successfully converted the property to reserve status. As a result, reserve natives who invest at financial institutions that operate on reserves do not pay taxes on the interest and gains received from these investments. This is in contrast to non-natives who must pay taxes on investment income.

One of the main goals of the First Nations Bank of Canada is to attract significant native business and individual investment dollars from across the country. This amounts to millions dollars in investment accounts. Returns received on these accounts are all tax-free.

Since the main branch opened in 1997, branches have been established in Quebec and Ontario, all of which operate on reserve land. There are numerous other examples of commercial banks which operate on reserves and provide tax-free investment services to registered Indians: the Bank of Montreal in West Vancouver and the TD Bank in Saskatoon are just two of many.

4.3 Treaty 8 – Complete Tax Exemption

Another issue is complete immunity from all forms of taxation regardless of where a native person may live in Canada. This issue stems from the *Benoit* v. *Canada* case – which, at the time of this writing, is under appeal.

On March 7, 2002 the Federal Court ruled in favour of the plaintiffs, and declared that the descendants of the Treaty 8 Indians "do not have to pay any tax at any time for any reason." Even though Justice Douglas Campbell found that treaty commissioners did not promise or intend to promise immunity from taxation, Campbell awarded these tax exemptions based on their ancestors' understanding of Crown promises.

This ruling directly affects about 35,000 native people in northern British Columbia, Alberta, Saskatchewan, and the Northwest Territories. Some now expect to be reimbursed for taxes they and their ancestors have paid over the past century. The cost of a reimbursement for back taxes could amount to tens, even hundreds of millions of dollars if one considers 100 years of taxes paid in today's dollars plus interest. Eddie Marten, Chief of the Fond du Lac Dene Nation located on the north shore of Lake Athabasca stated, "I don't know if we can get it all because we don't have receipts. But the income tax I think is something the government would have records of. All that has to be reconsidered and see if we can get that money back. If that happens, I'm going to be a rich man."[27]

Due to the far reaching consequences of the *Benoit* v. *Canada* ruling - or "Treaty 8" as it is known – the Federal Court of Appeal suspended the ruling that awarded absolute tax-free status to Treaty 8 natives. The court accepted the federal government's argument that the ruling could cause "chaos" in the federal tax system. Should this ruling not be overturned, other Treaty and non-Treaty Indians will likely attempt to use the Treaty 8 case as a precedent. It is possible that total exemption of Indians from taxation could extend throughout Canada based on the Treaty 8 case.

To further exacerbate the original court ruling, in August of 2002 the Federation of Saskatchewan Indian Nations (FSIN) expressed its intent to apply for intervenor status in the *Benoit* v*. Canada* appeal as well. The FSIN will lobby hard to have the all encompassing lifetime tax exemption expanded for all treaty Indians. Perry Bellegard, the FSIN Chief, has already stated that if the ancestors of one treaty allege they were promised a total tax exemption, the ancestors of all treaties must receive the same treatment.[28]

[27] Marten, Eddie, Chief of the Fond du Lac Dene Nation, quote taken from Saskatoon StarPhoenix article by Betty Ann Adam, March 9, 2002.
[28] Saskatoon StarPhoenix, *Vital to Appeal Native Tax View*, July 9, 2002.

The CTF intervened in the *Benoit* case to argue that a tax exemption on the basis of racial ancestry would violate numerous international treaties and conventions against racism. The CTF argued the progress of human civilization has been toward equality and individual rights, so a race-based tax exemption would be a legal and philosophical step backwards.

4.4 Native Government Initiated Taxation

It is interesting to note that some native governments have proposed a phased-in approach for federal and provincial taxes. What follows are two examples: The Sechelt proposal that was not adopted and the Nisga'a model that was adopted in 2000. The Sechelt proposal would phase-in taxation within a 50 year period compared to the Nisga'a model which phases in taxation after 12 years. The Canadian Taxpayers Federation believes that 50 years is an excessive length of time and suggests a phase in period of ten years.

4.4.1 Sechelt Taxation Proposal of 1989

The Sechelt band, located on the west coast of British Columbia, has operated under its own self-government statute since 1986. The native government has remained under the income tax provisions of the *Indian Act.* However in 1989 as part of land claim negotiations the Sechelt band submitted the following proposal to the federal and provincial governments that would phase in taxation over a period of 50 years. What follows is the Sechelt proposal:

> One more word about contribution towards Canada: in 1980, we submitted to the Federal Government a proposal of Sechelt Band members to enter this country's income tax system. Many people do not realize that Indian people are only exempt from the payment of income taxes while they are working on reserve; once they are off reserve; they are liable to pay the same taxes as everyone else. We see this as an anomaly. Our proposal provided for equality of treatment among all Sechelt Band members and the eventual **phase in** of Band members equally into full payment of income taxes. Here is that proposal: [emphasis added]
>
> > TAXATION OF INCOME OF BAND MEMBERS
> > 67. Unless the laws of Canada provide for complete exemption from taxes for all Sechelt Indians, all Sechelt Indians, whether earning income on or off the Band Lands, shall be equally liable to pay income tax. They shall be subject to federal and provincial income taxes applied on the basis hereinafter set out, commencing in the tax year following the year in which the Act is enacted:
> >
> > | | |
> > |---|---|
> > | Years 1 – 5 inclusive: | 10% of normal tax liability |
> > | Years 6 – 10 inclusive: | 20% of normal tax liability |
> > | Years 11 – 15 inclusive: | 30% of normal tax liability |
> > | Years 16 – 20 inclusive: | 40% of normal tax liability |
> > | Years 21 – 30 inclusive: | 50% of normal tax liability |

Years 31 – 35 inclusive:	60% of normal tax liability
Years 36 – 40 inclusive:	70% of normal tax liability
Years 41 – 45 inclusive:	80% of normal tax liability
Years 46 – 50 inclusive:	90% of normal tax liability
Years 51 and thereafter:	100% of normal tax liability

68. The formula for payment of income tax provided in section 67 shall also apply to corporations the shares of which are wholly owned by Sechelt Indians or the Band.

69. No Sechelt Indian who has attained the age of 60 years at the date of enactment of the Act shall have to pay income tax.

70. The Band is fully exempt from all taxation.

Revenue Canada did not wish to deal with this proposal during our self-government negotiations so the opportunity was lost at that time. Why? As far as we know, it had to do with bureaucratic misunderstanding. Whether this is true or not, we still think there is much merit in this proposal and we are again prepared to put it forward as part of a land claims settlement package.[29]

4.4.2 The Nisga'a Model of Taxation

The "8 and 12" principle used in the Nisga'a Treaty phases in taxation. Within eight years of finalizing the agreement transaction or sales tax will be phased in, and within 12 years of finalizing the agreement incomes taxes available under Canada's and British Columbia's mandates will be phased in. Specifically, as stated in chapter 16 of the Nisga'a Final Agreement:

SECTION 87 EXEMPTIONS

6. Subject to paragraph 6, section 87 of the *Indian Act* applies to Nisga'a citizens only to the extent that an Indian other than a Nisga'a citizen, or the property of that Indian, would be exempt from taxation in similar circumstances by reason of the applicability of section 87 of the *Indian Act.*

7. Section 87 of the *Indian Act* will have no application to Nisga'a citizens:
   a. In respect of transaction taxes, only as of the first day of the first month that starts after the eight anniversary of the effective date; and
   b. In respect of all other taxes, only as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.[30]

[29] *A Practical Proposal for Resolving the Indian Land Claim in British Columbia as It Affects the Sechelt Indian Band*, October 9, 1989, 12-13

[30] Bill C-19, An Act to Give Effect to the Nisga'a Final Agreement, first reading October 21, 1999; SC 2000, c.7; given royal assent April 15, 2000.

If some native governments are working with the provincial and federal governments to phase in taxation of their band members, clearly all on reserve natives should be subject to the same levels of taxation as other Canadians.

As stated at the outset, if someone does not pay tax, it should be because they are too poor to pay, not because of their racial ancestry. *Benoit* v. *Canada* will impact federal tax revenues, create an administrative nightmare for business and open the door to extensive manipulation, market distortion and smuggling. Furthermore, the Treaty 8 decision will only serve to further isolate native Canadians and lead to the continuation of the failed paternalistic model of the past. Finally, in the spirit of section 15 of the *Charter of Rights and Freedoms,* which mandates equality for all Canadians, a race-neutral tax system is not only desirable but necessary.

For years the Canadian Taxpayers Federation has advocated for lower taxes as a way to spur economic growth. But, the CTF is opposed to tax reductions or exemptions which are applied only to one group, at the expense of other Canadians. To ensure equality for individuals and businesses, tax exemptions must be based on income, not based on an individual's ancestry.

Recommendation 3:
The tax exemption now provided for natives living and working on reserves is a provision of the *Indian Act,* not the Canadian Constitution. The *Indian Act* is like any other piece of legislation, capable of being amended and/or abolished at any time. Taxation at all levels (municipal, provincial, federal) should be phased in for natives over a period of ten years. As it is now, an artificial competitive advantage for native businesses has emerged.

5.0 ACCOUNTABILITY

As pointed out earlier in this paper, Indian bands in Canada receive approximately $10 billion each year in federal and provincial funds. And, as indicated by the previous statistics, 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.

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.

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. As illustrated in greater detail in section 1.0 for the year ending March 21, 2000, there was one native politician for every 177 people. These politicians earned salaries and honoraria of approximately $91 million tax-free. Their travel expenses were another $29 million.[31]

Furthermore, the entire funding structure and whether federal payments should be directed to band governments and their Chiefs or to the individual band members for whom the support is needed must be considered.

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), that would then be transferred 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.

To determine which approach would be most beneficial, pilot programs could be established and implemented.

Recommendation 4:
In order to increase the level of accountability on reserves, the payments currently transferred to native band councils should be re-

[31] Department of Indian Affairs, 1999 to 2000 Schedules of Salaries, Honoraria and Travel Expenses provided by First Nations.

directed to individuals. The money necessary for native governments could then be taxed back by the local native government.

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.

5.1 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, an ethical and effective public service, good governance, sustainable development, and the protection of Canada's legacy and heritage.

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 the quality of services being offered on reserves.

Recommendation 5:
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 true accountability and transparency to occur.

6.0 UNEQUAL LEGAL RIGHTS AND ENTITLEMENTS

Native Canadians that live on reserves do not have to worry about paying their bills like other Canadians. They do not have to worry about their credit being ruined, or about possible fines. This is because section 89 of the *Indian Act* protects native property and assets located on reserves from any process of garnishee, execution or attachment for debts, damages and other obligations, including taxes, however justly due and owing.

The original intent of section 89 was to protect Indians from exploitation and from loss of land due to seizure. Nevertheless, in a modern world this section only serves to scare-off potential investors, and is based on a patronizing view of Indians as incompetent or incapable of participating in the economy as equals. Below are three examples of the possible risks investors face:

- While working for the Peguis Indian Band, a Manitoba accountant discovered that Manitoba Hydro had illegally charged the Band provincial sales taxes on the power sold to the reserve.[32] In fact, the accountant found that Manitoba Hydro owed the band almost $1 million in wrongfully collected sales tax.

  After months of trying to receive payment from the Peguis Indian Band for services rendered, the accountant tried to garnishee the amount Manitoba Hydro owed the Indian band before Hydro paid the Band. The Peguis Indian Band opposed the garnishee and successfully sued the accountant in 1990. The Supreme Court of Canada cited section 89 of the *Indian Act* when they ruled against the accountant in *Mitchell* v. *Peguis Indian Band*.

- In 1997, Wing Construction Ltd. of Thunder Bay, Ontario signed an agreement with the Sagkeen Education Authority Business Trust to design and build a school on reserve property. After years of trying – the case was even discussed during debate in the House of Commons – the company was unable to collect $3 million owing and went bankrupt as a result.

[32] The term "illegally" is used because under Section 89, Manitoba Hydro has no authority to charge the native band council the sales tax.

- More recently, in 2002 the Northern Bus Repair Centre Inc. of Saskatchewan lost almost $1 million it was owed. The bus repair company had 14 Indian bands as customers which did not pay for services received. The owner of the company was unable to use vehicle liens legislation to hold onto any of the Indian band's vehicles. Once again, this was due to the provisions outlined in section 89.

At this time it is unknown what legal protection cities and municipalities have for unfulfilled contracts with "urban reserves." Therefore, the CTF will assume that cities and municipalities are subject to the same lack of legal protection as individuals and businesses.

In the short-term this legislative "loop-hole" may appear to benefit native bands, however in the long-term it will have devastating economic effects. Due to the risks involved, it is increasingly difficult for bands to attract the much needed business investment to their reserves. Without the ability of liens – attachment to property – investors and businesses are rightly wary of investing in reserves because there is nothing to attach their risk to. In addition, service providers such as contractors, municipalities or professionals may charge higher rates to compensate for the risk of non-payment. Another sad consequence is the likely refusal, on the part of many businesses, to conduct commerce with native individuals and bands.

Recommendation 6:
If native reserves are to become economically viable and compete within Canada, they must be subject to the same rules. The *Indian Act* must be changed to eliminate section 89 which shelters native property and assets located on reserves from any process of garnishee, execution or attachment for debts, damages and other obligations.

7.0 SELF-GOVERNMENT

What does the inherent right to self-government mean? What powers would this type of government have, and how should it sustain itself?

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.[33] This definition, put into practice, creates semi-sovereign states. The RCAP and the federal Liberal government of Canada recognize the inherent right to self-government as being contained within the Constitution. This recognition lacks substance.

In the Constitution Act, 1867, sovereignty is divided between the Parliament of Canada and the legislatures of the provinces. The division of legislative powers contained in sections 91 and 92 of the Constitution determines which of the two levels of government has sovereign power. Other levels of government simply do not exist. The Appeal Courts of both Ontario and British Columbia explicitly rejected the concept that a "third order" of government existed. However in the 2000 *Campbell* case, the British Columbia Superior Court ruled that a "limited" form of self-government survived confederation and was affirmed by s.35 of the Constitution.[34] Unfortunately, the Court did not define what the term "limited" entailed.

That said, the British Columbia and federal governments established a *de facto* third order style of government through the ratification of the Nisga'a Treaty.[35] It is worth mentioning that a group of Nisga'a people has opposed this style of governance and are challenging its constitutionality in court.

What should a "limited" form of self-government contain? 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."[36] In other words, the RCAP envisions a native government that wields a tremendous amount of power and influence over the people it governs, for example: child and family services; adoption; marriage, divorce, property rights – including succession and estates, health, language, and pre-school to Grade 12 education.

Powers exhibited by current native governments nearly reach this wide-ranging state already. But given the current lack of accountability – according to recent Department of Indian Affairs internal audit reports – some existing native governments already fail to account properly for existing responsibilities and funding. Additional authority without better accountability first may lead to further corruption and abuse. In fact, the continuation of current government policy

[33] *Our Home OR Native Land,* Smith, Melvin H., 1995, Toronto, Ontario
[34] Campbell et al. v BCAG et al. BCSC 2000 – A982738
[35] The Nisga'a Treaty was ratified in 2000 and is the first modern day treaty to be finalized in British Columbia. The Nisga'a government established by the Treaty is described as a Third Order Style of government because it has jurisdictional and taxation power and portfolios that are similar to provincial and federal governments i.e., the Nisga'a government can create laws concerning citizenship, culture, health services, children and family services, adoption, education, solemnization of marriage, the management of timber resources, and the Nisga'a court system. In addition, the provincial requirements for democracy, due process and accountability, imposed on every municipality do no apply to the Nisga'a government, which is fully in charge of its own constitution. There are 17 instances where the Nisga'a treaty and/or future Nisga'a laws will prevail over federal or provincial laws in the event of an inconsistency.
[36] Excerpt from the Royal Commission of Aboriginal Peoples, Ottawa 1994.

towards native self-government on this model is a further move towards segregation and balkanization.

Current aboriginal governments rely heavily on fiscal transfer payments from government. There is little evidence that this trend would cease if a "third order" of government were established, 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. The intent here is explicit: let the Canadian taxpayer continue to foot the bill.

Municipal-style governments throughout Canada successfully govern small communities, and are far more appropriate than a "third order" style of government. 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.

Recommendation 7:
Municipal-type governments successfully manage small communities all over Canada. This model should be implemented for native reserves rather than a constitutionally protected "third order" style of government. In addition, the development of individual property rights must be established and protected in order to generate the wealth needed for a self-financed municipal-style of government.

7.1 Votes for Non-Aboriginals Living on Reserves

If someone is a full-time resident of a municipality, voting rights are assumed – regardless of ethnicity. 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.[37] 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

[37] Specific land claims deal with a native bands' claim that Canada has not fulfilled treaty or other legal obligations.

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.

Recommendation 8:
Non-natives living on reserves and paying taxes in their local communities must be granted the democratic right to participate in the local political community by being granted the right to vote. In addition to a right to vote, non-natives living on reserves must be given the opportunity to serve as elected representatives on band councils.

8.0 NEW AND PROPOSED FEDERAL LEGISLATION

The issues discussed in this report are not new. The federal government is recognizing that changes must be made, and has recently introduced four pieces of legislation. In 1999, the *First Nations Land Management Act* was passed into law. In 2002, the *First Nations Governance Act*, the *Specific Claims Resolution Act*, and the *First Nations Fiscal and Statistical Management Act* were introduced into the House of Commons. It is not anticipated that these pieces of legislation will be proclaimed before June 2003.

8.1 First Nations Land Management Act

Many Indians viewed the land management provisions of the *Indian Act* as giving too much power and authority to federal government officials. The *First Nations Land Management Act* of 1999 replaced the land management provisions in section 53 and 60 of the *Indian Act*. The new provisions allow bands to opt out of the land provisions of the *Indian Act* and draft their own land codes within the parameters of the Act. But the title to reserve land still belongs to the Crown. Consequently, “land owners” are not allowed to sell their land to off-reserve purchasers, and off-reserve mortgages are difficult to obtain.

The *First Nations Land Management Act* provides native band councils with sweeping powers to expropriate land for community works or other native purposes. The band council can give up to 30 days notice for expropriation. It's obliged to pay fair compensation which can only be disputed under rules set by the band council itself. There are many situations where local governments have interests in reserves such as right of ways or infrastructure such as sewers. The power of band council expropriation also extends to these interests.

Third parties, such as neighbouring municipalities, are given notification of band councils’ land codes and intended use of land, such as closing a roadway.

However, third parties are not provided with any mechanism of consultation with band councils. Additionally there is no opportunity for municipalities to participate in a dispute resolution mechanism with band councils should a dispute over a land use issue arise.

Land from non-native leaseholders or businesses may also be expropriated by band councils. As discussed in section 7.1 of this paper, non-native leaseholders do not have a vote in community elections. In addition, landlord tenant legislation that applies in other jurisdictions does not necessarily apply to native reserves. Therefore, non-native leaseholders and businesses on reserve have little accountability or influence when faced with the possible expropriation of their homes or businesses (see recommendation 8). This aggravates the difficulty native bands face in attracting much needed commerce and investment to native communities.

8.*2 First Nations Governance Act*

The federal government's proposed *First Nations Governance Act* will establish new rules for band elections, financial accountability and define legal capacity for native bands. But closer examination of this legislation reveals there is no requirement for native governments to hold elections or to report on the progress of federally funded programs. Furthermore, there is "limited liability" for a band government's legal capacity, which makes it difficult to successfully sue a native government.

The proposed leadership selection criteria for native councils will put the power in the hands of those that require it – the native people. No longer will a Chief have an opportunity to manipulate nominations or the eligible voters list. A band employee will no longer be subject to dismissal when a new government is formed simply because they may hold an opposing view. However, none of these new found liberties for native Canadians are worth much if elections are not guaranteed.

Currently, over seven billion federal tax dollars are spent each year on aboriginal affairs. Under the existing *Indian Act* there is no requirement for native governments to reveal their financial records to their members, let alone to the federal Auditor General or to taxpayers. The proposed legislation will require native governments to provide their audited financial statements to any person who requests a copy. Assuming that "any person" means any Canadian taxpayer, the accountability is significantly better than what taxpayers are provided with now – nothing.

That said, this level of accountability should go further. Native governments should be required to report on the progress of federally supported – taxpayer

funded – programs. Annual audited progress reports should be available to evaluate how well taxpayers' money is being spent.

The proposed legislation provides legal certainty on a native government's legal capacity to sue or be sued, to contract or to borrow. However, the proposed legislation will not replace section 89 of the *Indian Act,* which makes it very difficult for a business/investor to sue a native band (see recommendation 6).

Finally, the proposed legislation does nothing to empower native Canadians living on reserves with genuine property. As long as the *Indian Act* remains in place 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.

8.3 Specific Claims Resolution Act

The intent of this draft legislation is to replace the existing Indian Claims Commission (ICC) and speed up the resolution of specific land claims. However upon closer examination the legislation is an expansion of the existing ICC's powers and budget.

A specific land claim is a result of a native band's claim that Canada has not fulfilled treaty or other legal obligations. In 1973 the federal government established the Specific Claims Policy to investigate such claims. To date, 232 agreements worth $1.2 billion have been ratified.

The original policy was faulty in that the federal government sat as both defendant and judge. If native bands did not agree with a ruling the only alternative was the courts. In response to the violent 1990 confrontation in Oka, which occurred after a rejected specific land claim, the federal government revised the policy and established the Indian Claims Commission (ICC) in 1991.

The ICC is an independent federal commission with a mandate to resolve claims more efficiently and fairly, and to provide an independent dispute resolution mechanism. In addition, the ICC provides an out-of-court alternative for the review of rejected specific land claims. The ICC employs six commissioners who are appointed by the federal cabinet.

As a result of not having binding authority, many of the suggestions made by the ICC are ignored by the federal government. Some have argued that the resolution process is too slow. The government reviewed the ICC, resulting in the *Specific Claims Resolution Act*. The draft Act establishes an independent claims body that would focus on mediating disputes, and have binding authority on decisions – in other words the ICC with bite.

If passed, the proposed *Specific Claims Resolution Act* would "replace" the Indian Claims Commission with the Canadian Centre for the Independent Resolution of First Nations Specific Claims (the Centre). The Centre would consist of a Chief Executive Officer responsible for two divisions: a Commission to facilitate negotiations and a Tribunal to resolve disputes. The Commission would be responsible for the receipt, registration, and work to resolve all specific claims regardless of their value using a wide range of dispute resolution mechanisms – i.e., what the Indian Claims Commission currently does. The Tribunal would determine the validity of each claim and award monetary compensation where necessary.

To "speed up" claims resolutions, this new body would have binding authority for land claims up to $7 million.[38] Currently Ottawa budgets $75 million per year to settle land claims. At present there are approximately 430 outstanding land claims, averaging $5 million each. It will take almost 30 years and $2 billion to settle the existing claims.

Under the proposed legislation, the Centre will be accountable to both Parliament and the Auditor General for its expenditures. Besides the Chief Executive Officer to oversee the Centre's activities, the Commission would have a Chief Commissioner and a Vice-Chief Commissioner. Similarly, the Tribunal would have a Chief Adjudicator assisted by a Vice-Chief Adjudicator. In addition both the Commission and Tribunal would have up to five other members – doubling the Indian Claims Commission's executive staff.

The problem with the proposed legislation is that there is nothing in the draft legislation to protect Canadians from patronage appointments. Nor is there anything to prevent the current Indian Claims Commission's Chief Commissioner and five Commissioners from being appointed to the new Centre. So the government will spend twice as much, possibly to appoint the same people, and give the new body increased power to make binding settlement. In other words, the legislation will set up more bureaucracy and prop-up the same misguided policies.

By selling the *Specific Claims Resolution Act* to Canadians as an entirely new process to quicken the resolution of specific land claims, the federal government has skirted the issue of why the size and budget of the present Indian Claims Commission would almost double, by simply giving it a new name.

[38] Most specific land claims are under the $7 million threshold. Specific land claims that are more than $7 million are dealt with by the Department of Indian Affairs. Comprehensive land claims such as Nisga'a do not fall within the ICC's mandate.

8.4 First Nations Fiscal and Statistical Management Act

The draft *First Nations Fiscal and Statistical Management Act* will enable native bands to borrow funds for local infrastructure such as water and sewage improvements. Native bands will collectively guarantee each other's credit using future revenue from the federal government. Though well-intentioned, this legislation does nothing to address the fundamental problem: native dependency on government. In fact, this legislation may actually have the opposite effect: bands would continue to rely on federal funding as future revenues to guarantee their credit.

In addition to the federal government transfers, 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 they contribute to the coffers of the native communities in which they live, have no vote in community elections. Accountability for those citizens is missing (see section 7.1).

Another goal of this proposed legislation is to create a financial management board to help the bands produce budget documents that could gain the confidence of investors and attract financing. This board will provide peer reviews of native bands' budget documents. 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".

This initiative also intends to deal with the often high rates of interest faced by native bands. But the reason why interest rates are so high is because of the risk involved. This situation exists precisely 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 addressing the core issue of why the bands face such high interest rates – lack of property rights and the lack of the possibility of legal liabilities for non-payment – the federal government continues to avoid the issue.

9.0 CONCLUSION

This paper has illustrated that increased government spending has not improved health and other social indicators for native Canadians, and describes the inequality current federal legislation and policy has created for Indians. Good governance, accountability and transparency are minimal requirements for native communities to thrive. In addition, for native communities to compete successfully within the Canadian economic mainstream, the *Indian Act* must be phased out. To begin the process of eliminating the *Indian Act,* the current

exemption from taxation must be phased out over time. As it exists now, an artificial competitive advantage has been created.

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. With the discovery of the human genome, science has shown that all humans share similar genetic codes. It is less than one per cent of the genetic code that differentiates us by determining visible traits such as skin, eye and hair colour. Therefore all legislation and government policy must be based on fairness and equality – not race. 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."[39] In other words, the time for equality is now.

[39] Prime Minister Trudeau, *Statement of the Government of Canada on Indian Policy*, Ottawa, 1969