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Enfranchisement in the New Millennium

L to R: Jean Chrétien, Minister of Justice and Prime Minister Pierre Trudeau after concluding a deal on Canada's constitution, Nov. 5, 1981. (Photo by Robert Cooper)

By Kheebahdzee

Many First Nations people believed we ended the concept of enfranchisement with the adoption of Section 35 in Canada's constitution. Ironically, the fading of individual enfranchisement as the primary means of opting out of the **Indian Act**, with its intended loss of the collective rights of the individual Indian, has been replaced in this new Section 35 era by a collective economic enfranchisement. This new process of subtly obtaining collective consent to the extinguishment of inherent, aboriginal and Treaty rights is now accomplished through federal policy and legislation.

Whole communities and nations can now opt out of the **Indian Act** and proceed under new delegated authorities to tax, manage lands and govern community members. The only thing lost is any leverage or ability to pursue more substantive interpretations of these inherent, aboriginal and treaty rights.

There appears to be no shortage of First Nation "Champions" willing to make this trade off for short-term benefits and quick cash in exchange for the "uncertainty" of self-determination.

White Paper Politics & Emergence of the Rights-Based Agenda

Making real progress on the recognition of Indigenous Rights remains a major challenge for liberal democracy in Canada. The idea of a "Just Society", promoted by **Pierre Trudeau** in the 1960's, brought more focus on the issue in terms of the vastly different views and interests of First Nation Peoples and that of the governing class within Canadian society. Trudeau's idea was to bring the long-standing policy of "***enfranchisement***" to its ultimate conclusion, the elimination of "***Indian Status***".

It was the same old historical solution of assimilation, where for a hundred years under the **Indian Act**, enfranchisement of individuals brought them into full citizenship and separated them from their "***bands***". The new "***White Paper***" idea was to do it en masse and bring Indians as a group into the Canadian polity, whether they asked for it or not. There would be no discrimination, but neither would there be any separate collective rights, based on a separate status from individual Canadian citizens. The original First Nations would be relegated to the dust-bin of history.

Trudeau and his then **Indian Affairs Minister, Jean Chretien**, approached "***Indian Policy***" in the same fundamental way their colonial forbearers had; driven by the assumption of cultural superiority and the need for integration of the economically marginalized native

Special points of interest:

- **Enfranchisement in the 21st Century**
- **Straight Goods on Indian Programs and Services**
- **Tahltan Elders Take Action in BC**
- **Conservative Response to the Throne Speech**
- **Report on Negotiations Roundtable Session**

Inside this issue:

Cover of the infamous '1969 White Paper on Indian Policy'.

"The civil rights movement was about individual rights, while unknown to most non-natives, the First Nation struggle has always been about the collective rights of Indigenous nations. "

Treaty Medal

'Enfranchisement' continued from page 1

individuals into mainstream society, albeit at the lowest social rung of the social order. With the backdrop of the 1960's social revolution going on in the United States, with its significant Black American population demanding equality with whites, Trudeau assumed it was time to give Canadian Indians "***equality***".

The civil rights movement was about individual rights, while unknown to most non-natives, the First Nation struggle has always been about the collective rights of Indigenous nations. These original nations might differ from the classic nation-state of international discourse, but these nations were "***peoples***" in the international legal sense, entitled to self-determination.

The right of all "***peoples***" to self-determination was clarified in the **Universal Declaration on Human Rights** and the related international human rights covenants that followed, which were the global human rights standards adopted by the United Nations after World War II. Self-determination remains the only clearly recognized collective right, which entails among other things that "***peoples***" may choose their own political affiliation and may not be deprived of their own means of subsistence.

The Trudeau-Chrétien gambit to create their vision of a "***Just Society***" based on liberal democratic values of individual freedoms and rights not only failed to account for these collective human rights, it totally ignored the Crown's longstanding relationship with First Nations. This Crown-First Nations relationship was a fundamental, but relatively inactive aspect of Canada's political history and constitutional foundation.

The treaty relationship and the fact that only the Crown could legally acquire Indian lands, as required under the **Royal Proclamation of 1763**, had served its purpose in securing a peaceful settlement and building of Canada as a relatively large nation-state. The Trudeau-Chrétien plan had not accounted for the Treaties with First Nations and had failed to recognize that there was a legal basis for scores of land claims against the Crown.

These collective rights, inherent, aboriginal rights to lands and resources, as well as the Treaty relationship with many First Nations, had not been adequately accounted for by Liberal strategists. Their liberal social-economic philosophy was narrowly focused on the rights and equality of individuals, causing them to ignore the Treaties and collective human rights of First Nations peoples. This conflict of interest on the part of the Crown's representatives created an immediate reaction by First Nation Peoples across the country and helped launch the modern era of First Nation politics.

The "***Red Paper***" published by the **Indian Association of Alberta**, the **Nisga'a Calder Case** and the growth of national political movement under the auspices of the **National Indian Brotherhood**, precursor to the **Assembly of First Nations**, were all given a crucial impetus by the **White Paper Policy of 1969**. The collective rights and interests under the Treaties and long standing existence of land claim grievances against the Crown were the impetus for this political movement. The paternalistic mentality of enfranchisement that had historically guided federal Indian policy was being more effectively challenged than ever before.

These developments led to a new growth in effective collective action by First Nations, resulting in the inclusion of Section 35 in Canada's Constitution, when it was "patriated" in 1982. Although there have been key differences amongst First Nations on how to ensure that Treaties are respected, land claims are addressed and self-determination is achieved, there was for a time a fairly clear consensus about the rejection of an enfranchisement mentality.

The assertion of collective rights was seen as a First Nations responsibility and an enlightened Crown should uphold its bilateral relationship with First Nations. However, the existence of the **Indian Act** presented a dilemma for First Nations that informs today's events in ways never imagined back in 1969.

While the **Indian Act** represents a colonial

'Enfranchisement' continued from page 2

policy of assimilation, providing for the "***enfranchisement***" of individual Indians, it has also played a role in protecting the Indians on reserves from settlers and preserving a sense of place, community and survival for many First Nation communities. Ironically, the tax exemption provision of the **Indian Act**, for most of its existence, was seen as a minor economic concession to the impoverished original peoples and not as the great advantage many opponents see it as today. In fact, many First Nation people believe this tax exemption stems from their treaty rights and relationship to Canada, not the **Indian Act**.

It should be noted that prior to the 1950's, Indian Reserves did not receive the social services provided for today. The impoverishment that existed prior to the introduction of universal social programs would have been an embarrassment to Canada, had it been exposed to the world through the emergence of the international mass media. Although controlling costs has always been the driving force behind Crown Indian policy, the costs of supporting this social support system for Indians separate from provincial programs has represented the primary motivation for Indian policy reform by successive governments since the 1950's and not the so-called recognition of inherent, treaty and aboriginal rights.

For some time now, federal experts have realized that individual enfranchisement will not work to accomplish the desired cost-savings. Since 1969 they have realized only massive collective enfranchisement will accomplish that end. Since 1982 they have also realized that off-loading the enormous cost of Indians cannot be done openly, it must be done through the guise of "***self-government***". These federal strategists realize that the desire of First Nations to take control of their futures must be used to secure the consent required to reduce growing federal obligations and liabilities.

The New Era of Collective Enfranchisement

The First Nations relationship with the Crown has historically been characterized by unresolved questions concerning the self-determination of peoples. In British North America, the relationship between the Crown and the original First Nations of this land has been developed, at least in legal theory, if not in practice, in accordance with principles of respect for the pre-existing rights of First Nations and Treaty-making. While recent cases like **Delgamuukw** and **Marshall** have been hailed as clarifying this relationship and the rights of First Nations, the flip side of these cases reveals another more ominous trend in Canada.

It is a long running trend of administrative colonialism that has suppressed and manipulated the self-determination of First Nations to ensure dependence of the vast majority of our peoples on government policy, programs and administrative techniques to manage a rights-based relationship. This began with the imposition of the **Indian Act** and the policy of enfranchisement.

Many of our youth don't seem to realize that any Status Indian born before 1961 was not considered a Canadian Citizen with the right to vote in federal or provincial elections.

Our peoples actually conducted treaty relations with the Crown, who for its' part, unilaterally determined the relationship to be one of assimilation. There was to be no continuing recognition of our peoples' nationhood. The **Indian Act** provided for an administrative process of "***enfranchisement***", wherein our peoples could obtain Canadian citizenship by denouncing their nationhood and "gaining" the franchise. A franchise that provided for the taking your share of trust funds, etc. out of a band account. It allowed the individual Indian to vote and buy liquor. Yes, you could now be free to be a poor white man.

The enfranchisement cookie only represented a larger system designed to deny self-determination of the First Nations. Its genius was in its administrative procedure for obtaining consensual surrender of any personal right to inherent, aboriginal or

Canadian Parliament

"The **Indian Act** provided for an administrative process of "***enfranchisement***", wherein our peoples could obtain Canadian citizenship by denouncing their nationhood and "gaining" the franchise."

Logo of the Canada-Aboriginal Roundtable.

'Enfranchisement' continued from page 3

treaty rights. It secured the individual extinguishment of access to collective rights. It secured the consent of the individual to buy out of the First Nations and into Canadian society at its lowest rung.

Today, we face an even larger product of administrative colonialism. It represents the product of a long line of federal legislation, policies and procedures designed to:

- assimilate First Nations,
- reduce Crown obligations,
- limit spending and liabilities and
- extinguish pesky inherent, aboriginal and treaty rights.

We live in a new era of economic enfranchisement designed to obtain or impose our consent collectively. It is the new form of enfranchisement, designed to finish off any First Nations peoples who might prefer to maintain the spirit and intent of treaties or claim any rights to self-determination.

Recent federal legislation being promoted by a number of First Nations themselves, reflect the depth of this crisis for the traditional rights-based agenda. The new laws, such as the **'Financial Institutions' Bill**, provide the framework for the ultimate collective economic enfranchisement of a vast number of First Nation communities. Other complimentary institutions such as the **First Nations Governance Centre** represent the growing framework of administratively based means to provide for the de-facto economic and political enfranchisement of First Nations.

"Since the AFN has been hijacked by the Liberal connected "moderates" of **Phil Fontaine**, it has ceased to exist as a credible voice for First Nations inherent, aboriginal and treaty rights. "

Phil Fontaine and Paul Martin shake hands during Health Conference, Sept. 2004. (Photo courtesy of Reuters)

This trend is especially disturbing in view of recent developments concerning the former rights-based national collective body of First Nations, the Assembly First Nations. Since the AFN has been hijacked by the Liberal connected "moderates" of **Phil Fontaine**, it has ceased to exist as a credible voice for First Nations inherent, aboriginal and treaty rights. In this past year, repeated references to the National Chief's support for the **'Financial Institutions' Bill**, despite the formal rejection by the **Chiefs-in-Assembly**, exposed the situation even more effectively than the well-known behind the scenes support of the National Chiefs Office for a minority of federally bank-rolled Chiefs advocating Bill C-20.

As previously discussed by this writer, the development of two streams of First Nations is becoming more obvious. It can be characterized by the list of Liberal Government generated federal legislation regarding First Nations. As the consent rolls in from various First Nations and their organizations, these new legislative initiatives set the stage for the new era of collective enfranchisement.

Administrative Framework for the New Era of Collective Enfranchisement

As First Nations have struggled with the conundrum of the **Indian Act**, resisting most successive federal attempts to amend or otherwise alter it without their own collective involvement, there has been an alternative means by which the era of collective enfranchisement is being quietly imposed.

The two most fundamental policy frameworks Canada uses to tame the collective rights Section 35 was supposed to recognize, is the **Comprehensive Land Claims Policy** and the **Aboriginal Self-Government Policy**. By channeling all First Nation rights through these two policies, the federal government has managed to contain the meaning of these collective rights within whatever parameters they desire. That is because these elaborate policy processes are the only way outside of the courts that any First Nation can have rights recognized as being protected under Section 35. It provides the federal government with total control of the process, as the Constitutional protection is only obtained through reaching agreements for which the frameworks are predetermined by the federal policy.

In addition, there are the "***opting out***" processes the federal government and pliable First Nations have been designing. These are done either through recent

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amendments to the **Indian Act** or by separate stand-alone legislation. Either way, the new legislation will apply, and specific sections of the **Indian Act** as a whole will no longer apply. The **First Nations Land Management Act** is a variation on this approach.

The use of federally sponsored First Nations' "***Champions***" has progressively supported a quietly shifting federal policy framework, which bypasses the collective political voice of First Nations. There is no need for clarification of the Constitution. There is no need for any collective action or response by First Nations.

New policy frameworks are simply dreamed up by federal officials, and then offered up with new funding attached.

There are always at least a few takers. So many communities are competing for limited federal program funding and budgets, that any offer of new monies outside the existing program limitations is attractive enough to bring in some First Nations interest. As others see these takers getting a financial edge, others are coaxed to join in. That is all that is needed and the federal government can claim success.

It has even gotten to the point where the federal government can call most initiatives "***First Nation driven***". The current waning of First Nations solidarity for collective action or the defense of inherent, aboriginal and treaty rights has fed this trend toward optional processes. While the federal government can claim no one must take up such initiatives, which some fear might compromise inherent, aboriginal or treaty rights, these options become the only option as no alternatives are seriously considered as a matter of course in implementing federal policy and legislation.

The pending **'First Nations Financial Institutions' Act (Bill C-20)** clearly reflects this trend. Whether it's a small or large minority who support such a push for delegated federal authorities, the initiative is clearly complimentary to the overall federal tendency toward quashing inherent, aboriginal or treaty-based collective rights. The irony of all this is that it will be the First Nations themselves who sign onto these initiatives, whether they know the implications for their collective rights or not.

The de facto consent to collective enfranchisement proceeds without regard to its ultimate constitutional implications. Instead of individuals signing off on their collective rights, it will now be whole communities and nations who sign away the collective rights of their future generations.

Herb 'Satsan' George, head of the First Nations' Governance Centre, appointed by Robert Nault. (Photo CBC)

"The use of federally sponsored First Nations' "***Champions***" has progressively supported a quietly shifting federal policy framework, which bypasses the collective political voice of First Nations."

War Party, Saskatchewan. (Photo by Canadian Archives)

Manny Jules, Spokesperson for the 'Fiscal Institutions'. (Photo CBC)

Fiscal Responsibility for Programs and Services to Indians & Premiers' Meeting on Aboriginal Issues

By Andrew Webster

At the Editor's request, I offer readers a synopsis of my recent paper "**Fiscal Responsibility for Programmes and Services to Indians and the Forthcoming Premiers' Conference on Aboriginal Issues**". The paper examines the development of the status quo regarding the delivery and funding of programmes and services (P&S) to Registered Indians in Canada. "***Programmes and services***" refers to the high-cost government activities which maintain the social fabric and advance individual and collective well-being. The major of these comprise: social assistance; social services; social housing; preventative and curative health services; and education.

This paper is a response to requests, by colleagues and clients, for "***the straight goods***" on a complex and obscure subject. This need seems to be desperate, judging from the remarkable speed at which the electronic draft circulated in provincial, federal, legal, and Aboriginal circles. The objective is simply to demystify a complex and timely topic enough for it to receive wider debate in provincial, federal, and above all Aboriginal circles. I write mainly of the **Registered Indian** context, but the core issues transcend Aboriginal identity groups and the artificial fiscal boundary surrounding reserves.

"Neither of the two constitutional orders of government - federal and provincial - accepts legal responsibility for providing P&S to Registered Indians, particularly those living on reserves."

Neither of the two constitutional orders of government - federal and provincial - accepts legal responsibility for providing P&S to Registered Indians, particularly those living on reserves. Responsibility for the well-being of **off-reserve Aboriginal peoples - i.e., Metis, Inuit, and Indian** whether Status or not - is subject to a less vocal dispute. There are profoundly polarised differences of opinion on what the Constitution's wording actually means in terms of P&S obligations. These opposites are explained by the "***Indian Problem***".

At one time the Indian Problem, as it was openly called, was that Indians resisted the most coercive measures to affect their civilisation, advancement, and ultimate enfranchisement. To the federal and provincial governments, the modern Indian Problem is not that Indians frequently live in crowded, run-down social housing served by poor socio-sanitary infrastructure, suffer chronic and elevated levels of social and medical pathologies, or often reside in "***welfare colonies***" where welfare payments amount to the staple commodity in the weak local economy. Today's Indian Problem is the magnitude and trajectory of the dollar costs that these conditions imply. These expenditures constrain government spending in more popular areas of activity.

Indians would not be such a fiscal problem if there were not so many of them, and if their population would not grow as rapidly as it does. The **on-reserve population is about half a million persons, consisting of 458,600 Status Indians** and a few others who tend to have Aboriginal roots. The remaining 38% of Status Indians reside off-reserve. Over the next 20 years the Indian population will increase by a remarkable 34% with the greatest growth occurring on the 614 federal reserves. Vast disparities will emerge, between provinces, in the size of the Registered Indian cohort. For instance, in about 20 years Registered Indians will comprise almost a third of Saskatchewan's total population. Many of these will live on reserves which do not contribute to the tax base. Many of those living off-reserve will be economically disadvantaged, if not in receipt of public assistance.

The federal government is currently spending about $8 billion in 2004/05 to support basic, unavoidable P&S on reserves which fail to meet the real level of need. The provinces additionally contribute perhaps one or two billion towards hospital care when reserve residents are sent out to access services that are not available locally. The costs of P&S to the off-reserve rural and urban cohorts are a matter of speculation. Four to five billion is a reasonable estimate for these costs borne by the provinces, with a minor contribution from the federal government through the cost-sharing arrangements for the general population. The provincial burden includes the non-Status Indian population, and the Metis populations,

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for whom the federal government refuses any Aboriginal P&S support.

Thus, the magnitude and trajectory of the Indian Problem alone are reason for the federal and provincial governments to use every excuse possible to avoid involvement in services to Indians. This means exploiting every iota of ambiguity in the Constitution, and the treaties, with a view towards cost avoidance. Indian programmes and services fall into a constitutional grey area. First, understand that the Constitution only recognises the federal and provincial orders of government, and thus, its concern is with the division of powers between these two orders. There is consequently no mention of Indians, other than about which of the two orders of government is responsible for them in a general sense. Responsibility for Indian P&S therefore falls under either of federal or provincial jurisdiction. The possible exception is one of the recent, constitutionally entrenched treaties which suggests a measure of First Nation (FN) responsibility with respect to a particular self-governing group.

Questions of programmes and services to Indians are really questions about responsibility for Indian welfare. These questions cannot be (or have not yet been) answered simply on the basis of who has general responsibility for Indians. Things are much more complex - perhaps needlessly so, but understandably so given the magnitude of the financial issues.

It is unclear, from the treaties or from the Constitution, whether the funding and administration of programmes and services to Indians fall under federal or provincial jurisdiction. Put another way: the answer may seem clear to some, while others would differ absolutely, and the courts have not yet defined the allocation of this responsibility. Neither of the Constitution's orders of government acknowledges ultimate, legal responsibility for providing Indians with P&S even on reserves. The federal Crown provides a minimum level of P&S - mainly on reserves - on "***moral***" and "***humanitarian***" grounds rather then obligation. At the **1964 Dominion-Provincial Indian Affairs Conference**, the Crown tabled a list of moral, historical, and legal reasons why the provinces should take over P&S administration with declining federal contributions. This was rejected, and four decades of dispute followed.

First Nations people - and some would argue all Aboriginal peoples - are in effect "***fiscal lepers***" or "***fiscal footballs***" whom neither order of constitutional government wants responsibility for. The on-reserve Indian population - and perhaps those people who have recently left reserves - are probably the most deserving of the "***financial pariah***" terminology. It seems inconsistent with a modern, western, industrial democracy that the welfare of hundreds of thousands of people is a matter of intergovernmental avoidance. Few people in the general population are aware of this financial dispute; most imagine that the federal Crown is entirely responsible.

The Crown actually feels that provincial services should extend onto reserves under the cost-sharing arrangements that apply to the general population. Disagreement on this translates into under-funding and service gaps. Neither government feels obligated to invest the sums needed to alleviate poor conditions on reserves. The Crown routinely tries to be rid of, or to limit, Indian P&S costs; e.g., Health Canada is "***off-loading***" large numbers of chronic patients onto provincial primary care facilities. Opposition to off-loading was the dominant issue for First Nations for four decades.

The Crown could, if it wished, exercise its constitutional right to enact Indian-specific P&S legislation. This could solve accountability problems and allow for fast-tracking the recognition of FN jurisdiction in these areas. Yet in 1964, Cabinet decided that P&S legislation would suggest a legal responsibility and raise expenditures. The Crown's court defence assumes that the power to adopt a law does not translate into a positive duty to use that power: the Crown is not responsible for inaction on its part to assist Indians, no matter how desperate their situation becomes. Thus, the "***moral grounds***" rationale is inconsistent

Empty Table during First Ministers' Health Conference, Sept. 2004. (Photo CBC)

"First Nations people - and some would argue all Aboriginal peoples - are in effect "***fiscal lepers***" or "***fiscal footballs***" whom neither order of constitutional government wants responsibility for."

Prime Minister Paul Martin during Health Conference, Sept. 2004. (Photo CBC)

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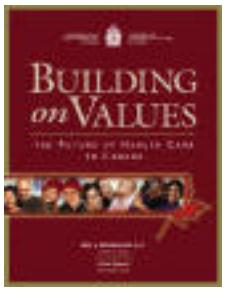
First Nations Elders with Prime Minister Paul Martin during Health Conference, Sept. 2004. (Photo by CP)

"the **Assembly of First Nations (AFN)** declined to negotiate any issue including the federal financial offer for additional First Nations health funding. It fell silent when fiscal responsibility was raised by premiers."



Cover of Romanow Report.

with fact and at odds with the protective duties of a fiduciary.

The first **Premiers' Meeting on Aboriginal issues** since 1964 is anticipated to occur in late 2005 or early 2006. The **September 2004 Premiers' Health Conference** may suggest what to expect. In such high-stakes negotiations the provinces are willing to hurt the Federal Government to advance their aims. Yet despite common ground with the provinces, the **Assembly of First Nations (AFN)** declined to negotiate any issue including the federal financial offer for additional First Nations health funding. It fell silent when fiscal responsibility was raised by premiers. Several weeks earlier, former premier **Roy Romanow** stressed to the National Chief the importance of addressing the jurisdictional question at the health conference. It seems odd that Mr. Romanow subsequently felt obligated to raise this point in front of the cameras, while the AFN representatives had no comment. The AFN also raised no discernable protest over significant off-loading events which occurred in the months leading up to the Health Conference. These include termination of social assistance benefits to off-reserve students, cancellation of non-insured health benefits, and stoppage of patient transportation funding in cases of chronic patients. Events such as these formerly elicited shrill protest from the AFN.

A parallel and significant development occurred shortly after the September Health Conference: The Conservatives demanded federal legislation for the main Indian P&S areas. This would occupy provincial ground and assume financial responsibilities. Despite potential for healing fiscal wounds with the provinces, and appeal to FNs insistent on federal acknowledgement of responsibility, the AFN is disregarding this development. Its interests seem to be jurisdiction, immediate cash in some programme areas, and escalator-driven funding. Now some of its regional constituents question this dismissiveness and disinclination to confront the Liberals. It remains to be seen whether they will compel the AFN to work with the provinces to press the fragile Federal Government, under the television cameras, on responsibility. The combined legislation-responsibility issue has the potential to animate the next conference, if not polarise First Nations along party lines.

The present Liberal Government has rediscovered the perceived necessity, first realised by the **Pearson Liberal Government in the early 1960s**, that the provinces must be coerced into programmes and services financial partnerships. Thus, at present there is every reason to assume that, at the forthcoming conference, the Prime Minister will table significant new investments in targeted programme areas and challenge the provinces to follow suit. It is unlikely that the 1964 proposal for the provincial take-over of federal services will be repeated. In retrospect, that proposal ranks with the old Indian Policy in terms of historical folly in Canadian Indian affairs. The federal approach will doubtless be more subtle although oriented towards the same ultimate objective.

If First Nations again downplay the responsibility issue, some people will ask whose side the AFN is on. If it is left to the Conservatives to elevate the issue, then Liberals at all levels will have a bigger problem. At the next Premiers' meeting on Aboriginal issues, one cannot expect the provinces to argue against the absurdity of the fiscal status quo unless First Nations show some interest. They must lead this battle, if they still care. This same question ought to be asked of organisations representing Non-Status Indians, Metis, and Inuit. They too have a stake and an obligation to speak their interests and, indeed, make use of their common ground with the provinces. The provinces are spoiling for a fight on the responsibility question. They remember the fiscal shocks caused by waves of unilateral federal offloading events. They are compelled to absorb sharply increasing costs associated with services provided off-reserve. They fear - quite rightly - a reinvigorated federal strategy to coerce them into financial "***partnerships***" that First Nations, particularly, have traditionally resisted.

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If First Nations miss the opportunity to resolve the responsibility matter, we will continue on our march towards court decisions that have potentially catastrophic impacts on intergovernmental fiscal relations. The Crown's willingness to fight legal challenges, on the basis that it has no responsibility and cannot be compelled to legislatively acknowledge a responsibility, is playing a dangerous game. Federal officials wait for a "***miracle***" court decision that someday throws billions in Indian expenditures onto the provinces. This is a most questionable basis for national public policy. The fiscal shocks could well ignite a political firestorm. The status quo for dollar transfers and taxation powers would likely require adjustment. The Constitution might need reopening. First Nations might revolt. There is no favourable scenario if the federal government won its "**miracle**".

Thus, **the forthcoming federal-provincial conference on Aboriginal issues** will be an historical turning point judged on whether or not it resolves the responsibility question.

[NOTE: Andrew Webster is an Ottawa-based consultant specialising in support to negotiation and litigation of programmes and services issues. He has written numerous reports on P&S fiscal relations.

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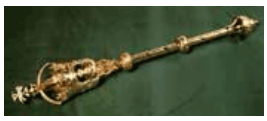
First Ministers' & Aboriginal Leaders Health Conference, Sept. 13, 2004. (Photo CP/Fred Chartrand)

"the forthcoming federal-provincial conference on Aboriginal issues will be an historical turning point judged on whether or not it resolves the responsibility question."

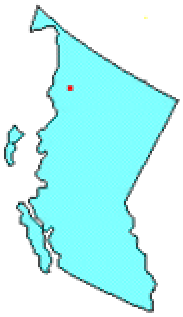
Opening Ceremonies of the Canada-Aboriginal Roundtable, held in Ottawa, April 19, 2004.

(Photo by R. Diabo)



Parliamentary Mace.

Tahltan Protesters Occupy Band Office in B.C.



TAHLTAN NATION Chief Councillor Jerry Asp holds document presented by Elders demanding his resignation. (Photo by Terrace Standard)

TERRACE (BC Newspaper Group/Jan. 22, 2005) — A group of Tahltan elders concerned about mining development in their traditional territory took over the band office in Telegraph Creek last week, as tensions over the band's leadership and its pro-mining stance - simmered over into political protest.

Spokesperson Terri Brown said between 30 and 40 people were camping out in the hopes that chief councilor Jerry Asp would quit.

Brown, a resident of Ottawa, and past president of the Native Women's Association of Canada, said the group was determined to stay.

"There are a lot of us who are dissatisfied with the chief," Brown said, as the standoff appeared poised to enter its fifth day.

On Jan. 18, 75-year-old band member Bobby Quock served chief councilor Jerry Asp with his notice. Protesters were also gathering signatures on a petition calling for Asp's resignation.

Brown said the protesters, most of whom had never taken part in a political demonstration before, are concerned with existing and potential mines and exploration projects taking place on traditional territory, raising fears that mining activity could harm sacred areas and hurt the environment.

Asp refuses to resign. In a statement, Asp said his decision has been reaffirmed by the Department of Indian affairs.

"Our elders are important to us as a nation culturally, politically and socially, and using them as a political bat to hit the current leadership over the head saddens and hurts me," he said.

Asp added he continues to enjoy the support of more than 1,500 members.

"So far, only 30 members have publicly expressed a desire for a change in leadership."

The Tahltan have a long-established reputation as being at the forefront of aboriginal groups in B.C. who have been willing to work with mining companies, in return for jobs and other benefits.

Asp pointed to a policy paper dating from 1987 developed through consensus that the first nation is willing to work with industry and government in order to achieve long-term social and economic stability, all while enforcing a higher environmental standard. The result? Asp says the band has seen unemployment drop from 85 per cent to 6 per cent.

On Jan. 8 and 9, the Tahltan nation held a general assembly in Dease Lake to discuss mining exploration company Nova Gold's proposed Galore Creek development.

Chief Asp said the nation spent $100,000 on costs such as chartered planes to ensure Tahltan members from as far away as Ottawa were able to attend. Terri Brown and Cassiar Watch representative Jim Bourquin led much of the discussion about the proposed mining project, Asp said.

But the pair failed to dissuade the membership from endorsing the Tahltan leadership's intent to continue exploring negotiations for a participation agreement with Nova Gold.

Asp also questions Brown's concern over a band deficit of $1.2 million.

Asp said the band has accrued a CMHC housing rental deficit of that amount from members who haven't paid their rent, but past band administrators borrowed from programs and services to cover the deficit.

"As a council we have been struggling with ways to address this housing deficit and we were ready to meet with the department of Indian affairs officials in Dease Lake when this `sit-in' was begun."

Dease Lake RCMP Sgt. Duncan Dixon described the protest as peaceful.

[Reprinted from Terrace Standard]

"Protesters ... are concerned with existing and potential mines and exploration projects taking place on traditional territory"

Alpine mountain in Tahltan territory.

Tahltan Elders Press Release: Sit-In At The Telegraph Creek Band Office

January 30, 2005

The **Tahltan Elders Women's Circle** were made aware of a pending sexual assault charge against **Jerry Asp**. Tahltan Elders are now demanding his resignation on the grounds of the alleged sexual assault charge, which is currently under investigation. Safety of women is now at stake, should the ousted Chief return to the tiny remote northern British Columbia community of Telegraph Creek. The band office is staffed by mainly women of varying ages. Women need to be safe in this community including their band office.

Elders of the Tahltan Nation are into the 14th day of occupation of their band office. The past Chief Jerry Asp met the elders at the entrance to the office on the 3rd day of occupation. We have not seen him since. He was put on notice by elder spokesman 75-year old **Bobby Quock**. He was told, "***Jerry Asp, you are no longer Chief of the Tahltan People.***" At the time he pushed a woman elder and grabbed Bobby Quock in a rough manner and others intervened. We have not had communication with him since. The only communication has been the interviews on radio and television. Asp seems to think that 1560 Tahltans support him. Despite the reality that he has lost credibility and is regarded as a threat to the Nation. The **Department of Indian Affairs** failed to respond to the letter from elders dated January 19, demanding an audit of finances. Their excuse is the flooding in the Lower Mainland.

Elders are concerned with the lack of information on proposed mining projects in the area. Galore Creek is one where a 300 km access road is to be built along the **Stikine River**. This area is a sensitive area with salmon streams and breeding grounds. There is a large population of grizzly bear, goat, sheep, moose, and caribou. Asp has been in negotiation with **Shell Canada** behind closed doors. We do not want agreements signed without our knowledge and consent. The **Klappan area is the headwaters to the Skeena River, Stikine River and Nass River**. Coal bed methane is to be extracted from the area. The area could be destroyed for future generations.

The Tahltan leadership have proved to be very weak and non-representative on the protection of land and eco-systems.

The **Tahltan Nation Development Corporation** which Asp also heads is stacked with his relatives. Nepotism, favourtism, and domination by one family has made this corporation suspect to the Tahltan people. Benefits of jobs, opportunities and training has clearly by-passed the local people. Relatives of Asp have been moving into the area to control the corporation, band and tribal government. An audit would be in order to account for the revenues generated and decisions made for investment, contracting and business activity outside of the territory.

The protestors were warned of a pending court injunction, however it has not been served. A catholic nun attempted to deliver notice of appearance of the application hearing. However, she was sent away with her bundle. She later apologized saying she was not informed of the conflict and will in the future stay out of the politics of the Tahltans.

In the beginning, we had several visits per day from the RCMP and now we do not hear from then at all. They were concerned that **Terri Brown** was identified as an outsider making trouble. They discovered that Terri Brown is a Tahltan and has family members living in Telegraph. On the night of January 26, a senior elders home was entered and the young man identified himself as a supporter of Jerry Asp. He attacked a visiting elder. However, he was overpowered by 83-year old **Roy Quock** and was forced to leave. The police were asked to give him a warning.

Jerry Asp is continuing his business as a leader despite the demands from the elders. We have had threatening emails from his supporter **Gordon Loverin**, a member of the **Taku River Tlingits**. The emails are riddled with warnings of blood shed and pay back. The elders chose to ignore threats and continue with the damand for the formal resignation of Asp.

Workers returned to work on their pay day to resume service delivery. The elders do

Confluence of the Tahltan and Stikine Rivers at Eagle Rock, Tahltan territory.

"Elders are concerned with the lack of information on proposed mining projects in the area. Galore Creek is one where a 300 km access road is to be built along the **Stikine River**. This area is a sensitive area with salmon streams and breeding grounds. There is a large population of grizzly bear, goat, sheep, moose, and caribou."

Tahltan Village.

Mountain Goats in Stikine Canyon.

'Tahltan Elders' conclusion from page 11

not interfere with their work. Two staff members continue to make rude comments to the elders and attempt to provoke an altercation. We continue to state that we are here in a peaceful way.

We receive calls from Tahltan supporters every day and words of encouragement and honor. We continue to build solidarity and strength. Days are spent in strategy sessions, and discussions around our beliefs. The band councillors remain supportive as these are their elders in the building. There has been a huge outpouring from the community. We have meals delivered from different households daily. We have enjoyed our traditional foods and many treats and are gaining weight and becoming very pampered by all.

We hear from supporters from around the globe and it is very heartwarming and gives us the strength to go on. We have had great coverage and elders are giving interviews and state our position very well.

Elders were informed that Asp spoke in Guatemala to indigenous peoples attempting to convince them of mining in their territory. We have been advised that 2 protestors were killed in the area that Asp visited. We are embarrassed of his actions and will not tolerate or support his shameless behavior. We plan to send a letter to the indigenous brothers and sisters apologizing for his actions.

The morale of the elders remains positive and encouraging. However, some are tiring and they still do not want to surrender for fear of what may be in store for their families. Despite the numerous health problems, Tahltan elders are determined in the struggle for the removal of Jerry Asp.

The strength of the Tahltan People lies with the elders. Their stories of struggle when the first whitemen arrived, gives us courage. Their dreams of a better tomorrow, gives us vision. Their prayers softens our anger. Their connection to Creator gives us a restful sleep and gratitude. Until the next we remain your friends.

Tahltan Elders, Telegraph Creek

"Despite the numerous health problems, Tahltan elders are determined in the struggle for the removal of Jerry Asp."

Stikine River. (Photo by Garth Lenz)

Stikine River Valley.

Mining in B.C.: Report on the Occupation of the Tahltan Band Office

January 30, 2005

By Arthur Manuel, Spokesperson, Indigenous Network on Economies and Trade (INET)

On January 29, 2005 I had a telephone conversation with Terri Brown who was at the Tahltan Band Office and I would like to file the following report on our conversation:

The Tahltan elders are still occupying the Tahltan Band Office in Telegraph Creek, British Columbia. They began their occupation on January 17, 2005 because they are very concerned about mines being planned in their territory, and especially how their Chief Jerry Asp has been misrepresenting them in discussions with the mining industry. They say that the local, regional, national and international communities have been led to believe they support mining, but they do have real major concerns.

Nova Gold and other mining companies have mining plans in their area that will contaminate the headwaters of the Skeena, Nass and Stikeena Rivers. They are also very concerned about the roads that are planned especially toward the alpines. All mining will impact the three kinds of fish in the area. They are also concerned that Chief Jerry Asp has been meeting privately with Shell Canada about coal bed methane in the region.

The people of the Tahltan are embarrassed with the support Chief Jerry Asp has given Canadian mining companies in Guatemala. They said that everyone thought he was down in Guatemala for holidays. They never thought he was supporting mining down south and that the government and mining companies were responsible for the killing and hurting local people protesting against those mining activities.

Chief Jerry Asp has got a Court Order to remove specified people from occupy the Band Office and carrying on other protest activities against the Tahltan First Nation (also known as Tahltan Indian Band). The January 26, 2005 Order is actually is very broad and does limit the legitimate right of all people to protest against the political decisions of the Tahltan Chief and Council. This Court Order has not been served or enforced.

The elders say they have four out of the five councilors of the Tahltan Band supporting them. In order to obtain a valid Court Order an Indian Band must pass a BCR giving instructions to their legal counsel to seek a Court Order. In this case the Chief Asp does not seem to have the support to get a BCR.

The Tahltan Band Office was open on Friday and will remain open to every one except the Chief Jerry Asp. The people of Tahltan want Chief Jerry Asp to resign because of these very serious problems regarding his support for the mining industry.

Logo of the Indigenous Network on Economies and Trade (INET)

"The people of the Tahltan are embarrassed with the support Chief Jerry Asp has given Canadian mining companies in Guatemala."

Stikine River. (Photo by Garth Lenz)

Stikine River. (Photo by Garth Lenz)

Grizzly Bear standing, Northern B.C.

October 8, 2004—Conservatives Response to the Throne Speech: Aboriginal Affairs Critic, Jim Prentice

Jim Prentice, M.P. Calgary Centre North, Aboriginal Affairs Critic, Conservative Party of Canada.

"The Government of Canada will expend almost $10 billion on aboriginal programs and services in this fiscal year, yet it does so without any legislative framework for the expenditure on social services, education or health."

Mr. Jim Prentice (Calgary Centre-North, CPC): Mr. Speaker, I will be splitting my time with the member for Souris--Moose Mountain.

I rise as a new member of this honourable House and in so doing, allow me to say that it is a great honour for me to be here, to stand here on the floor of the House of Commons as the advocate, the spokesman, and the voice of the fine citizens of Calgary Centre-North.

This throne speech purports to offer Canadians lives of dignity characterized by cultural expression, vibrant communities and dynamic economic opportunities. Heady stuff, but not so for aboriginal Canadians because the throne speech for them speaks of another darker, more sombre Canada. For these Canadians the future is one of poverty, despair, lives overshadowed by fetal alcohol syndrome, teen suicide, chronic disease, and government failure to provide education or basic infrastructure

[*Translation*]

Those are the government's words from the Speech from the Throne. Independent observers, such as the United Nations Commission on Human Rights and, more recently, Amnesty International, are even less generous in what they have to say.

[*English*]

In what must surely be one of the saddest chapters in modern throne speeches, the government offers only a confession. There is no plan. There are no specifics. There is no compassion. There is no vision.

As it is written in stone, at the entrance to this hallowed building, "Where there is no vision, the people perish", and so it shall be with our young aboriginal people in their communities unless and until the government, or more likely a future Conservative government, has the courage to address these problems.

The government is so bereft of ideas that it dares to present a throne speech which acknowledges intolerable consequences and yawning gaps. In response, it vaguely offers to meet to talk about it, and only then to set measurable goals, as though we were discussing statistical information rather than the lives of our children, for aboriginal children are our children. They are Canadian children.

There is a growing consensus on what must be done.

First, there is a need for accountability in the money that is spent. The Government of Canada will expend almost $10 billion on aboriginal programs and services in this fiscal year, yet it does so without any legislative framework for the expenditure on social services, education or health. Stated simply, there are no laws in place governing these expenditures, no laws defining what services or what standards of service aboriginal Canadians are supposed to receive. Perhaps most important, there is no way for Canadians, aboriginal or non-aboriginal, to find out how much of that money is making its way through to aboriginal Canadians themselves.

Second, the Indian Act must be replaced. It must be replaced by a modern statute providing for aboriginal self-government. Everyone agrees that the country requires an orderly devolution of full legal and democratic responsibility to aboriginal Canadians. This must happen within the context of our federal state and with full consultation with aboriginal Canadians.

[*Translation*]

It must be obvious, even to this directionless Liberal government, that it is in the process of destroying the lives of Canada's Aboriginals who have been stuck in an outdated system of governance for more than a hundred years.

[*English*]

Aboriginal Canadians, like other Canadians, are entitled to a governance framework which ensures stability, certainty, safety, respect for the rule of law and which allows first nations themselves to address issues such as the availability of on-reserve private property ownership.

[*Translation*]

‘Conservatives’ continued from page 14

Thirdly, Canada's Aboriginals are entitled to a system in which public funds are managed transparently and accurately. How much of the $10 billion really goes to the people who need it most?

[*English*]

Fourth, the government lacks the vision to propound a legislative framework for the settlement of comprehensive claims for the development of self-government agreements and the overarching resolution of specific claims, all in a way which would respect the rights of aboriginal Canadians while simultaneously ensuring constitutional harmony so that this nation is governable.

Pathetically, after 12 years of Liberal government, the speech contains only a telling admission of failure, that for many their water is unsanitary, their communities are not safe and their children, who for all of us are the repository of our hopes and dreams, live in despair.

In a democracy governed by the rule of law, there is no place to hide, and so it is for the aging and decaying regime that has penned the throne speech. The Liberal government has had the past 11 years to pursue meaningful institutional and legal reform with a view to improving the lives of aboriginal Canadians. I say unequivocally that it has failed and someday it shall bear the harsh judgment of history.

It is not just the 2004 throne speech. The 1993 Liberal red book chronicles the aboriginal frustrations of 11 years ago: unemployment, health problems, poor housing, unequal educational opportunity, unsafe drinking water. In the time since the Liberals have retreated on every difficult issue.

I have reviewed the throne speeches of these ensuing 11 years. Placed in the saddened context of teenage aboriginal suicide, they are a stunning indictment of vapid promises. In 1994 there was a promise to forge a new partnership with aboriginal people. In 1996 there was a promise to incorporate aboriginal aspirations. In 1997 there were promises to develop partnerships to build strong communities. In 1999 there was a promise to build stronger partnerships. In 2001 there was a promise to share the Canadian way with aboriginal Canadians and a commitment not to be deterred by the length of the journey of the obstacles. In 2002 there was a promise to close the life gap. In February 2004 there was a promise to start to turn the corner on the shameful circumstances on reserves. Finally in October 2004, again after 10 years, there was a new promise of partnership. In the intervening 10 years there has been no significant institutional change, no significant legislative change, no self-government legislation, no accountability legislation and no governance legislation.

What we do have is the consequences of 10 years of failure: more bad water; continued educational gaps; infrastructure shortage; and sadly, more fetal alcohol syndrome and teenage suicides.

The 2004 throne speech is correct because there is sham in all of this. I have travelled the length and the breadth of the country. I have seen the face of aboriginal poverty. I have seen the face of aboriginal despair, the despondency of fetal alcohol syndrome and of teenage suicide. I am unashamed to say, as a citizen of Canada, that I have wept in the face of the poverty I have seen on first nations.

I say today that we can do better. Canadians, aboriginal and non-aboriginal, deserve better.

[*Translation*]

We can and must do better for all Canadians, Aboriginal or not.

[*English*]

They deserve more than this throne speech has offered. They deserve vision, they deserve purpose, they deserve hope and they deserve a government which has the courage to effect change. Without that, that which makes this country what it is, we shall surely perish.

Mr. Lee Richardson (Calgary Centre, CPC): Mr. Speaker, we have just heard a remarkable speech in the House today. These are things that we have been hearing

Prime Minister Paul Martin during Throne Speech in October 2004. (Photo by Shaun Best)

“The Liberal government has had the past 11 years to pursue meaningful institutional and legal reform with a view to improving the lives of aboriginal Canadians. I say unequivocally that it has failed and someday it shall bear the harsh judgment of history.”

Stephen Harper, Leader of the Conservative Party of Canada.

Algonquins protest reserve housing conditions, while on Victoria Island, in Ottawa, October 2001.

'Conservatives' conclusion from page 15

about for a long time. The member for Calgary Centre-North just went through a litany of broken Liberal promises, which really had to move everyone in the House.

I am not familiar with all the issues of which the member spoke, but it seems to me that these are things that we have heard time and time again. We have heard solutions proposed for the past 10 years in the House. What is the reason for the delay? Why can they not carry on with these issues?

I know the hon. member is an acknowledged expert in the country on aboriginal issues, particularly aboriginal self-government. What is the delay? Why can we not get on with these things?

Mr. Jim Prentice: Mr. Speaker, it is my honour to respond to the experienced member from Calgary Centre.

The throne speech contains a remarkable statement that is offered to us in the context of Canada's role in the world and what we have to offer as a nation. It states:

In so many of the world's trouble spots, establishing order is only the first step. Poverty, despair and violence are usually rooted in failed institutions of basic governance and rule of law.

If in the throne speech the government can see with clarity that is the situation in the world, why does it lack the judgment, the decency and the compassion to realize that we are dealing with the same problems of institutional failure in Canada? That is the source of the despair and the despondency. If that applies elsewhere in the world, why can we not apply the same Canadian sense of imagination to the problems of our first people right here?

I referred in my comments to Amnesty International. I am not the only one who feels this way. This was not in the throne speech. This is what Amnesty International had to say in a report that was issued this week:

The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the Aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to Aboriginal communities on reserves.

These problems are well chronicled. They are problems that commenced with institutional failure of a governance system that was initiated more than 100 years ago in the form of the Indian Act and that has undergone some change, but paltry change, in the time since. Aboriginal Canadians do not have control of their own affairs. The Indian Act, if there is to be progress in this country, must be replaced by a modern legislative framework which provides for the full devolution of authority so that aboriginal Canadians in concert with government can work to solve these problems.

The government, this aging regime, in throne speech after throne speech has spoken of these issues, has offered vapid, vacant promises and yet, at the end of a period of 11 years of governance, aboriginal Canadians are no better off in this country than they were, by its own admission, 12 years ago. It is a failure of governance and it will be cured only when there is a government in place which has the courage to act, to step forward, to take the initiative, to work together in partnership with aboriginal Canadians and develop governance structures which will present a bright future for aboriginal Canadians.

SOURCE: Parliament Hansard, October 8, 2004.

"The government, this aging regime, in throne speech after throne speech has spoken of these issues, has offered vapid, vacant promises and yet, at the end of a period of 11 years of governance, aboriginal Canadians are no better off in this country than they were, by its own admission, 12 years ago."

Algonquins protesting reserve housing conditions, while in Ottawa on Victoria Island, Oct. 2001.

Re: Canada-Aboriginal Peoples Roundtable (Negotiation Session)

Andy Scott, Minister of Indian (and Aboriginal) Affairs, Chaired the Negotiations Session of the Canada-Aboriginal Roundtable process, held in Calgary, Jan.12,13, 2005. (Photo by DIAND)

January 16, 2005

By Ardith Walkem, Barrister and Solicitor

I was asked to attend at the **Canada-Aboriginal Peoples Roundtable on Negotiations** in Calgary, and report on the discussion. Key features of the evolving federal framework for addressing Aboriginal Title and Rights are discussed below.

There are significant changes that will impact on First Nations. Foremost among these changes are:

1. Incorporation of all sections of the Aboriginal population (non-status, Métis, off-reserve) in federal decision making and policy development;
2. Integration of federal and provincial policy regarding Aboriginal issues;
3. Introduction of "***own source revenue***" requirements for all funding of Indigenous organizations, and increased financial reporting requirements;
4. Introduction of "***quality of life***" as a standard for the measurement of the success of federal programs;
5. Creation of a template approach to the negotiation of self-government and lands/resource agreements; and
6. Introduction of incremental treaty/certainty or sectoral agreements to address lands and resource issues.

The new policy framework outlined in the Roundtable discussions represents a classic liberal view, originally applied to Indigenous Peoples through the **White Paper policy of 1969**. The focus is not on respecting Indigenous Peoples' difference, nor of making space for that difference within the Canadian legal and political framework, but rather of integrating Indigenous Peoples into the Canadian body politic.

The purpose of the federal policy is to encourage a reconciliation framework for negotiation, and to discourage use of litigation by incorporating evolving constitutional case law into federal policy. The "***new***" federal policy discloses a renewed commitment to implementing federal policy directions already underway through initiatives such as the **Land Management Act** and **First Nations Governance Act**. Mechanisms originally anticipated in the now defunct **First Nations Governance Act** will be imposed on Indigenous governments as part of federal policy, including: constitutions, citizenship codes, and the application of the **Charter** to Indigenous governments and organizations.

Reconciliation Framework

The discussion of Reconciliation in the federal documents (and, indeed, the Roundtable discussion that I attended) entirely lacked of any reference to the sovereignty of Indigenous Nations. The starting point for the discussion is the assumption that Indigenous Nations have been absorbed into the Canadian state. Reconciliation includes the recognition of the "***sovereignty of the Crown and the rights of other Canadians.***" Reconciliation, as defined by Canada (in its interpretation of the SCC pronouncements in this regard) includes the following features:

- "***balancing the recognition and preservation of the rights of Aboriginal peoples, with the Crown's ability to limit those rights in the interests of all Canadians.***"
- "***Mutual recognition is premised on coexistence and interdependence of Aboriginal and non-Aboriginal Cana-***

AFN meeting on 'Recognition and Implementation of First Nations Governments', held in Ottawa May 2004. (Photo by R. Diabo)

"The starting point for the discussion is the assumption that Indigenous Nations have been absorbed into the Canadian state. Reconciliation includes the recognition of the "***sovereignty of the Crown and the rights of other Canadians.***"

L to R: National Chief Phil Fontaine and David Nahwegahbow, Co-Chair, of AFN Committee on FNG. (Photo by R. Diabo)

L to R: Three Amigos, Phil Fontaine AFN National Chief, Clem Chartier, MNC President, Jose Kusugak, President ITK. (Photo courtesy of ITK/S. Hendrie)

"The Roundtable reflects a shift away from federal policy distinctions historically made between status Indians (First Nations), non-status Indians, and Métis."

Logos of AFN, MNC, ITK

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dians and their shared citizenship within the Canadian federation. Aboriginal and treaty rights are not absolute: they operate within the framework of the Canadian Constitution which requires a balancing between the rights of Aboriginal peoples, the sovereignty of the Crown, and the rights of other Canadians. This balancing should contribute to predictability and clarity for the exercise of rights, facilitate social and economic development, and promote harmonious relationships among governments and citizens."

- Reconciliation "***includes mutual respect for the values we share as Canadians: democratic values, respect for human rights, rule of law and the principles articulated in the Canadian Charter of Rights and Freedoms.***"

Key elements of the emerging federal strategy are outlined below.

1. **Equalization of all Indigenous Peoples (Status, non-Status, Métis, Off-reserve):** The Roundtable reflects a shift away from federal policy distinctions historically made between status Indians (First Nations), non-status Indians, and Métis. (Inuit issues in the discussions are primarily concerned with the implementation of existing land claim/self-government agreements.) Canada will equalize the treatment of all different types of Indigenous peoples and will seek agreements with urban (off-reserve) populations regarding social programs, and require inclusion of these groups in agreements which are reached involving lands and resources or self-government.

2. Canada will **recognize Métis rights**, both in self-government areas (social programs such as health, education, child and family services) and also lands and resources. Canada is undertaking a study of historic Métis rights in certain regions. Where they identify these rights, they will "pursue initiatives with provincial governments to secure both Métis and First Nation participation in, and benefit from resource development activities in tradition territories." Therefore, if Canada identifies Métis lands/resource rights in British Columbia it will treat these equally with the rights of First Nations.

3. **Quality of Life as a Measurement of Federal Policy:** Responding to the Auditor General's report, as well as the consistent ranking of Indigenous Peoples on the U.N. quality of life index as lower than Canadians, Canada will focus on quality of life measurements (including high-school completion, post-secondary participation, employment, health, life-expectancy, infant mortality as well as potable water and housing) as a measure of federal policy success. It is therefore likely that federal funding will be increasingly tied to this objective.

4. Canada is **harmonizing data collection and sharing with the provinces and territories**, and will likely increasingly bureaucratize the funding formulas and procedures that it requires of individual First Nation communities. Canada's policy reflects a continued drive towards **increased accountability regarding financial matters** (reflected in the review of PTO funding which DIAND recently undertook). As a consequence, funding will be tied to specific results, most likely to the achievement of quality of life measurements.

5. Federal policy will redefine and clarify who different Indigenous organizations represent, and tie funding to this. **Canada will streamline (by enforcing a consolidation) the number of Indigenous organizations or groups that it negotiates with**:

- Canada will encourage Indigenous organizations to consolidate, as a means of reducing the overall number of Indigenous groups or organizations that they negotiate with. Eventually, this may include refusing to enter agreements or discussions with

'Negotiations continued from page 18

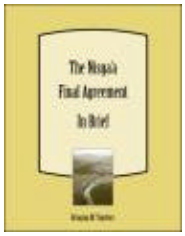
smaller communities or organizations on their own.

- Canada has concerns about entering into negotiations with groups which claim to represent Indigenous Peoples, but have been challenged as non-representative of their communities (by off-reserve members, hereditary representatives, etc.). Therefore, Canada will have a new policy "***requiring an approved constitution that identifies governance structures and contains a citizenship code, and accountability and redress mechanisms***". Such has been the case in the latest federal negotiations such as the **Nisga'a agreement** and recent AIPs.
- This approach will also be applied to different organizations that the federal government funds: "***Federal investment in these [organizations] needs to be re-examined to encourage greater aggregations, synergies, and efficiencies***". This reflects the concerns highlighted by DIAND in the PTO funding review.

6. There will be **increased provincial involvement in setting and implementing federal policy regarding Indigenous Peoples**. This will be reflected both on self-government matters and quality of life issues, which generally are within provincial or territorial jurisdiction (education, health, etc.) and also on lands and resource issues through the negotiation of the incremental treaties or certainty agreements discussed below.
7. The **incremental certainty approach pioneered in B.C. through the B.C.T.C. process will be exported to the rest of Canada as the federal response to evolving case law regarding consultation and accommodation (*Haida* and *Taku*).** Cabinet has approved the negotiation of "***incremental treaty agreements***" or "***sectoral agreements***" to achieve interim certainty, and provide for some sort of economic benefit, and possibly co-management, while larger land and resource treaties are being negotiated.
   - The approval of incremental treaties/ sectoral agreements is meant to address the long lengths of time negotiating final agreements is taking, and to address the uncertainty which results for industries and the provinces in the interim.
   - Incremental or Sectoral agreements will provide "***predictability and clarity for the use and management of lands and resources, rather than necessarily a final, comprehensive definition of all Aboriginal land rights for all time***".
   - Consultation and accommodation will include the recognition that Aboriginal Title and Rights **likely** exist, and address these through an agreement to share in benefits of resource development and use. There is no commitment to a sharing of jurisdiction or decision-making authority in land and resource use decisions. British Columbia's existing consultation policy is cited as a good example of what consultation and accommodation should look like.
   - Certainty will be "***based on recognition and coexistence of rights rather than a surrender of rights***" as reflected in the **Nisga'a** and **Tlicho** agreements (this is also known as the "***promise not to practice***" approach).
8. Instead of **negotiation loans**, the parties may enter into agreements to "***share benefits***" while negotiating which would provide the cash to allow Indigenous Peoples to negotiate:
   - "***[N]egotiating incremental treaty agreements…would provide interim certainty for land and resource matters pending the negotiation [of] a larger treaty. Such agreements can build capacity and provide economic benefits in Aboriginal communities during the negotiation process.***"
   - Canada anticipates that removing this barrier to negotiation should speed up

John Watson, former RDG, INAC-BC Region, was brought into Ottawa to head up PCO Aboriginal Affairs Secretariat, to export the BC experience nationally. (Photo by INAC)

"The **incremental certainty approach pioneered in B.C. through the B.C.T.C. process will be exported to the rest of Canada as the federal response to evolving case law regarding consultation and accommodation (*Haida* and *Taku*).**"



Cover of the Nisga'a Final Agreement

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CORRECTION: The Dec. 2004, issue had a photo incorrectly labeled as Dr. John Paul Murdoch. In fact, the picture was Dr. Murdoch's son.

The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it. Feedback is welcome. Let us know what you think of the Bulletin.

Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

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the process of finalizing land claim agreements.

9. Canada will **develop a template approach to the negotiation of modern treaties or self-government agreements to standardize negotiations**, so that once certain powers have been "***granted***" at one negotiation table, they will not have to be re-negotiated at others. A federal template which lists the powers/services that Canada is willing to allow Indigenous Peoples to take over will be developed. However, certain powers (child welfare, for example) will still require negotiations with the provinces or territories.

10. Own source revenue requirements (where Indigenous Peoples' federal funding decreases as their own economic development and capacities increase) have only been applied to those communities (such as Nisga'a) who entered into agreements with Canada. This has been identified as a "***disincentive to move to self-government.***" **Canada will amend its policies to require "*own-source revenue treatment and incentives for both self-governing First Nations and Indian Act bands*".**

11. **Self-government discussions will not focus on rights, but rather on "*practical self-government arrangements or program service delivery*".** In this regard, the federal government anticipates an increase in provincial involvement and tri-partite agreements.

I hope that this discussion has provided a useful overview of the direction of the development of federal policy at the Canada-Aboriginal Peoples Roundtable discussions that are occurring. Please be in touch if you would like a more in-depth analysis of the legal implications of any of these proposed policy developments.

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