



Federal Government Funding to First Nations

The Facts, the Myths, and the Way Forward

EXECUTIVE SUMMARY

This paper presents a summary of current Federal Government funding on First Nations issues. It then rebuts specific criticisms that would suggest spending in this area is wasteful. Finally, it proposes areas for change that would contribute significantly to constructive progress for First Nations in Canada.

The rights relied on by non-aboriginal Canadians to access funds from the three levels of government are the same as those that form the basis of Federal Government funding to First Nations.

These can be categorized as follows:

- comparable services—services comparable to those provided to other Canadians by federal, provincial and municipal governments;
- lawful obligations—legal debts owed by the government; and,
- self- government—a right for non-aboriginals that to date has been denied to most First Nations.

Critics say that funding to First Nations is extravagant, misused and squandered.

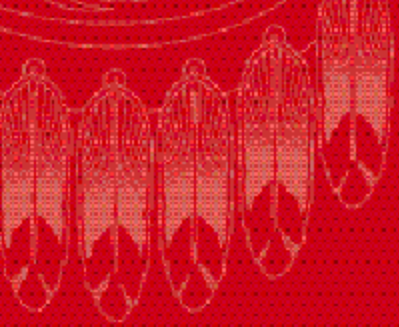
In fact, as this paper will demonstrate:

- rather than lavish spending, the reality is one of diminishing investment and failure to meet the needs of First Nations;
- rather than corruption and recklessness, there is extensive reporting and responsible spending by First Nations' governments; and,
- rather than frittering money away, the path to success has been defined, while the real waste is in maintaining the status quo and ignoring the benefits that can be derived through investment in self-government.

Living conditions on many First Nations reserves are notoriously inadequate. In order to arrive at some equality of outcome with the rest of Canada, existing policy must change.

There is a body of learned opinion developing that supports what First Nations have been saying all along. Self-government is the key to unlocking the potential of First Nations, economically, socially and politically. This paper reviews sources such as studies by the Harvard Project on American Indian Economic Development, research by psychologists M.J. Chandler and C.E. Lalonde at the University of British Columbia, the report of the Royal Commission on Aboriginal Peoples and several reviews by the Auditor General of Canada. Each of these authors points to a different element of the solution. All point to greater control by and for First Nations as a necessary precondition to improvement.





First Nations have a positive agenda for the future, based in self-government. Greater understanding will open avenues for making that future a reality.

More cost-effective programs and services and more effective governance can be facilitated through:

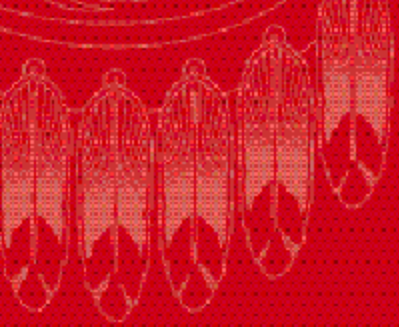
- integrating programs and streamlining processes to remove overlap and accelerate decision-making;
- improving dispute resolution mechanisms that recognize the inherent injustice in delaying the settlement of lawful claims and meeting historic treaty obligations;
- amending reporting requirements to provide relevant information about outcomes to the communities involved while reducing the burden on them;
- inverting accountability practices to allow First Nations governments to account to their members first and other governments second;
- enhancing accountability by establishing a general audit function for First Nations;
- establishing sustainable funding, with an escalator formula that mirrors the true cost drivers of need, inflation and population growth;
- providing sufficient funding to support the development and implementation of First Nations governments; and,
- establishing fully inter-dependent governments, within a constitutional framework which appropriately reallocates governance jurisdictions according to the rights and capacities of each government to discharge them best.

First Nations have a positive agenda for the future, based in self-government. Greater understanding will open avenues for making that future a reality.

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First Nations demand no more than the rights exercised by all Canadians: to receive services from the government comparable to what other Canadians receive.

INTRODUCTION

For several years now, a collection of myths has been growing within the public discourse in Canada, sowing misperceptions of how funding to First Nations works, what the money is for, and what happens with it. As part of the myth, First Nations are portrayed as lacking in responsibility and accountability, and band councils as rife with corruption. First Nations, the “Indian industry”, and the Federal Government are blamed for “wasting” over \$8 billion in program dollars each year, with current spending described as extravagant, misused, or squandered.¹ This is by no means the only perspective on the issues, but it is one that has gained some currency, partly due to a lack of contradictory voices.

For First Nations, the need to dispel these myths is a cruel and unjust blow. Nonetheless, the need exists. As astonishing as it is to those who have suffered over 400 years of discrimination, many of whom live in conditions of poverty beyond the imagination of most Canadians and who must still seek recognition and acceptance of their basic constitutional rights, these myths are no less popular for being flagrantly wrong.

The reality behind the myths is that the money provided by the Federal Government to First Nations is insufficient rather than excessive, well-accounted for rather than misused, and almost all goes to pay debts and obligations to First Nations rather than the generous hand-out it is most often portrayed to be.

In fact, First Nations demand no more than the rights exercised by all Canadians: to receive services from the government comparable to what other Canadians receive; to pursue legal redress for what is owed to them due to historic treaties or more recent wrongs, as is the right of every Canadian; and, to exercise self-determination in the same way that other Canadians do; by choosing their government and granting it both the authority and responsibility to act on the behalf of those who have chosen it.

For those who have heard only the critics, this paper provides a primary education concerning how funding to First Nations really works and what it can achieve, if given the opportunity. For others, this may be an opportunity to build a deeper appreciation of the issues, to see things in a new light, and to begin to explore solutions. A more mature and better-informed dialogue can only benefit First Nations.

The Assembly of First Nations invites you to read, discuss and explore these issues yourself. It is our belief that the more that people understand the reality and reject the myths, the more likely it is that they will support the aspirations of First Nations across Canada and help those become reality as well.

THE FACTS

It would be impossible in any paper to give the reader a complete understanding of the reality facing First Nations in Canada today. Certainly, the full story remains to be told, but this paper will attempt to provide a broader and deeper understanding of issues related to the funding of First Nations in Canada.

It has been widely reported that the Federal Government spends over \$8 billion on programming directly related to aboriginal people. In fact, the \$8 billion figure is an estimate of what was spent in fiscal year 2003-2004.² A projection for this fiscal year would suggest that the number will rise to \$8.5 billion in 2004-2005.³

However, as you will see, only a portion of the funds spent this year will go to First Nations. Included in the numbers is funding for Inuit, Métis, “non-status” Indians, administration and bureaucracy at the federal level, and money paid to Provinces, Territories and private organizations to carry out programs on behalf of the Federal Government.

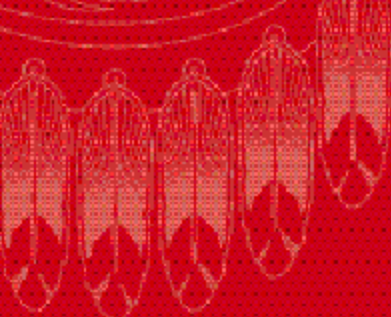
Of the spending that does go to First Nations, the largest portion goes to provide basic services to people on First Nations reserves. Much of the remainder will go to pay longstanding debts that the Federal Government owes to First Nations’ people, either collectively or individually, arising from claims, litigation, treaties and other historic agreements between First Nations and the Crown. A small piece will go toward First Nations’ self-government.⁴

The total spending figure is an amalgamation from a number of government departments that provide programs and services to all aboriginal people in Canada. In 2003-04, approximately two-thirds⁵ of all funds spent on aboriginal programs and services were spent by the Department of Indian Affairs and Northern Development (DIAND). The remaining third was split between 13 departments and agencies, with Health Canada the most significant at 20%. Canada Mortgage and Housing Corporation and Human Resources and Development Canada (as it was then known) split approximately 7% of this spending between them, and the remaining 6% was divided between the programs and services of ten other departments and agencies.⁶

As noted, among these programs and services, some go to assist Inuit, Métis, or “non-status Indians”. From the remainder that is aimed at First Nations, some also goes to administration and bureaucracy at the federal departments involved or to other levels of government and private sector organizations that provide services for the Federal Government. The portion that is actually transferred to First Nations’ control is approximately 67%⁷ of the total, although that control is severely restricted through a variety of funding mechanisms, the most important of which is contribution agreements.⁸

Of the spending that does go to First Nations, the largest portion goes to provide basic services to people on First Nations reserves.





The Federal Government states that it "supports the national objective of giving First Nations, Inuit and Northerners access to a range and level of services from their governments reasonably comparable to those enjoyed by other Canadians in like circumstances".

This means that, out of an estimated \$8 billion dollars in spending on policies and programs relating to aboriginal people in 2003-2004, approximately \$5.36 billion were allocated to First Nations in grants or contributions, or just over \$7,200 per person.⁹ By way of contrast, the Federal Government will spend approximately \$6,000 on each of Canada's 31 million people in 2004-2005.¹⁰ For other Canadians, however, additional funding well exceeding this \$1200 difference is provided by the various provincial and municipal governments of Canada.¹¹ For example, when the federal, provincial and municipal budgets are measured against population, the average citizen of the City of Ottawa receives services costing approximately \$14,900.¹²

In order to understand these numbers better, it is critical to understand the reason for this spending; its intended purpose. To assist the reader, the following categories apply to the funds that are spent by DIAND on the Indian and Inuit Affairs Program (IIAP): comparable services (79%); lawful obligations (12%); and, self-government (2%).¹³ The remainder goes to the Northern Affairs Program or to pay for regional direction and administration.

THE FACTS: Comparable Services

The majority of funds that actually find their way to First Nations through grants or contribution agreements are related to the provision of basic services such as health, education, roads and drinking water, to name a few of the most significant. The provision of these services is intended to be comparable to what non-aboriginal Canadians already receive from the federal, provincial and municipal governments. However, as the Prime Minister has admitted, the Federal Government is not meeting this standard.¹⁴

It is the responsibility of the Federal Government to provide these basic services to First Nations because the Crown has created laws that allow and require the Federal Government to do so, and laws that prevent First Nations from doing so unless that authority is delegated from the Crown. Under Section 91(24) of the *Constitution Act, 1867*, the Federal Government has exclusive authority to legislate on matters pertaining to "Indians, and Lands reserved for the Indians". The obligation on the Federal Government to pay for those services comes from the requirement to respect the aboriginal and treaty rights protected under Section 35 of the *Constitution Act, 1982*. The *Indian Act* prevents First Nations from exercising their own authority and responsibility in these areas except under an agreement with the Federal Government.¹⁵ Self-government agreements, which would enable First Nations to act on these issues, are quite rare to date.

In Canada, provincial and municipal governments, along with the Federal Government, provide services to the general public based on the division of powers in the constitution and the delegated authorities that have been passed to municipalities. The Federal Government states that it "supports the national objective of giving First Nations, Inuit and Northerners access to a range and level of services from their governments reasonably comparable to those enjoyed by

other Canadians in like circumstances.”¹⁶ The standard of government services provided either to First Nations or the general public is a public policy choice made by each successive government based on that government’s assessment of its own mandate. Unfortunately, the standard on many reserves across Canada is substantially lower than that found anywhere else in the country, contradicting the principle of comparability.¹⁷

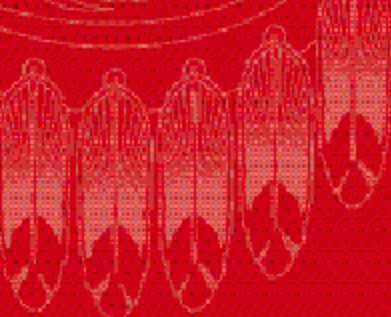
In spite of the fact that the principle of comparability of services is breached to the disadvantage of First Nations, it should be noted here that there are a few specific areas of spending where it might appear that the principle of comparability favours First Nations, warranting closer inspection. Specifically, there is spending related to tuition and living expenses for post-secondary students from First Nations that goes beyond what most non-aboriginal students receive (although some non-aboriginal bursary and grant holders receive much more). There is also a portion of the housing program on reserve that goes beyond comparability with social housing or affordable housing programs offered by federal and provincial governments to non-aboriginal Canadians (although the quality of much on-reserve housing is notoriously inferior to that offered in a provincial housing project). Nonetheless, under some definitions, these programs appear to exceed the principle of comparability.

The driving principle behind these unique circumstances may be a policy objective of the Federal Government to enable an equality of outcomes between aboriginal and non-aboriginal people, meaning that the historically disadvantaged position of aboriginal people requires a period of readjustment and increased effort to help them catch up. Certainly, the Federal Government has stated its intent to help “close the gap” between the social and economic outcomes of First Nations and other Canadians.¹⁸ However, in many cases, there are also treaties that dictate the obligation of the Federal Government to provide post-secondary education and housing services to First Nations. Another explanation is that these programs are based in aboriginal and treaty rights, as enshrined in the constitution. This would suggest that the Federal Government, by rendering it impossible for First Nations to provide education and housing to their people during the period of colonization, has the responsibility to do so now and until that situation can be rectified under First Nations’ governments. The Federal Government has not clarified its position in this regard, nor have the courts yet spoken on the issue.

Returning to the basic conception of comparable services, it can be said that on balance these spending programs do not begin to make up the shortfall in comparability experienced by First Nations in Canada with regard to fundamental services such as clean drinking water and accessible roads. The shameful nature of conditions on many reserves has received widespread recognition, including from the Prime Minister and Government of Canada.¹⁹ That the funds spent under this heading do not reach anything near comparability is not an issue of serious debate, nor is the lack of comparability of outcomes with regard to fundamental quality of life issues such as life expectancy, educational attainment or employment opportunities.

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THE FACTS: Lawful Obligations

Despite the impression that some would give, when First Nations speak of the debt owed to them, they are not expecting generosity borne of racial guilt, rather they are speaking to the lawful obligations of the Crown.

International and domestic law defines the obligations of the Government of Canada in general. The obligation of the Federal Government to First Nations has roots that are widely varied and dating back several hundred years. They arise from sources such as the *Royal Proclamation of 1763*, from the *Constitution Acts of 1867 and 1982*, from treaties between the government and First Nations, and from the decisions of Canada's own courts.

The notion that the government could have owed its own citizens a debt for several generations is unfamiliar to most Canadians. Where citizens have a rightful claim, most Canadians would expect that negative media coverage or a fight in the courts would bring resolution fairly quickly, as this is the general experience and rightful expectation of citizens in a country under the rule of law. For First Nations, despite situations involving whole communities and interests based deep in constitutional law and backed by Supreme Court of Canada decisions, this has not been the case.

It is an unfortunate but undeniable fact that, historically, First Nations could not rely on the media and public support to compel governments to resolve injustice against them. A lack of broad understanding of the issues throughout the general public and a lack of interest in the mainstream media still renders public sentiment a tool that is only rarely of use to First Nations. The courts were no help as it was illegal for First Nations individuals to raise funds for land claims until relatively recently.²⁰ For a time, a member of a First Nation could lose status as a "registered Indian" for becoming a lawyer or even getting a university degree.²¹ Since gaining the capacity to fight the government with its own tools, First Nations often have been successful at convincing the courts to see the justice of their cause. But these successes come agonizingly slowly against governments that insist on hard line negotiations, protracted litigation, and forcing important cases to the highest court. For many First Nations, who lack the resources or capacity to fight a lengthy legal battle, the court system remains an inaccessible tool as well. Consequently, the Government of Canada still owes First Nations an enormous debt in terms of money, land and services, which it is repaying at an extremely slow pace.

As mentioned, the lawful obligations the Crown owes to First Nations take various forms, but they stem from four broad categories of obligation: comprehensive claims; specific claims; treaties; and, litigation.

Comprehensive claims arise where the Crown has not signed a treaty with a First Nation. The Crown's obligation arises from the *Royal Proclamation of 1763*. This Proclamation requires that First Nations be undisturbed in the enjoyment of their lands unless and until they sign a treaty with the Crown. Where a First Nation has never signed a land treaty with the Crown, the First Nation holds unextinguished

aboriginal title to the land and has the sole legal right to possession and occupation of their traditional land. The Supreme Court of Canada has recommended the parties negotiate a treaty or use the government's comprehensive claims process to resolve disputed interests in the land. Recent agreements have included financial compensation as well as agreement on access to and jurisdiction over the land in question, or a combination of these compensations. However, the implementation of these agreements has been the subject of criticism from the Auditor General among others.²²

Specific claims are even more varied, but always arise where the Crown has breached the *Indian Act*, a treaty or other agreement. An example would be where, in a treaty, the Crown promised to provide some form of payment to a First Nation in exchange for use or possession of certain land, but the payment was not provided or the Crown took land beyond what was agreed to in the treaty. The debt the Crown owes is compensation for the breach of a treaty.

Treaties are agreements signed between the Crown and a First Nation and could relate to any variety of issues from land use to the use of natural resources, to the provision of services by either party. The debt the Crown owes is the enforcement of an ongoing promise under the terms of a treaty.

Litigation creates an obligation in the way with which many Canadians are familiar. Someone, in this case a First Nation, can sue the Crown and, if they win, the Crown owes them compensation such as money, or the return of land, or the provision of a service. The costs of the court case as well as the compensation ordered represent the lawful obligations arising from litigation.

As can be seen from the foregoing, in each case, the Crown owes a debt to a First Nation or a group of First Nations. This is what is meant by lawful obligations. As an example, by DIAND's own estimation, that department's contingent liabilities from litigation and claims amounted to just under \$11 billion in 2001.²³ These obligations have not been and must be met.

Someone might ask why in each case it is only the Crown that could owe a debt. The answer to this is relatively straightforward. Generally, First Nations have met their obligations in a timely manner; for example, by surrendering land following the signing of a treaty. However, in those instances where one did not, the Crown had and continues to hold all the power necessary to enforce repayment of a debt, or to ensure that a commitment or obligation owed by a First Nation was met, often to an extent well beyond what was owed to it (see specific claims). Therefore, First Nations' lawful obligations have been and are being met.

One additional point on this issue is worth highlighting. The Federal Government has taken an approach to resolving its lawful obligations that costs First Nations and the Canadian public large sums of money and produces no benefits to either group. That approach is to stall and delay resolution of claims, forcing protracted





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negotiation and lengthy court battles. Evidence of that approach can be found in the number of cases the Federal Government has forced to the Supreme Court of Canada only to lose at that level, or the enormous backlog in resolution of land claims.²⁴ One could also point to the 1998 *Report of the Joint First Nations-Canada Task Force on Specific Claims Policy Reform* which recommended a variety of means to reduce delays in resolving specific claims. The Federal Government, a partner in developing the report, choose not to implement its recommendations.²⁵ These delays in providing what is owed only increase costs to both sides. It is an inherently unfair approach in that First Nations often do not have the depth of resources to keep up an ongoing battle and, therefore, must capitulate. Alternatively, delays keep necessary funds out of a community, forcing capitulation due to need.

It appears that the ability and desire to press this advantage is what drives this policy. However, there is no long-term financial saving in this strategy as the costs of the battle and of maintaining communities in poverty greatly outweighs the short-term benefit to the government of not meeting its obligations immediately. This irresponsible approach to the Crown's lawful obligations renders this aspect of spending on aboriginal issues truly wasteful, and none of the money benefits First Nations.

THE FACTS: Self-Government

First Nations have continually sought recognition of the inherent right of self-determination. First Nations seek full inter-dependence with other governments in Canada within a constitutional framework which appropriately allocates governance jurisdictions according to the rights and capacities of each government to discharge them best. That is self-government.

Canadians have self-government. Citizens choose their system of government, their leaders and they have the capacity to change what they do not like. They also have the tools to actually govern, including the funds and the skills that make up the infrastructure of a government. First Nations do not have these tools, nor do they have self-government.

History explains the difference.

Most Canadian families chose to be part of the project that is Canada. By coming to this country, they chose to adopt and adapt to the system of government that existed, bringing their own contributions, adding to the greater whole the wealth of their experiences and their wisdom. Through these choices, they continue to build Canada's government. This exercise of self-determination has made Canada a self-sufficient nation that stands apart from its colonial forebears with one of the highest standards of living anywhere on the planet.

At the time of the arrival of the Europeans, First Nations had their own governments and ways of life. They entered into treaties with the European powers and later with the Government of Canada on a nation-to-nation basis. But the practical

tools of self-governance were then denied to people who were herded onto reserves and made subject to the *Indian Act*. By the same token, self-sufficiency was taken away with the land and the destruction of its ability to support people. The Federal Government recognizes the right to self-determination and, to support efforts to rebuild the capacity to govern, DIAND provides 2% of its annual budget to First Nations.

This is inadequate.

As noted, First Nations receive approximately two-thirds of the Federal Government budget in this area. These funds come with the responsibility to administer the applicable programs and services. However, the power to decide where to invest and how programs are to be delivered remains with federal politicians and bureaucrats. First Nations must be allowed to develop the tools required to do this task and do it well.

The responsibilities of First Nations governments will grow, due to a need to increase economic and social development within communities, due to population growth within First Nations communities, due to anticipated growth in the areas of authority that First Nations governments will need to exercise to provide transparent, responsible and accountable government, and, due to the increasing complexity of modern government. With that growth in responsibility, there must be an accompanying growth in resources.

The development of a competent First Nations Public Service is crucial to the ability to govern effectively and reliably. Success has been achieved where sufficient investment in First Nations government has been made. Unfortunately, as the federal government devolved programs and service management to First Nations in the late 1980's, there was no funding with which to build the necessary management infrastructure such as policy development capacity. This should come as no surprise since this devolution was principally a deficit-fighting measure. There are gaps in the funding necessary to hire and train people with the skills needed to provide responsible and accountable governance. There are gaps in the funding needed to establish appropriate institutions capable of supporting First Nations governments, school boards for example. There are gaps in the resources needed to build appropriate financial and management systems and to develop the technological support that is needed by any government. Most First Nations do not have these tools and the funds that are being provided to develop them is currently insufficient to obtain or develop them.





THE MYTHS

For the past few years, as legitimate public demands for responsible spending by government have increased, some have chosen to paint funding to First Nations as a key part of the problem.

It is said that the funding is either:

- extravagant—growing rapidly and exceeding need;
- misused—lacking accountability and subject to malfeasance; or,
- squandered—spent without purpose or result.

These myths are spread by critics who balk at the \$8 billion budget, deploring its supposed rapid increase or objecting to any increase at all. They charge that spending grossly exceeds the need which it is intended to address. They accuse First Nations of misusing funds, implying widespread malfeasance and a lack of accountability. Or they complain that the funds are squandered; that they are thrown away without purpose or profit. All of which leads such people to conclude that this spending is unfair to non-aboriginal citizens “who are footing the bill”.²⁶

The reality is quite the contrary.

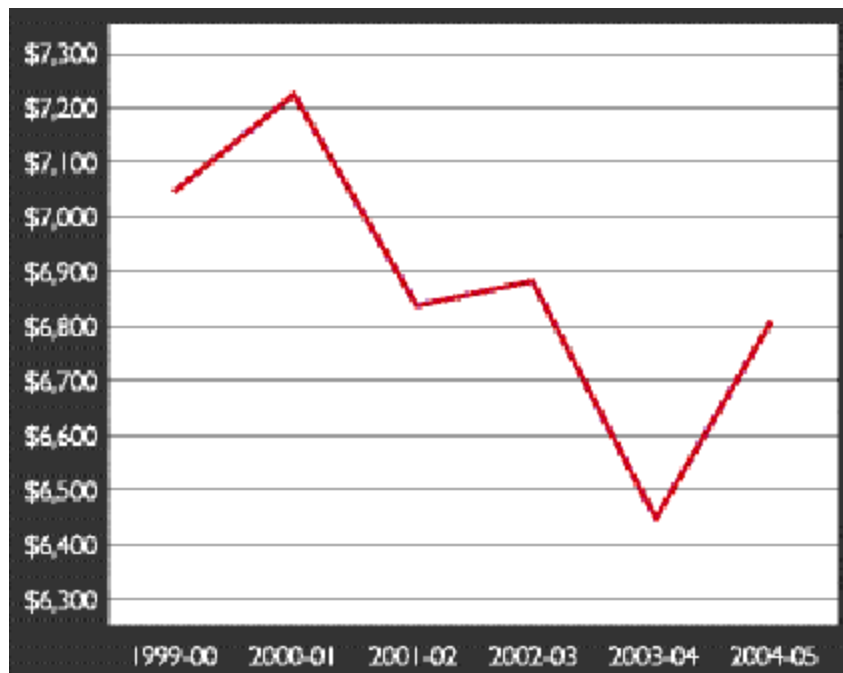
THE MYTHS: Extravagance

With regard to claims of extravagance, a fair analysis would look for increasing rates of spending to see whether increases exceed justification. In terms of justification, a fair analysis would look at need to determine whether the spending—even though increasing—was required to meet that need.

The truth is that spending meets neither test, as it is both decreasing and has never met the needs of First Nations’ communities.

As can be seen from Figure 1 below, the rhetoric concerning increased spending is entirely inaccurate. To reflect what is actually spent on people, numbers must be adjusted for inflation and population increases over time. When that is done, the total budget for Indian and Northern Affairs Canada (DIAND) is shown to have decreased by 3.5% since 1999-2000. In fact, the per capita figures would be even lower if the funds that go to others than First Nations were also factored into the calculations. As discussed earlier, other recipients include Inuit programs, DIAND administration, other government departments, other levels of government, and non-governmental organizations.

Figure 1: Total Spending by Indian and Northern Affairs Canada - Per Capita and Adjusted for Inflation



Sources: Financial data are from DIAND Departmental Performance Reports and Treasury Board Secretariat's Main Estimates. Population data are from DIAND published research reports. Inflation data are from Statistics Canada's Consumer Price Index.

An even more detailed picture of what actually goes to First Nations and Inuit is set out in Figure 2, which indicates that funding for core services such as education, economic and social development, capital facilities and maintenance has decreased by almost 13% since 1999-2000. Figure 2 represents per capita* contributions funding for core programs, adjusted for inflation and population growth over the period. Contributions are funds that are provided to communities to be spent locally.

These contributions can be considered representative and were selected for several reasons:

- ease of comparability over time—DIAND has consistently grouped these specific contributions spending items together in their own reporting, so it is easier to trace spending over time for these items;
- relevance—these contributions are for core ongoing programs, not payments stemming from obligations due to claims or treaties or for special programs of a limited nature; and,
- applicability—these contributions appear to have been directed to First Nations and Inuit, rather than other levels of government, delivery partners or other government departments.



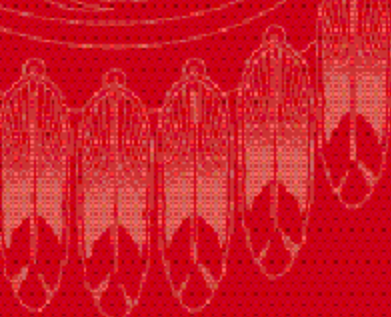
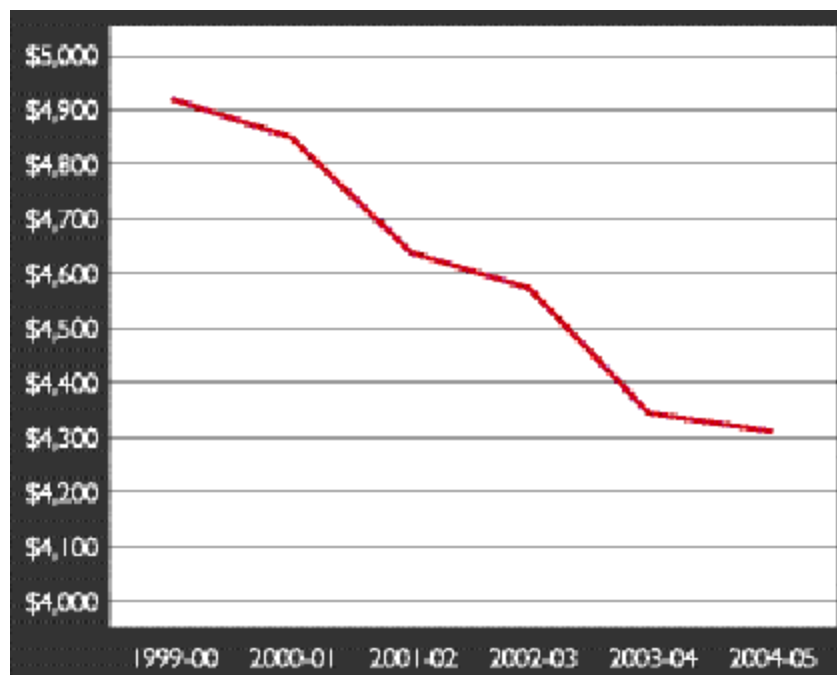


Figure 2: Indian and Northern Affairs Canada Spending on Core Programs - Per Capita and Adjusted for Inflation



Sources: Financial data are from DIAND Departmental Performance Reports and Treasury Board Secretariat's Main Estimates. Population data are from DIAND published research reports. Inflation data are from Statistics Canada's Consumer Price Index.

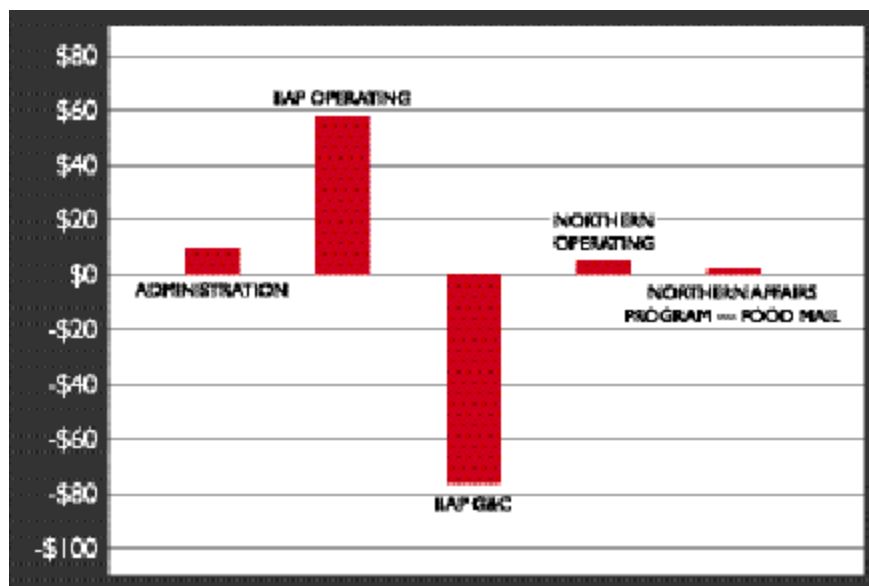
* Note: Per capita refers to the "registered Indian" population only, inclusion of Inuit population statistics would show even smaller per capita spending.

What these figures demonstrate is that "increases" in budget, trumpeted by the Federal Government as exemplifying its compassion and assistance to First Nations on the one hand, and decried by opponents as extravagant spending on the other hand, are in fact neither, having failed to keep up with the predictable budgetary pressures of inflation and population growth. This compares to total Federal Government spending which, adjusted for inflation and growth in the Canadian population, will hold steady from 1999-2000 through 2004-2005.²⁷

Perhaps even more troubling is the fact that pressures other than inflation and population growth are also at play. Within a context where the overall budget is decreasing due to inflation and population growth, there is no excess to address other priorities, which means that core services are hit even harder when money must be found for those other needs. For example, the requirement to address increased child welfare requirements means that education and housing suffer to make up the difference. In other words, the Federal Government is financing its budget on the backs of First Nations services.

As Figure 3 shows, the funding for core services, reflected in Indian and Inuit Affairs Program grants and contributions (labeled IIAP G & C in the figure below), has been transferred between programs to meet needs in other areas that do not go directly to First Nations.

Figure 3: Indian and Northern Affairs Canada Permanent Vote Transfers 1997-98 to 2001-02 Total



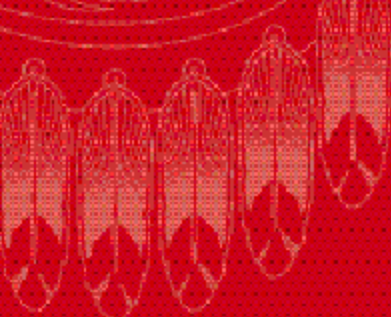
Sources: DIAND A-Base History: Overview for the Assembly of First Nations, March 2004

This situation could be ameliorated by increases to these core budgets, but the system itself is designed in such a way that the current situation is almost inevitable. The Federal Government sees budgets for these core services as “discretionary”, meaning that they argue that they need not keep up with inflation and population pressures, nor are they protected from being transferred from core services to meet other needs. This may seem like a technical point, but it is reflective of a troubling attitude on the part of the Federal Government which is laid bare when First Nations funding is compared with how funding for core services to the rest of Canada is handled.

The Canada Health and Social Transfer (CHST) is the fund which provides provinces with funds for core services such as health, education and social assistance. This is legislated as non-discretionary funding and is designed to take into account population growth and inflation. Although many Canadians may feel that this money does not meet their needs, at a minimum this system ensures that these budgets are never threatened to decrease without new legislation being passed. A fair reader must ask why First Nations are treated differently, why their needs are “discretionary” and why a constant battle must be fought just to maintain a diminishing bottom line. This is a fundamental breach of the concept of comparable services.

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Nonetheless, proponents of the myth of extravagant spending would argue that, even if spending has decreased over time, it is unjustified even at its current rate because it exceeds need. The reality is that spending on First Nations does not meet the need in First Nations communities and never has. As Figure 4 shows that the cost of providing comparable services to aboriginal people is higher than it is for non-aboriginals. This is because the needs are greater.

Figure 4: Relative Cost of Providing Comparable Services for Aboriginal and Non-Aboriginal People in Canada

AREA OF EXPENDITURE	RATIO OF EXPENDITURE PER ABORIGINAL PERSON COMPARED TO PER NON-ABORIGINAL PERSON
Elementary & Secondary Education	\$2.1 to \$1
Post-Secondary Education	\$1.8 to \$1
Income Transfers	\$1.0 to \$1
Housing	\$5.6 to \$1
Health Care	\$1.6 to \$1
Social Services	\$2.9 to \$1
Protection of Persons & Property	\$1.5 to \$1
Other Expenditures	\$1.4 to \$1
Average	\$1.6 to \$1

Source: Royal Commission on Aboriginal Peoples, 1996, volume 5, chapter 2

There are several reasons for greater need.

First, most First Nations are in remote or northern areas of the country where the cost of providing materiel and services is much higher, varying from 25% to 100% more than the Canadian average, depending on economies of scale and distances from major centres. This fact is reflected in the premiums paid to some workers, such as the RCMP, who receive higher pay in order to make the purchasing power of officers' salaries on northern postings resemble that of others throughout the country.²⁸

Second, First Nations have a different population distribution. For example, the higher proportion of youth in the First Nations population means that education costs proportionate to the overall population are higher.

Third, the legacy of poverty, displacement and disenfranchisement which stems from centuries of abuse, neglect and a deliberate government policy of assimilation has driven higher social costs in many First Nations. Addressing this reality creates higher demand on services.

In addition, due to the eradication of more traditional means of earning a living through environmental damage and encroachment on traditional lands, there is a need for new employment opportunities. However, the lack of real investment in

creating sustainable economies on First Nations reserves means fewer economic opportunities, which in turn drives the need to provide replacement income.

And yet, needs are not fully met and investment in addressing the underlying causes of greater need has been sadly lacking, both financially and in policy terms.

THE MYTHS: Misuse

If spending is neither increasing over time nor exceeding need, it still would be considered wasteful if the money available were misspent or misused. First Nations stand accused of misusing the funds they do receive, with claims in the media that there is widespread malfeasance and a general lack of accountability. While there are certainly issues that arise with regard to how some money is handled, these are no more significant among First Nations than in any comparable community and pale in comparison to the costs stemming from ethical lapses we have seen in industry and government recently. The perception that corruption is acute among First Nations is especially irritating given that First Nations provide an extremely high degree of accountability for the use of their funds.²⁹

According to no less an authority than the Auditor General of Canada, Sheila Fraser, in her December 2002 report:

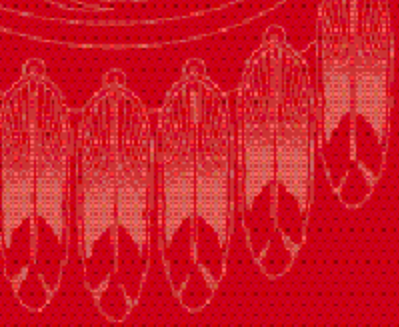
“First Nations reporting requirements established by Federal Government organizations are a significant burden, especially for communities with fewer than 500 residents. . . . We are concerned about the burden associated with the federal reporting requirements. Resources used to meet these reporting requirements could be better used to provide direct support to the community.”³⁰

Some of the significant burden described by the Auditor General is created by a minimum of 168 different financial reports required of First Nations by the four main funding organizations. It is also worth mentioning here that First Nations with fewer than 500 residents, highlighted in the Auditor General's comments as particularly burdened, make up 61% of all First Nations.

And yet, according to DIAND figures, the “problems” in communities are very few.³¹ Among the 557 audits conducted by DIAND of First Nations financial management in 2002-03, auditors found only 16 cases (less than 3%) where it was necessary to register an adverse opinion or denial of the band council's financial statement. The reasons for some of these opinions are as simple as a lack of adequate documentation for some transactions or a departure from generally approved accounting procedures.

One of the ways that DIAND deals with areas of difficulty, either due to financial, political or other challenges faced by band councils is the appointment of a third party manager to assist the First Nation in addressing their issues. As of March 31, 2004, there were third party managers working with 34 of the 633 band councils (5%).





As First Nations' budgets are controlled by the Federal Government, there is actually greater scrutiny and more accountability for those budgets than would be the case for comparable private sector organizations.

According to a member of the Standing Committee on Aboriginal Affairs and Resource Development, that committee estimates that 96% of First Nations have no accountability issues at all, meaning that they are fully compliant with a set of rules and regulations that greatly exceed those under which private enterprise operates.³²

The truth is that malfeasance, or improper use of funds, happens throughout the public and private sector, including among First Nations. One need only reflect on the recent scandals at Hollinger Incorporated or at Canada's largest banks in the private sector, or, in the public sector, the recent sponsorship scandal in the Federal Government and the criminal conviction of twelve members of the Grant Devine government in Saskatchewan, to understand that serious problems do arise in every walk of life.

This is not to excuse such activities on the part of anyone, but to put the problems that arise among First Nations within perspective. It is simply a fact that the areas where government dollars are spent are examined more closely by the media and the public. As First Nations' budgets are controlled by the Federal Government, there is actually greater scrutiny and more accountability for those budgets than would be the case for comparable private sector organizations. It is also a fact that problems are relatively few, as is detailed above. When problems do arise they are fully reported, unlike the standards applied to the private sector. The lack of positive media coverage for positive accomplishments among First Nations serves to exacerbate the perception of corruption and mismanagement, despite evidence to the contrary.

THE MYTHS: Squandering

Even though funding to First Nations is in fact decreasing rather than increasing, and it is not meeting the needs of the communities, and it is well documented and accounted for, and any misuse of funds is limited both in scope and in amount, there are those who would continue to say that funds are being wasted. In the end, they would say, regardless of the lack of extravagance or misuse, if the money is being dissipated without any real plan or purpose and it is not having a positive effect in First Nations' communities, then it is being squandered and will continue to be frittered away for so long as those conditions exist.

This is, in fact, the strongest argument of those who criticize spending on aboriginal issues. It is an argument that would find some degree of agreement within First Nations, as it does often seem that the plan and purpose of funding is unclear and, when one looks at the continually miserable conditions on some reserves, one could wonder whether there has been any beneficial effect to the billions that have been spent.

One must distinguish between the funds that are not well spent because, in the absence of self-government, policy directions are set by outsiders, however, and those funds that must be spent for the purpose of providing basic services or supporting the establishment and implementation of self-government.

Certainly, one can not argue that meeting lawful obligations is squandered spending. No matter how those funds are in turn used by recipients, the money is legally owed by the government and, therefore, must be paid out to the rightful party.

As noted, funding for comparable services represents the vast majority of spending. It will be argued later in this paper that these funds could be spent with greater effect; that integrated and streamlined processes could improve observed results. However, these services are part of the fundamental infrastructure meant to keep communities alive and, perhaps, to help them thrive. As such, they can not be reduced from what is already demonstrated to be an inadequate level.

Moreover, the extent to which the communities thrive will depend on the amount of control the community holds over the spending of those funds and the provision of the services for which they are meant to pay. Funding will not be squandered if it is invested in the continuing economic development of self-governing First Nations and in assisting more First Nations to become self-governing. Those funds are not squandered when they are invested in establishing the foundation of self-government.

In fact, the greater the degree to which communities are self-governing, the greater effect one can expect from the funds spent on services or in payment of lawful obligations. As will be argued below, a system of First Nation governments supported by First Nation institutions is in the interest of all Canadians. Solving the root causes of impoverished conditions means building First Nation governments and giving them the resources and clear responsibilities they need.

The Federal Government can address waste and give positive effect to funding by making investments that will result in real power sharing and transformative change.

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THE WAY FORWARD

As noted, the Federal Government states that funding to First Nations is intended to provide comparable services, meet lawful obligations and support self-government.

However, the funds that First Nations currently receive are insufficient to achieve the goals for which they are intended.

The indicators of human development that tell us about fundamental issues such as health, education and prosperity are significantly lower for First Nations than for the non-aboriginal population in Canada and have been for several generations.³³ In addition, the higher rate of population growth in First Nations communities is creating an associated demand for increased services. Just as it is the role of government to support development for all citizens, correcting this disparity must be the principal purpose of the Federal Government's spending on First Nations. To date, the effort has been insufficient. If funds are being wasted, the problems exist where there is a lack of focus on improving these results. It is the position of the Assembly of First Nations that a refocusing of existing resources and control over those resources, with an increase in spending targeted at concrete, sustainable improvements to outcomes is what is actually required.

Waste is not the issue; process, sustainability and jurisdiction are the issues.

THE WAY FORWARD: Process

No matter how much is spent by the Federal Government, there will always be opportunities to improve the effectiveness of that spending. As will be argued below, making the funding sustainable and supporting the decision-making jurisdiction of First Nations are critical elements of improving effectiveness. Beyond those steps, simply integrating and streamlining many of the administrative processes through which funds are utilized can enhance the impact that such funding has in First Nations communities.

As mentioned earlier, there are 14 different departments and agencies of the Federal Government that provide some funding to First Nations. As any Canadian who has dealt with government bureaucracy can attest, procedures for the simplest of tasks can be complex, time-consuming and often frustrating. For many of the issues faced by First Nations, multiple departments or agencies must be coordinated in order to get a task accomplished. The challenges inherent in this situation are easily imagined.

Both in her December 2002 report on *Streamlining First Nations Reporting to Federal Organizations* and in her December 2003 report on *Economic Development of First Nations Communities: Institutional Arrangements*, the Auditor General identified opportunities to integrate and streamline administrative arrangements between first Nations and the Federal Government. The 2002 report identified a minimum of 168 different reports required by the four main funding organizations. As pointed

out earlier, these requirements are especially burdensome when one considers the small size of most communities.

Problems cited in the Auditor General's 2002 report include:

- overlap and duplication among the required reports;
- limited use being made of reports;
- reporting requirements dictated with insufficient consultation;
- information reported not being used to set funding levels;
- reports that do not reflect community priorities;
- insufficient feedback to First Nations; and,
- a lack of information on program performance or results.

The 2003 report identifies similar issues of complexity and administrative burden. That report states that: "federal support for institutional arrangements is not yet sufficient to help First Nations overcome barriers and take control of their economic development. Federal organizations need to:

- consolidate the administrative requirements and improve the adaptability of business support programs;
- help First Nations identify and build consistent and fair institutional arrangements in a timely way; and,
- use a more horizontal approach for economic development programming".³⁴

In its response to this report, the Government of Canada agreed to its recommendations and has committed to undertaking such changes.

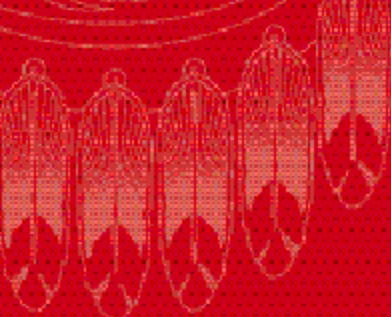
The reports of the Auditor General have examined just two areas of the many in which such an approach would be a distinct advantage. This paper has also identified protracted litigation and delay in resolving both comprehensive and specific claims as perhaps the most egregious areas of waste. There are many other areas that could benefit from a similar review in order to ensure that regional and national First Nations institutions are being built that integrate programs and support First Nations governments.

It is a legitimate concern that integrated and streamlined processes not leave programs open to abuse and that, where problems arise, appropriate remedies are identified. Therefore, the Federal Government should work with First Nations, in consultation with the Auditor General of Canada, to create a general audit function for First Nations.

The scatter-shot approach of sprinkling dollars around various programs and initiatives does not serve First Nations well and is not cost-effective. Clearly, integration and streamlining will make program delivery cheaper. In addition, putting an end to

Investment should foster self-reliance. This builds stronger First Nations and a stronger Canada.





Without sustainable funding, those conditions on reserve that the Prime Minister has described as “shameful will worsen. Those who have suffered the most will suffer more and the social cost of their suffering will spread, both within First Nations communities and outside.

administrative barriers to progress is a necessary first step in unlocking the positive and constructive work of First Nations themselves, allowing those most directly affected to seize control of their own destinies and build a productive future. Investment should foster self-reliance. This builds stronger First Nations and a stronger Canada.

THE WAY FORWARD: Sustainability

As demonstrated earlier, federal funding is failing to meet current need in First Nations communities, and, funding levels are declining when examined against population growth and inflation.

This point is both simple and straightforward, while absolutely crucial. Critics must put aside factually incorrect and morally indefensible positions regarding the waste represented by funding to First Nations. Meanwhile, the Federal Government must provide funding at levels that meet current need and that will grow to meet future need in a sustainable manner.

Fundamental inequities, such as legislation that protects core program funding to provinces through the CHST, while leaving funding to core First Nations programs “discretionary”, must be changed. This legislation means that the Federal Government need not keep First Nations funding current with inflation and population pressures, nor is it protected from being transferred from core services to meet other needs. This is a glaring inequity.

Without sustainable funding, those conditions on reserve that the Prime Minister has described as “shameful”³⁵ will worsen. Those who have suffered the most will suffer more and the social cost of their suffering will spread, both within First Nations communities and outside.

Without sustainable funding, there can be no reliable predictability of conditions such as is necessary to support a positive economic climate for investment. Without such investment, First Nations communities will never build self-sufficient economies and, in the long run, costs to the taxpayer will be higher.

Without sustainable funding, and with the social and economic failure that accompanies that lack of funds, there will be greater political instability. As with the other costs of such a policy, political instability will cause a ripple effect outside of First Nations and the cost to the country is, again, even higher.

The solution is funding that meets need, with a formula for increases to match both inflation and population growth. This is what is meant by sustainable funding and it is essential to counter the otherwise inevitable negative outcomes.

THE WAY FORWARD: Jurisdiction

First Nations jurisdiction in those areas that are essential to economic self-sufficiency, social health and political stability stems from the inherent right to self-determination.

To be self-sufficient, First Nations must be free and able to make choices. Reliance

on the authority of others is a denial of the means to self-sufficiency. First Nations have asserted all along that the key to self-sufficiency is the ability and freedom to be self-governing.

Those who have studied these issues in an independent and unbiased manner have reached the same conclusions. Studies have shown that there are common aspects to successful communities. These characteristics apply whether considering economic development, social health, or political stability, and they all relate to the establishment and implementation of self-government.

According to an important study of First Nations in Canada by members of the Harvard Project on American Indian Economic Development, there are three factors that are critical to economic self-sufficiency. Following extensive research over the past fifteen years, researchers have been able to demonstrate that economic development is closely linked to the existence of the following:

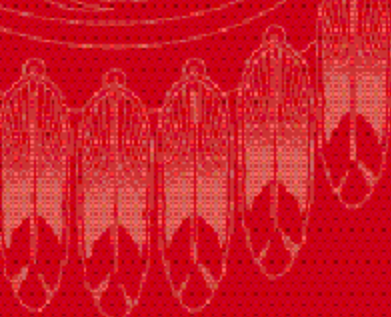
- practical sovereignty, meaning genuine decision-making power over internal affairs, governance, resources, institutions, and development strategies;
- capable governing institutions, which exercise power effectively, responsibly, and reliably; and,
- cultural match, which are formal institutions of government that match Indigenous conceptions of how authority should be organized and exercised.³⁶

As observed by the Royal Commission on Aboriginal Peoples (RCAP) in 1996, there is reason to be optimistic about economic growth in the resource-producing areas if lands and resources are restored to Aboriginal peoples.

“Where land claims have been settled, Aboriginal people have taken control of resources and invested in their communities; regional economies have expanded, benefiting all who live there. When Aboriginal people control resources and the businesses that exploit them, a larger part of the income generated is likely to remain in the region instead of being transferred to urban centres. The result is that more money is spent locally, and in turn, more jobs and greater business activity are generated. . . . Indeed, in some parts of the country, where land claims have been settled or Aboriginal people have successfully launched businesses, we can already glimpse a better future with a stronger economic base for Aboriginal people.”³⁷

On the social side of the equation, according to a ground-breaking study by psychologists at the University of British Columbia, the presence or absence of certain factors have a significant role as predictors of suicide among youth. Each of these relate specifically to the degree of self-government being exercised at the local level, the control over institutions and the cultural sensitivity with which those institutions are run.





The six factors are: the attainment of self-government; the pursuit of land claims; band control over education; band control over health services; the presence of cultural facilities; and, band control over police and fire services.

The authors reviewed First Nations in British Columbia where these factors existed and those where they did not, comparing suicide rates between them. They found that:

*"...each and every one of the small handful of factors that we selected as somehow constituting tangible evidence of the importance placed on cultural continuity within First Nations communities, proved to be individually associated with a statistically significant reduction in the rate of youth suicide. Taken together, it also proved to be the case that having more of these factors present in the community was decidedly better: the observed 5-year youth suicide rate fell to zero when all six were found to be true of any particular community."*³⁸

It should be noted again that these factors are both consistent with and brought about by self-government, as envisioned by First Nations.

Looked at in the inverse, not only does self-government produce success, but the cost of the status quo is unsustainable. Those who are concerned about costs to the Canadian taxpayer of maintaining the current system would do well to read the *Report of the Royal Commission on Aboriginal Peoples, 1996*³⁹. In it, one sees that the status quo is costing billions and will continue to cost billions more, not in terms of what is invested in First Nations, but in terms of what is wasted in foregone production and remedial programs to deal with problems that could be avoided.

To quote from that report:

"The first and largest cost results from the economic marginalization of Aboriginal people. We have shown that under better conditions Aboriginal people could contribute an additional \$5.8 billion to the Canadian economy. That they do not do so now is directly related to their low participation in the labour force, high unemployment, and lower productivity when they are employed. On further exploration we also found that a lack of full-time, year-round employment and low educational attainment relative to all Canadians are important aspects of the problem. The second cost of the economic marginalization of Aboriginal people consists of the extra expenditures by governments on remedial programs that address the adverse conditions facing many Aboriginal people. Many Aboriginal people and some entire communities are in poor health, struggling socially and economically. Expenditures on health care and social services, including child and family services, substance abuse programs, and the justice system, are higher for Aboriginal people than for Canadians generally. We estimate the combined cost of these expenditures, which we refer to as excess government expenditures on remedial programs, at \$1.7 billion in 1996....."

*In sum, every year that the social and economic circumstances of Aboriginal people remain as they are, it costs the country \$7.5 billion. That cost - the cost of the status quo - is the equivalent of nearly one per cent of Canada's GDP. It consists of a fiscal cost of \$4.6 billion, borne by all Canadians, and a loss of net income to Aboriginal people of \$2.9 billion."*⁴⁰

Today, the total cost of the status quo may be as high as \$10.6 billion, with the fiscal cost at \$6.5 billion and the loss of net income at \$4.1 billion. Proportionate to population, this means an approximate per capita fiscal cost of \$210 per non-aboriginal person and a loss of net income of \$2733 per aboriginal person (including First Nations, Inuit, Métis and non-status Indian population estimates).

These are, in fact, wasted dollars. They represent lost opportunity and remedial expenditures that should have and could have been avoided. As RCAP and other studies have shown, and as First Nations and the Canadian governments agree, the way forward is through investing in self-government. That will allow First Nations to develop economically and to create services that are sensitive and responsive to the needs of the communities. However, greater investment is needed to make self-government a reality, to develop the appropriate institutions and to build the capacity needed to carry out the daily business of a First Nation. Investment is also required to create a favourable climate for economic development and to build toward sustainable self-sufficiency on reserves.

Not only does the status quo represent an enormous waste of money, but it also represents an even greater waste of human potential. This is especially troubling when it has been shown, both in theory and in reality, that success does happen when the conditions are right. When communities are allowed to develop the institutions and ways of operating that reflect the community's own intrinsic values and when people feel part of the ongoing development of the community—benefiting themselves, their families, friends and neighbours—then success can and does happen.

Purposeful, results-oriented spending can be achieved through development of and support for self-government. Furthermore, self-government has been shown to be the critical factor in developing economic self-sufficiency and tackling social problems such as suicide among youth. Beyond these reasons for pursuing immediate investment in self-government structures and capacities, it is also a legal right and stated policy of the current Federal Government of Canada.

International law recognizes the right of peoples to self-determination as a fundamental human right. The Federal Government of Canada has recognized the right of self-government in law and states that self-government is a policy goal that it shares with First Nations' leadership. First Nations continue to pursue this aim first among all others. It appears that only those who seek the assimilation and extinction of First Nations as peoples would challenge this essential objective. The irony is





*Self-government is the
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that the same critics of self-government are those who complain most loudly about the wasteful spending on First Nations when, as has been shown above, the real waste comes from the failure to invest in self-government and the development of successful First Nations communities.

Self-government is the hope for the future. It is critical to both economic and social progress. It is self-government that will lead First Nations out of the negatively reinforcing cycle of poverty that has marked our history since the arrival of the Europeans. Full funding and recognition of First Nations jurisdiction will break this cycle. Investment is cheaper than the status quo.

CONCLUSION

The primary reality for First Nations in Canada for quite some time has been a battle against assimilation. Since before confederation, the Crown has followed a deliberate policy aimed at assimilating “Indians” into mainstream society. However, this policy was not always the principal approach. At first, there was a degree of cooperation between the French and the indigenous peoples, and this was followed by a similar approach from the British for a time. Treaties were signed, for peace and friendship, or for cohabitation on land. These treaties were understood—by the First Nations at least—to mean that First Nations would continue to be free on the land and free to govern themselves. But this was followed by movement onto reserves. Where people objected, they were moved by force or they were starved into submission, with accepting reserve lands as the only way to stay alive. Traditional economies and lifestyles were rendered impossible and a false economy, built largely on dependency, arose.

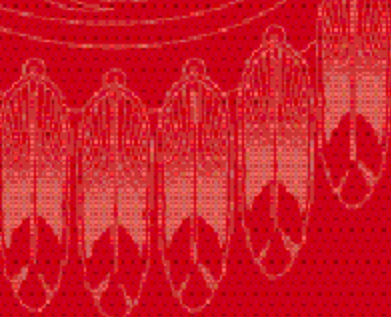
This choice to segregate First Nations on reserve later created a conflict for the colonial government as the decision to pursue a more complete policy of assimilation took form. With people living together on reserves, languages were still in use, cultural and religious practices continued, and identity with the community stubbornly refused to die out. Various means of encouraging people to leave the reserve were used. Residential schools, for example, were a means of breaking both cultural and familial continuity, ensuring that people would be unable to return to a normal life on reserve even if they attempted to do so. However, some of the most effective methods employed were economic incentives, or rather disincentives for remaining on reserve. The principal disincentive used was rendering traditional hunting, fishing and farming increasingly difficult, basically starving people off the reserve. This was achieved by putting small reserves on barren lands and ruining the surrounding ecology through resource extraction and environmentally destructive use. But the Crown also ensured that no new economies would sprout in the place of lost traditions through a mix of laws preventing First Nations from competing or even developing the skills to do so.

The Federal Government states that it is no longer pursuing a policy of assimilation. If so, the means for encouraging prosperity are evident.

As this paper has discussed, First Nations, the Government of Canada, and the people of Canada have a common interest. There are positive steps that can be taken to move the common agenda forward. Investment will be required, but it is not simply a matter of pouring more money into the current system. There are structural changes that must take place to make such investments pay off.

There are policies that can and must be changed.





More cost-effective programs and services and more effective governance can be facilitated through:

- integrating programs and streamlining processes to remove overlap and accelerate decision-making;
- improving dispute resolution mechanisms that recognize the inherent injustice in delaying the settlement of lawful claims and meeting historic treaty obligations;
- amending reporting requirements to provide relevant information about outcomes to the communities involved while reducing the burden on them;
- inverting accountability practices to allow First Nations governments to account to their members first and other governments second;
- enhancing accountability by establishing a general audit function for First Nations;
- establishing sustainable funding, with an escalator formula that mirrors the true cost drivers of need, inflation and population growth;
- providing sufficient funding to support the development and implementation of First Nations governments; and,
- establishing fully inter-dependent governments, within a constitutional framework which appropriately reallocates governance jurisdictions according to the rights and capacities of each government to discharge them best.

These are the choices will help to stem the vicious cycle of poverty that continues to drive costs higher. These are the steps that will serve people best and enable real progress to be made. These will not be wasted dollars. This is what is meant by the term self-government.

It is time now for real, transformative change. The myths can be put behind us. The way forward is evident.

Endnotes

¹ Interested readers will find a large number of such comments by a group of like-minded organizations such as the Canadian Taxpayers Federation and The Fraser Institute. Representative comments can be found in the following publications:

- Tanis Fiss, *The Lost Century*, Canadian Taxpayers Federation, Aboriginal Centre, November 2002, available at http://www.taxpayer.ca/Aboriginal_Centre/index.htm
- Idem., *Apartheid: Canada's Ugly Little Secret*, March, 2004;
- Fred McMahon, *Changes to the Indian Act are a Step Forward*, Fraser Institute, Saint-John Telegraph-Journal, June 2002, available at <http://www.fraserinstitute.ca/shared/readmore1.asp?sNav=ed&id=52>
- Tom Flanagan, *First Nations? Second Thoughts*, McGill-Queen's University Press, April, 2000

² This number is based on Treasury Board Secretariat's Main Estimates for 2003-04, available at <http://www.tbs-sct.gc.ca/est-pre/estime.asp>

³ Projections are based on Treasury Board Secretariat's Main Estimates for 2004-05. Also available at <http://www.tbs-sct.gc.ca/est-pre/estime.asp>

⁴ This financial information was provided to the Assembly of First Nations by Indian and Northern Affairs Canada. For a more detailed discussion of these numbers, see page 7 of this paper.

⁵ The figure of 67% is derived from the Main Estimates of the Government of Canada, footnote #2 Supra.

⁶ Canada, Indian and Northern Affairs Canada, *Departmental Performance Report*, available at http://www.tbs-sct.gc.ca/rma/dpr/02-03/DIAND-AINC/DIAND-AINC03D01_e.asp#secll

⁷ This figure is an estimate based on a review of available information from the thirteen federal departments that provide grants or contributions to First Nations. The number should be distinguished from what the departments claim to spend on aboriginal programming which includes groups other than First Nations. It must also be distinguished from what departments claim to spend on First Nations issues, which includes administrative and program funds that are not provided to First Nations through grants or contributions. Relevant data can be found in the Main Estimates of the Government of Canada at <http://www.tbs-sct.gc.ca/est-pre/estime.asp> or in the individual Departmental Performance Reports of each of the thirteen departments, which can be found at <http://www.tbs-sct.gc.ca>

⁸ Contributions programs are programs managed by the Government of Canada that provide funds directly to citizens or organizations. In this case, DIAND sends approximately two-thirds of all its spending to First Nations in the form of contributions programs. Restrictions on contributions programs vary, however, DIAND has detailed agreements with First Nations for all funds, specifying the purpose of the funding and how the First Nation must account for funds received in reports to DIAND. For more information, please refer to those funds listed as contributions in the Main Estimates or in the Departmental Performance Reports for DIAND, both of which are cited above.

⁹ Per capita figures are calculated using population figures provided by DIAND in *Registered Indian Population by Sex and Residence 2002*, a research publication available at http://www.ainc-DIAND.gc.ca/pr/sts/rip/rip02_e.html

¹⁰ Total Government of Canada expenditures were estimated at over \$186 billion for 2004-2005. Data can be found in the Main Estimates at <http://www.tbs-sct.gc.ca/est-pre/estime.asp>



¹¹ Information on provincial budgets can be found by following the links at <http://www-2.cs.cmu.edu/Unofficial/Canadiana/budgets.html>

¹² In addition to Government of Canada expenditures at over \$186 billion for Canada's 31 million people, in 2004, the Province of Ontario budget shows expenditures of \$79.6 billion for its 12.4 million people, and the City of Ottawa budget is just over \$2 billion for its 775,000 people. Details can be found at the following websites:

For Ottawa population figures —

http://www.ottawa.ca/city_services/planningzoning/facts/counts/counts_jan_03/index_en.shtml

For Ontario population figures—

<http://www.statcan.ca/Daily/English/040929/d040929d.htm>

For Ottawa budget information—

http://www.city.ottawa.on.ca/inside_govt/budget/budget_2004/council_highlights_en.shtml

For Ontario budget information—

<http://www.gov.on.ca/FIN/bud04e/papera.htm#pasection3>

¹³ Relative budget percentages based on financial information for 2003-04 provided to the Assembly of First Nations by Indian and Northern Affairs Canada, June, 2004.

¹⁴ Canada, *Strengthening the Relationship, Report on the Canada - Aboriginal Peoples Roundtable April 19th, 2004*, Opening Speech by The Right Honourable Paul Martin, pages 31 to 37.

¹⁵ Indian Act, (R.S. 1985, c. I-5), available at <http://laws.justice.gc.ca/en/i-5/text.html>

¹⁶ Canada, *Indian and Northern Affairs Canada and Canadian Polar Commission Performance Report For the period ending March 31, 2003*, available at

http://www.tbs-sct.gc.ca/rma/dpr/02-03/DIAND-AINC/DIAND-AINC03D01_e.asp#secl

¹⁷ As an example of the wide-spread acceptance of this fact, see footnote 13, *Supra*.

¹⁸ Speech from the Throne, February, 2004 available at <http://www.pm.gc.ca/eng/sft-ddt.asp>

¹⁹ *Ibid.*, or refer to footnote #13 *Supra*.

²⁰ Section 141 of the Indian Act, 1927 stated, "Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the Tribe or Band of Indians to which such Indian belongs, or of which he is a Member, has or is represented to have for the recovery of any claim or money for the said Tribe or Band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for a term not exceeding two months." Parliament repealed this section in 1951.

²¹ Section 86(1) of the Indian Act, 1876 stated, "Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law, either as an Advocate or as a Barrister, or Counsellor, or Solicitor, or Attorney, or to be a Notary Public, or who may enter Holy Orders, or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall ipso facto become and be enfranchised under this Act." Enfranchisement meant that person ceased to be a registered Indian.

²² Canada, Report of the Auditor General, ch. 8, November 2003, available at: <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20031108ce.html>

²³ DIAND estimates for contingent liabilities for lawful obligations were last published in 2001, available at http://www.ainc-inac.gc.ca/pr/est/pr01_e.pdf

²⁴ For a discussion of the delays faced by some First Nations in having claims addressed see <http://www.apcfn.ca/fng/speakingnotes.htm>

²⁵ Canada, Report of the Joint First Nations - Canada Task Force on Specific Claims Policy Reform, November, 1998.

²⁶ Fiss, *The Lost Century*, footnote #1, *Supra*.

²⁷ See Government of Canada Main Estimates for the period 1999-2000 through 2004-05, available at <http://www.tbs-sct.gc.ca/est-pre/estime.asp> as well as population figures from Statistics Canada at <http://www.statcan.ca/english/Pgdb/demo23a.htm> and inflation data from the Consumer Price Index at <http://www.statcan.ca/english/Pgdb/econ46.htm>

²⁸ Canada, Report of the *Royal Commission on Aboriginal Peoples*, 1996, volume 5, chapter 2.

²⁹ Canada, *Report of the Auditor General of Canada*, ch. 1, December, 2002, available at http://www.oag-bvg.gc.ca/domino/reports.nsf/html/02menu_e.html

³⁰ *Ibid*.

³¹ National Audit Information provided to the Assembly of First Nations by the Department of Indian Affairs and Northern Development, June 2004.

³² Canada, *Hansard 049*, a speech by Pat Martin, M.P., January 30, 2003.

³³ First Nations consistently rank far lower than other Canadians on key Human Development Index measures such as life expectancy, education and literacy. For more information on First Nations' development index measurements, see Indian and Northern Affairs Canada, Departmental Performance Reports available at <http://www.tbs-sct.gc.ca/est-pre/estime.asp>
For more information on the Human Development Index itself, see the United Nations Development Program's 2003 report at <http://hdr.undp.org/reports/global/2003>

³⁴ Canada, *Report of the Auditor General of Canada*, ch 9. Full text of this report can be found at <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20031109ce.html>

³⁵ See footnote #17, *Supra*.

³⁶ Stephen Cornell, *Statement on tribal self-governance and nation-building by Professor Stephen Cornell before the Standing Committee on Aboriginal Affairs*, House of Commons, Ottawa, Canada, June 6, 2000, available at <http://www.udallcenter.arizona.edu/cgi-bin/perfect/search/search.pl?q=First%20Nations%20governance&showurl=http%3A/www.udallcenter.arizona.edu/publications/ottawa.html>

³⁷ See footnote #25, *Supra*.

³⁸ Chandler, M.J. & Lalonde, C.E., *Cultural Continuity as a hedge against suicide in Canada's First Nations*. 1998, *Transcultural Psychiatry*, 35(2), 193-211, available at http://www.turtleisland.org/front/_front.htm

³⁹ See footnote #25, *Supra*.

⁴⁰ *Ibid*.

