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# **Improving Education on Reserves: A First Nations Education Authority Act**

*by*

**Michael Mendelson**

**July 2008**

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### *The continuing failure of education for on-reserve students*

A decade ago, the 1996 Census found that approximately 60 percent of First Nations on-reserve residents aged 20 to 24 had not completed high school or obtained an alternative diploma or certificate. In the 2001 Census, once again approximately 60 percent of First Nations on-reserve residents aged 20 to 24 reported not completing high school. The 2006 Census figures for First Nations on reserve have recently been released. The results are unchanged: approximately 60 percent of First Nations on-reserve residents aged 20 to 24 still have not completed high school or obtained an alternative diploma or certificate.<sup>1</sup>

Had educational outcomes on reserve been improving in the last several years, better results should have been apparent in the 2006 Census for at least the 20- to 24-year-old age cohort. Instead we are seeing no improvement at all. Indeed, the static educational attainment data imply that educational outcomes for residents on reserve are actually getting worse in relative terms. During the 1996 to 2006 period, the number of 20- to 24-year-olds in Canada as a whole with less than high school graduation decreased from 19 percent to 14 percent. The high school completion gap among the 20- to 24-year old age cohort on reserve has therefore *increased* in the last decade by five percentage points.

There are data weaknesses in the Census in respect of First Nations, especially under-enumeration of the total reserve population. However, there is no reason to suspect the Census understates educational attainment on reserve. For those who doubt the pattern in the Census, the basic departmental data from Indian and Northern Affairs Canada demonstrate the same trend using a very different data set. Table 1 below shows the ratio of First Nations students resident on reserve enrolled in Grade 12 (since they are high school students, the schools they attend are likely not on reserve) compared to the number of students who actually graduated.

**Table 1**  
**On-reserve First Nations students enrolled**  
**and graduating from Grade 12**

<b>Year</b>	<b>Enrolment in graduating year</b>	<b>Graduates</b>	<b>Percent graduating of those enrolled in Grade 12</b>
1996-97	5,485	1,785	35.5
1997-98	5,931	1,975	33.3
1998-99	6,013	1,939	32.2
1999-00	6,460	2,072	32.1
2000-01	7,057	2,112	29.9
2001-02	6,698	1,953	29.2
2002-03	6,711	1,945	29.0

Source: Indian Affairs and Northern Development. (2005a). *Basic Departmental Data: 2004*. More recent data have not been published.

Of course, the data in Table 1 understate the total number of high school graduates since many who do not graduate in their enrolment year go on later to acquire needed credits and a high school diploma. On the other hand, many students who drop out do so in earlier grades and never get to Grade 12 at all, so in this respect the statistics also understate the real challenge. Nevertheless, the direction of the trend is all too clear – no improvement in graduation rates and, it seems, even somewhat of a decline – more evidence of the same underlying reality as is seen in the Census data.

Education is the bootstrap which First Nations communities must use to improve their social and economic conditions. Like all others in Canada, Aboriginal children need to acquire an acceptable education to have a chance of succeeding in the modern economy. An acceptable education is more than high school graduation – a post-secondary diploma or degree, or a trade certificate, is required – but high school graduation is the door through which most students must pass to go on to post-secondary schooling. The most recent Census statistics, backed up by departmental data, show that this door is shut for the majority of students on reserve.

From a public policy perspective, the continuing failure of education for residents of First Nations reserves is confounding. There is all but unanimous agreement on the desperate need for improvement in education for those living on reserves. In a 2004 study of public opinion regarding Aboriginal issues [Indian and Northern Affairs Canada 2004], Canadians rated education as the number one issue on which government should concentrate its efforts on behalf of Aboriginal youth. In addition, the same study found that there is a widely shared perception that present policy is failing. Both Aboriginal youth and the general public felt that “the quality of on-reserve education is poor compared with the education received by the general population.” The 2004 study reported that a series of focus groups with Aboriginal youth found a surprisingly consistent assessment that students in any given grade in on-reserve Aboriginal schools were about two years behind “city schools.”

The continuing consequences of the oppression of Aboriginal peoples in Canada explains the low starting point 30 years ago, but it does not explain the lack of improvement in high school completion rates over the last decade. Nor can we explain lack of progress through the sheer impossibility of the challenge. Some First Nations have been successful in improving their educational outcomes. Some schools and some areas have improved and continue to get better results. Research has shown variable rates of attainment among schools [Bell et al. 2004; Aman and Ungerleider 2008; [Richards, Hove and Afolabi 2008]. If some schools can do better, then many more could do so as well if the conditions were right.

From the author’s own experience, Indian and Northern Affairs Canada has many capable public servants, eager to make a positive difference for First Nations. Most important, there are literally thousands of excellent educators dedicated to improving educational outcomes for First Nations children. Yet the data we have reviewed shows no progress in one of the core measures of educational outcomes.

The Royal Commission on Aboriginal Peoples asked the question: “Why, with so many sincere efforts to change the quality of Aboriginal education, have the overall results been so disappointing?” [Royal Commission on Aboriginal Peoples 1996]. A decade later, we are still asking the same question.

### *Ottawa’s ‘policy vacuum’*

Improving educational outcomes on reserve is not an easy task with some simple, instant one-size-fits-all solution. The education system for residents on reserve faces daunting challenges, mainly stemming from the use of education as an instrument of oppression in our not-so-distant history. Until the release of *Indian Control of Indian Education* by the National Indian Brotherhood (now the Assembly of First Nations) in 1972, First Nations education remained firmly under the control of governments and religious institutions. Education was wielded as one of the main weapons in a centuries-old war on First Nations’ culture and language.

A startling illustration of the intent of education for First Nations peoples can be found in the *Indian Act* itself, which remains the statute legally governing education on most reserves today. The *Indian Act’s* education sections (114 through 122) spell out in careful detail the requirement for First Nations children to attend the schools imposed upon them, whether they or their parents like it or not. The *Act* permits the Minister to enter into agreements with provinces or religious organizations to run First Nations schools, but does not permit the Minister to enter into an agreement with a First Nations organization to run its own schools. The *Act’s* core purpose was to provide a legal basis for the internment of Aboriginal children and to establish government control as a means of pursuing assimilation.<sup>2</sup> The *Act* contains no reference to any substantive educational issues, the quality of education or the rights of parents to obtain an adequate education for their children.

While the education sections of the *Indian Act* remain legally in force today, these sections are so obsolete as to be inoperative. In practical terms, this implies that most First Nations education has no applicable statutory basis.<sup>3</sup> This may appear to be little more than a legal nicety, but the absence of a legal framework for education of on-reserve First Nations residents is much more than a technical issue: It is reflective of an ongoing vacuum in federal policy which is stifling efforts to improve education for residents on reserve. This ‘policy vacuum’ has its origins in the historical evolution of federal policy on education for on-reserve residents.

A process of repatriation of education back to First Nations control began with the National Indian Brotherhood publication of *Indian Control of Indian Education* [Matthews 2001; Royal Commission on Aboriginal Peoples 1996]. In 1973, the federal government made an explicit 180-degree reversal of previous policy and accepted the principle of *Indian Control of Indian Education*. That year marked the beginning of an increasingly hands-off attitude to the

contents of education for students on reserves. In 1974, the federal government started to fund Band-operated schools, and the number of federally directly-operated schools began to decline. This process has, in fits and starts, continued to this day.

Today, Indian and Northern Affairs Canada funds Band councils or other First Nations education authorities to pay for education from kindergarten through to adult learners for people resident on reserves. Federal funding pays for students normally<sup>4</sup> resident on reserve to attend schools (whether the schools are on- or off-reserve); student support services such as transportation, counselling, accommodation and financial assistance; and school administration and evaluation. Funding is through several different types of agreements, with varying degrees of autonomy for First Nations.

Indian and Northern Affairs Canada now spends roughly \$1.2 billion for operations and \$200 million for building capital and maintenance to support about 120,000 students who are normally resident on reserve. About 60 percent (70,000) of these students attend 550 schools on reserve, almost all operated by First Nations. Most, but not all, of the on-reserve schools are for kindergarten and primary grades. The remaining 40 percent (50,000) attend off-reserve schools mainly under provincial authority, with a few thousand students in private schools.<sup>5</sup> Their tuition is paid by Indian and Northern Affairs Canada or in some cases by a First Nation which is reimbursed by Indian and Northern Affairs Canada. Most of the off-reserve schools are for secondary grades. Many of the public school boards with large numbers of tuition-paying First Nations students have formal or informal arrangements to involve First Nations representatives in decision-making.

Within Indian and Northern Affairs Canada, the culture has become one of sending cheques – in the case of education, sending cheques from headquarters to the regions, which then send cheques to First Nations (as well as to public and private schools for tuition on behalf of First Nations residents). The Auditor General undertook a major audit of Indian and Northern Affairs Canada's education program in 2000 that confirmed this view of the culture within the Department. In her audit report, she observed: "Many departmental regions interpret their major role as [one] of providing a funding service. Only one of seven regional offices maintains an education program; however even there, the major priority is to negotiate and provide education funding" [Auditor General 2000: 4.11].

In the 2004 follow-up to her 2000 report, the Auditor stated: "We are concerned about the Department's lack of progress in defining its roles and responsibilities. In our view, until the Department clarifies these and its capacity to fulfill them, and reaches a consensus with other parties on their own roles and responsibilities, it will remain difficult to make progress in First Nations education and close the education gap" [Auditor General 2004: 5.41]. Partly in response to the Auditor's 2000 report, the Department established a dedicated education branch in 2004, which presumably is now mandated to become more involved in the substance of education on reserves – although the education branch does not purport to be a source of educational support and consequently does not include many personnel with educational credentials.

Ottawa's policy reversal in 1973 was initiated without having been subject to a rigorous review of its implications so that essential consequent reforms could be initiated. What can the Department do to assure quality education for on-reserve students while at one and the same time devolving authority for education to First Nations? This is one of the unanswered questions at the heart of federal policy, which has never been adequately resolved since the beginning of devolution in 1973. For example, in 2004 the Auditor General reported that: "The [Public Accounts] Committee expressed serious concern about the unacceptable state of First Nations elementary and secondary education and criticized the Department's 'hands-off' management approach. While agreeing with the principle of devolution, the Committee insisted that this principle must be accompanied with clearly defined roles and responsibilities agreed to by all parties" [Auditor General 2004: 5.23]. Regretfully, the Public Accounts Committee did not provide advice to the Department about how "clearly defined roles and responsibilities" as part of a new 'hands-on' policy could square the circle with a continued commitment to devolution.

The conflict between expectations that, on the one hand, the federal government will intervene to require better results while, on the other hand, simultaneously continuing devolution, will not be resolved by papering over, hand wringing or blaming public servants. This is a high-level policy issue which will ultimately demand the attention of courageous politicians both in Parliament and in First Nations. Laying the groundwork for that resolution requires clearly recognizing the apparent contradiction – not obfuscating the contradiction in the hope that we can muddle our way through. Muddling through is often an excellent policy choice, but in this case 30-odd years of muddling have already proven unsuccessful and the situation is becoming desperate.

### ***Federal financing of education for on-reserve education***

Almost all federal officials working in Indian and Northern Affairs Canada will inform you that the federal government undertakes to fund education for on-reserve residents to levels comparable to those to be found in similar provincially-funded schools. For example, in response to an interview with this author on CBC radio in Saskatchewan, the Saskatchewan regional office of Indian and Northern Affairs Canada was quoted as claiming that "the per pupil grant that the Department provides First Nations is equivalent to what school boards receive" [CBC Radio 2006].

The terms and conditions of the Band Operated and Federal Schools (BOFS) program through which most primary and secondary education funding has been paid include a requirement of comparability as a condition of payment, and other funding arrangements (there are several) include essentially the same condition:

In the case of band-operated or federal schools, the [Band] Council shall ensure that programs comparable to provincially recognized programs of study are provided, and that only provincially certified teachers are employed. The Council shall also ensure that education standards allow students to transfer without penalty to an equivalent grade in another school within the school system of the province in which the school is located.

This condition does not impose requirements on the federal government with respect to funding; rather, it imposes requirements on First Nations. A search of Departmental documents found no policy statement in which the Department committed itself to fund First Nations schools at a level which would permit ‘provincial comparability’ – only statements of comparability as a general goal. At the working level, funding instruments appear to work in only one direction – requirements of First Nations schools as to education programming. The provincial comparability criterion is indeed included in the terms and conditions of federal funding programs, but at present there is no regulatory or budget-setting link back from that criterion to funding levels provided.

As we have seen, the consensus among First Nations students is that their schools are not in fact ‘comparable.’ The First Nations students’ assessment was that the on-reserve schools were in reality about two grades behind public schools, and similar assessments seem to be widely shared (although of course among the 550 on-reserve schools there are many that are excellent). The Departmental Internal Audit reinforces this assessment in its evaluation in which questionnaires were sent to various officials involved in First Nations education. Of 140 First Nations educational administrators who responded, only about 18 percent believed that there was transferability between grades for First Nations schools and public schools. Of the 221 principals who replied, about 22 percent believed that transferability had been achieved. Remarkably, of the 25 Departmental officials who replied, *none* believed that transferability had been achieved [Indian and Northern Affairs Canada 2005b: 24].

The Internal Audit report also found that “the tendency has been to apply [provincial comparability] as a prescriptive rule that provincial curricula and provincially certified teachers be employed by band operated schools, rather than as a description of education outcomes such as literacy and numeracy skills and cultural competency” [Indian and Northern Affairs Canada 2005b: 51]. So far as we are aware, the ‘transferability’ condition *as an outcome* has never been enforced anywhere, which is just as well since it appears to be met almost nowhere.

The internal audit report cited above found that even the audit team could not readily compare funding levels between the systems. The report concluded that:

INAC’s figures show a level of funding for instructional services per student that ranges between \$5,500 and \$7,500. The Pan-Canadian Education Indicators Project (PCEIP 2003) shows a range of per student expenditures from \$6,800 to \$8,400 across Canada. Although the PCEIP data are not directly equivalent, they provide a sense, at least in terms of order of magnitude, of what provincial jurisdictions are spending on elementary and secondary education per student. Because of a number of high cost factors such as isolated location, high levels of socio-economic need and high proportions of special needs students in First Nation and Inuit, one study conducted for INAC concluded that per student for First Nations would likely exceed provincial averages [Indian and Northern Affairs Canada 2005b: 48].

The harsh reality is that the Department’s confidence in the parity of its funding is misplaced, since it simply does not know. There are no regular data collected to compare provincial and federal education funding levels, nor is there any mechanism in the budget-setting process for First Nations education to ensure that funding levels are indeed comparable to those

in provinces. In her 2004 report, the Auditor General concluded: “At present, the Department does not know whether the funding provided to First Nations is sufficient to meet the education standards it has set and whether the results achieved, overall and by the different delivery mechanisms, are in line with the resources provided” [Auditor General 2004: 5.50]. First Nations education budgets are set without reference to provincial education funding. If there indeed does happen to be parity between some provincially – and federally – funded schools, it is a coincidence, not the outcome of a planned budgetary process.

Moreover, Departmental funds for education have reportedly been capped at 2 percent growth per year for the last several years. In the meantime, several provincial governments – including large provinces with substantial First Nations populations such as BC, Alberta and Ontario – have significantly increased their funding for provincial schools well beyond 2 percent. Therefore, if there had been comparability with provincial funding levels in the early 2000s, it is *impossible* that there would still be parity today.

In 2004, the federal government and the Assembly of First Nations established a Band Operated Schools Federal Funding Formula Working Group to review the funding formula and recommend changes. The Working Group completed a number of valuable studies; however, the exact status of the Working Group at present is not known.

Parity for First Nations schools with provincial schools is a reasonable criterion for federal funding – if ‘parity’ is understood to mean funding sufficient for a similar quality of education including the special geographic, cultural and support needs of First Nations students, as well as the secondary and tertiary service levels needed for a quality education system, as discussed further below. This, albeit loosely defined, is more or less the criterion that many within the federal government profess to use today. But as we have seen, the preponderance of evidence is that this is not a criterion used to determine levels of federal funding. Rather, it is a selectively applied condition for receipt of federal funds by First Nations schools, which is quite a different matter.

Recognition of First Nations jurisdiction over education requires a financing mechanism based on a clearly defined principle and process which are not subject to arbitrary or unilateral decisions at any moment by the federal government. Parity with the provincial system as defined above seems to be an acceptable principle to most involved. An institutional arrangement is needed to ensure that this principle, or some other to be negotiated, is fairly employed to determine ongoing funding levels.

### ***The need for a First Nations school system***

Improving the quality of education takes more than money, but it also requires more than schools. If schools are to work well, equally necessary is the infrastructure to support and maintain a good education *system* – from curriculum development to capital facilities planning. Most on-reserve schools are managed by individual First Nations which have authority for one or

two schools. This is an old and outdated model of school organization. The ‘non-system’ of small rural schools in every province was reformed many years ago, when consolidated rural school districts were created – sometimes over the strenuous objections of local communities. At the same time, provincial ministries of education were greatly strengthened, with significant legislative authority and educational expertise. Most First Nations schools are stuck in the old model of the village school that existed prior to rural school consolidation and the enhancement of provincial education ministries.

The problem was eloquently set out by Harvey McCue, a First Nations educator, co-founder of the Native Studies Department at Trent University and first Executive Director of the Mi’kmaq Education Authority (among many other accomplishments), in a posting on the Turtle Island Native Network’s Forums:

How can any serious observer or bureaucrat reasonably expect all 680 or so bands, the majority of them with fewer than 1,000 residents and situated in rural and remote locations, to manage effectively an education program with limited and inexperienced internal resources in the absence of anything even remotely resembling a system of education? Elsewhere in Canada, there are whole Departments or Ministries of education plus school boards, faculties of education and a variety of commissions and committees to plan, evaluate and oversee the status and future of Canadian education... [McCue 2003].

This is the second core issue that was left unaddressed when the process of devolution began in 1973 – the need to create a First Nations-controlled education system out of a multiplicity of band schools, many of which are very small. How could First Nations schools function well, and how could necessary educational infrastructure be provided to support them, in the absence of an educational system? Given that the federal government cannot itself provide substantive leadership in education, as this would be a reversion to paternalistic policies, where will the institutional capacity be developed to ensure that First Nations education is of a high quality, culturally appropriate and continuously improving? In other words, what First Nations institutions can play the role filled by provincial departments of education and school boards in the public school system?

The function of school boards and provincial Ministries of Education is often referred to as the 2<sup>nd</sup> and 3<sup>rd</sup> levels of the education system. In general, 2<sup>nd</sup> level supports are those provided by school boards, which work primarily directly with schools, students, teachers and principals. The 3<sup>rd</sup> level services, in turn, work mainly through the school boards to provide services that are “normally provided by ministries of education and refer to the broader education issues such as regulations, standards, certification, codes of conduct, and the setting (and altering) of the provincial curriculum” [McCue 2006b: 48; see McCue’s Appendix 1 for a comprehensive list of 2<sup>nd</sup> level services].

Those unfamiliar with education, or simply ill-informed, may make the argument that these levels are nothing more than layers of bureaucracy imposed upon the ‘real’ work being done by the front line, as was argued by rural politicians resisting school consolidation. This line is analogous to saying that Wal-Mart’s head office functions of corporate planning, information

technology strategies, accounting and so on are nothing but a bureaucratic burden to the ‘real’ work being done by front line stores. This argument would not be accepted by Wal-Mart shareholders, nor should the analogous argument be accepted by students, parents and taxpayers. Both the secondary and tertiary levels are necessary (although not sufficient) requirements for long-term, continued quality education. Without these levels of support, a few schools will from time to time become highly successful, through a mix of luck and leadership. But with the right 2<sup>nd</sup> and 3<sup>rd</sup> levels of service, we can look to continuing systematic and sustained improvement in performance of all schools over the long haul.

Many First Nations have recognized the gap, and consequently there are today many First Nations educational alliances being organized, with varying degrees of recognition and authority. McCue undertook to catalogue most of these alliances. These are listed below as of 2006 [McCue 2006b]. Some of these initiatives have since fallen into hiatus, while others, such as the New Brunswick initiative, have progressed. Information on most of these initiatives can be found on the Web.

First Nations Education Steering Committee  
Treaty Seven First Nations Education Consortium  
Treaty Six education initiative  
Treaty Eight education initiative  
Federation of Saskatchewan Indian Nations  
Northwest Nations Education Council  
Prince Albert Grand Council  
Northern Nishanawbe Education Council  
Fort Frances – Treaty 3  
Union of Ontario Indians  
Indigenous Education Coalition  
Association of Iroquois and Allied Indians  
Cree School Board  
*L’Institut Culturel Educatif Montagnais*  
New Brunswick Education Initiative  
Mi’kmaq Kina’matnewey

For the most part, these initiatives are in the planning stage and will, even if eventually constituted as planned, exercise only some of the needed 2<sup>nd</sup> level services and few of the 3<sup>rd</sup> level service functions. In some cases, there is an attempt to layer on needed 3<sup>rd</sup> level services, such as curriculum development, despite the reality that these cannot realistically be undertaken efficiently by small groupings of First Nations. In most cases, financial relationships are unclear and uncertain. Often, financing is being provided on a year-by-year basis from the Indian and Northern Affairs Canada regional office, with the regional office itself scraping together financing from various sources of unspent money. Nevertheless, these are still important and useful undertakings that are paying needed attention to First Nations education, and promise at least some improvement. At the same time, we need to be aware of the acute limitations imposed

on all of these one-off efforts by the lack of anything resembling a Canada-wide plan or commitment to a First Nations *system* of education.

Perhaps the exception that proves the rule is the Cree School Board in northern Quebec which was formed about 30 years ago as part of the James Bay settlement. It serves nine Cree communities with more than 3,000 elementary and secondary students. The Cree School Board is recognized under the Quebec Education Act and functions as a special school board within the provincial system. It is funded by both the federal government and Quebec. Outcome data from the Cree School Board are hard to find – there has been surprisingly little evaluation – but what there is suggests that the Cree School Board has not yet been especially successful in achieving much improved graduation rates. According to one study, the dropout rate for the cohorts from 1992 to 1998 is 88 percent [Visser and Fovet 2007: 3].

The Cree School Board experience shows first that organizing First Nations schools under a school board is not a panacea that will correct all ills, but rather a necessary but not sufficient condition for systematic improvement in First Nations schools. The Cree Board schools still suffer from the poor adaptation of standard Canadian schooling to the northern Cree way of life, as well as the strong continuing residue of the anti-school culture created by the residential school system. Anecdotally, there are low academic expectations and a sense of futility to classroom education, especially in the northern and more remote communities, where the possibility of post-secondary education is hard to imagine and the skills gained by staying in school for another three or four years hardly seem worthwhile [Visser and Fovet 2007].

The above issues point to the deeper challenges that will need to be addressed over time. But the Cree School Board also shows the limitations of a 2<sup>nd</sup> level school board within a provincial system without a 3<sup>rd</sup> level under First Nations jurisdiction. The Cree School Board has had great difficulty adapting the provincial structure to the needs of their communities. It is apparently out of necessity attempting to take on roles, such as curriculum development, that cannot reasonably be expected of a school board consisting of little more than 3,000 students and with extremely limited financial resources. For the first decades of its existence, it was plagued by financial problems as neither the federal nor the provincial governments could decide which was responsible for programs previously delivered by the federal government directly – an issue that was only resolved when a court action was undertaken. The Cree School Board has also had to come to grips with the issue of language of instruction, since many of its students speak Cree as their first language. These are immensely difficult challenges to tackle for a small system with limited human and financial resources.

One of the ideas sometimes floated is for provinces simply to take over the whole First Nations education system, as a way of providing the needed support for First Nations schools. Even if this approach were somehow feasible and amenable to agreement, the experience of the Cree School Board demonstrates that it would not work. Moreover, such a ‘solution’ is in any case neither feasible nor capable of agreement. The federal government has Constitutional and Treaty obligations for education of residents on reserves. The First Nations do have an inherent

right to self-government and are not creatures of the provinces or subject to their administrative control. Most First Nations would reject and resist any such reform, both legally and by shunning an imposed provincial school system. Most provinces would also reject such a transfer and, even if some did accept it, they would demand significant financial guarantees. In short, such a policy prescription would be at best a recipe for 30 more years of paralysis and another lost generation [see also McCue 2004].

The Royal Commission on Aboriginal Peoples recognized the problem of the ‘missing system’ and recommended a four-level organizational structure for a First Nations education system as shown in Table 2. Central to the Royal Commission’s proposals on education was the concept of the ‘nation.’ As set out in the accompanying text box, an Aboriginal Nation was meant to be a “sizeable body of Aboriginal people that possesses a shared sense of national identity.” In the Royal Commission vision, the Nation would more or less assume the role of a school board while multi-nation organizations (which would usually range over more than one province) would take the role of Ministries of Education. A Canada-wide body would represent the First Nations system as a whole on a national level and undertake tasks that had to be standardized for the entire country, such as collecting national statistical data.

**An Aboriginal Nation** should be defined as a sizeable body of Aboriginal people that possesses a shared sense of national identity and constitutes the predominant population in a certain territory or collection of territories.

Thus, the Mi’kmaq, the Innu, the Anishnabe, the Blood, the Haida, the Inuvialuit, the western Métis Nation and other peoples whose bonds have stayed at least partly intact, despite government interference, are nations. There are about 1,000 reserve and settlement communities in Canada, but there are 60 to 80 Aboriginal nations.

In their study *Sharing Our Success: Ten Case Studies in Aboriginal Schooling*, Bell et al. concluded with a series of recommendations, the first of which was to establish a system of education, with the same intent as the Royal Commission’s recommendation:

[It is recommended] that the Indian Act be revised to: a) recognize and empower Aboriginal school boards similar to those in provincial/territorial systems; b) provide sufficient funding to develop and support a level of educational infrastructure and services equivalent to those provided by provinces and territories; and c) articulate an accountability framework that defines the relationships and responsibilities of educational stakeholders for the provision of educational equity and excellence for all Aboriginal students [Bell et al. 2004: 323].

And, to select another example from a different source altogether, a recent letter to the editor of the *Globe and Mail* sent by a knowledgeable reader [Phillips 2008] stated:

Look at the mess federal governments, Conservative and Liberal, have accomplished in first-nations education – lack of a comprehensive system of delivering services, no federal standards, lack of trained specialists/consultants, and arbitrary decisions made by unqualified bureaucrats [Phillips 2008].

In his appearance before the House of Commons Standing Committee on Aboriginal Affairs, the Hon. Jim Prentice, then Minister of Indian and Northern Affairs Canada, also identified the same missing element in education for residents on reserve:

The biggest challenge with the education system, I would submit, is not the dollars *per se*; it is rather the absence of an overall school system that individual schools are part of. Previous governments have created a system in this country where individual First Nation schools are one-off schools operating outside any school system. It's fair to say that it's not working very well. We are achieving the lowest educational outcomes certainly anywhere in Canada, and amongst the lowest in any western democracy, from this approach. The first step to change that is what you and I both know we've done in British Columbia. The challenge is to now move that forward across the country, make the structural changes, and deal with the funding issues [Prentice 2007].

If ever there were a growing consensus, this is it. Having identified the missing pieces in the First Nations education puzzle, how can we begin to fill them in?

### ***A First Nations Education Authority Act***

In the last several years, a number of the First Nations education initiatives have progressed to the stage of requiring a legislative base outside of the *Indian Act*. The federal government under both Liberal and Conservative administrations has been responsive, but only through one-off legislation.

In some of the new Treaties, such as the Nisga'a Treaty, the provisions of the *Indian Act* have been replaced by the Treaty's provision for First Nations control over education. In Nova Scotia, the Mi'kmaw Kina'matnewey is responsible for services to several schools under the terms of the federal *Mi'kmaq Education Act*, passed in 1999. The *Mi'kmaq Education Act* has little more than the bare necessities to allow the Mi'kmaw Kina'matnewey to be recognized outside of the *Indian Act*. In neither of these cases is there much in the new laws about the quality or nature of education itself. At most, these are administrative statutes.

More recently, a number of First Nations in BC have negotiated a series of agreements to enhance First Nations jurisdiction over education, and provide supports for First Nations education. The agreements were given legislative basis in another one-off federal statute – the *First Nations Jurisdiction over Education in British Columbia Act*, which came into force on November 22, 2007. The new *Act* provides legal recognition of a First Nations Education Authority in BC which may become responsible for support of the K-12 education program in participating First Nations. Participating First Nations may also set up Community Education Authorities, separate from the regular Band Council, to operate its schools. At the same time, the

**Table 2**  
**Royal Commission on Aboriginal Peoples**  
**recommended structure with respect to K-12**

Local Community	<ul style="list-style-type: none"> <li>◆ Participates in policy making through representation in Aboriginal nation governing bodies and nation education authority</li> <li>◆ Makes decisions on instruction of local students</li> <li>◆ Implements nation policy in local Aboriginal institutions</li> <li>◆ Negotiates tuition agreements in accord with nation policy</li> <li>◆ Participates in decision making in post-local institutions under provincial/programs territorial jurisdiction institutions [sic]</li> </ul>
Aboriginal Nation	<ul style="list-style-type: none"> <li>◆ Enacts or adopts laws on Aboriginal education</li> <li>◆ Establishes an education authority to make policy on               <ul style="list-style-type: none"> <li>• education goals and means of achieving them in the nation</li> <li>• administration of schools and colleges within the nation</li> <li>• tuition agreements</li> <li>• purchase of provincial/ territorial services</li> </ul> </li> <li>◆ Receives revenues and distributes funds for government services including education</li> <li>◆ Participates in establishing policy framework province-wide through representation in multi-nation organizations</li> </ul>
Multi-Nation Organization	<ul style="list-style-type: none"> <li>◆ Negotiates policy framework with the province or territory               <ul style="list-style-type: none"> <li>• for tuition agreements</li> <li>• access to provincial or territorial services</li> <li>• transfer between Aboriginal and provincial or territorial academic programs</li> </ul> </li> <li>◆ Develops curriculum</li> <li>◆ Monitors academic standards in Aboriginal system</li> <li>◆ Advises provincial ministers of education, colleges and universities and training</li> <li>◆ Provides an umbrella for representation of community of interest governments administering education</li> </ul>
Canada-Wide Networks	<ul style="list-style-type: none"> <li>◆ Federated organizations reflecting nation interests               <ul style="list-style-type: none"> <li>• electronic clearinghouse</li> <li>• statistical clearinghouse</li> <li>• documentation centre</li> <li>• associations for setting standard programs and accrediting secondary institutions</li> </ul> </li> </ul>

Source: Royal Commission on Aboriginal Peoples (1996): 5.10.3.

province of BC passed parallel legislation – the First Nations Education Act – to implement necessary complementary changes in provincial laws.

The precise amounts of the funding and other arrangements are still being negotiated, so a First Nations Education Authority has not yet been formed. However, the roles and responsibilities of both the new Authority, its relations to the federal government, settlement of disputes and other specifics have been worked out in the agreements. There is much more substance to the BC jurisdiction *Act* than there was in its predecessor *Mi'kmaq Education Act*. This is partly because the BC initiative grew out of the long established and organically evolving work of the First Nations Education Steering Committee which has been an active participant and support for First Nations education in BC since 1992.

The BC agreements and *Act* are an important precedent. The negotiators have done a good job in representing First Nations interests, and the federal and provincial governments have responded positively. However, there is some question as to whether these arrangements in themselves could provide an adequate base upon which to build a First Nations education system.

While the new First Nations Education Authority proposes to provide important 2<sup>nd</sup> and 3<sup>rd</sup> level services (teacher and school certification, and curriculum development and standards), the approximately 54 First Nations which have so far expressed an interest in participating have relatively small populations, roughly 20,000 to 25,000 people in total. In general, the BC First Nations have more resources to call on than did the Northern Quebec and James Bay Cree, especially given that it is 30 years later and many more First Nations people now have post-secondary education. Yet, like the Cree School Board, this is a small population base for tertiary education services.

In response to these practical limitations, the BC agreements see the new First Nations Education Authority relying on the BC provincial ministry of Education for a great deal of support. Although expedient today, this may be seen as a temporary expedient pending the development of adequate First Nations-controlled tertiary education services.

In addition, the agreements provide for accountability mechanisms for First Nations, but few accountability mechanisms for the federal government. In particular, the basis for ongoing federal funding is vague, and there is nothing in the agreement *per se* to prevent the federal government from imposing arbitrary limits on funding. Once again, while the First Nations are committed to the principle of 'transferability,' a careful reading of the agreements reveals that the federal government is not obligated to provide financing sufficient to support schools that can achieve transferability, even subject to the usual proviso allowing for Parliamentary authorization. Perhaps as a consequence, the implementation negotiations appear to be dragging on and on, at least to an outsider.

Despite these drawbacks, there is much in the BC arrangements that could provide a useful template for other agreements, so long as it is a template which allows for flexibility to

reflect the differing needs of various First Nations. The BC arrangements are an advance over anything that has existed before. However, passively responding one-by-one to initiatives begun here and there by individual First Nations will never build a First Nations education system for all of Canada, at least not within the next few lifetimes. Those First Nations that especially need the most support and assistance will likely be the last to organize to obtain it. In addition, negotiating one-by-one with no central policy framework in Ottawa, starting fresh each time, will itself require several more lifetimes. As Minister Prentice said, the BC agreement is a good precedent, but the challenge now is to move that forward across the country.

It is past time for the federal government, in cooperation with First Nations, to complete the policy framework needed to support the recognition of 'Indian control of Indian education.' A vehicle for doing so would be a *First Nations Education Authority Act*. A *First Nations Education Authority Act* would permit initiatives like that in BC to be recognized by a regulatory schedule under the *Act*, so that individualized statutes would not be needed. Such an *Act* would have sufficiently flexible terms to permit the particular needs of each alliance of First Nations to be met, but at the same time clarify core requirements and responsibilities. It would establish tertiary services and the framework for secondary services. It would encourage both First Nations and Indian and Northern Affairs Canada regional offices to begin a process of consolidation and construction of a First Nations education system, by setting out a clear road map to get from where we are today to where we want to be tomorrow. (Also see McCue's *Fixing Indian Education*, previously cited, for a similar proposal.)

The proposed *Act* would have to be shaped in partnership with First Nations. The final form of the *Act* would depend upon these negotiations, but the following characteristics are suggested as one possible example of the type of provisions that might emerge from such a process:

#### **A non-coercive enabling law**

The *First Nations Education Authority Act* would be enabling legislation that would set out the conditions which, if met, would enable an alliance of First Nations to become a recognized First Nations Education Authority under the *Act*. The new First Nations Education Authority would be entitled to the benefits set out in the *Act*, as well as assuming the responsibilities of an Education Authority. No First Nation would be forced to accept a First Nations Education Authority if it did not wish to do so.

#### **Removal from Indian Act of sections (114-122) on education**

First Nations which are part of a First Nations Education Authority would be removed from the Indian Act sections on education, and instead be covered by the *First Nations Education Authority Act*. Under this new *Act* a First Nation could form a Community Education Authority, as under the BC *Act*.

## **Role of First Nations Education Authority**

The purpose of the First Nations Education Authority would be to provide 2<sup>nd</sup> level services to an alliance of First Nations, similar to those provided by public school boards, but with allowance in the *Act* for the form of the Authority to be adapted to the specific needs of the First Nations involved. In this respect the proposal here is different than the BC Act, under which the First Nations Education Authority is responsible for 3<sup>rd</sup> level services. In the model presented here, another organization at a higher aggregation of population, Regional First Nations Education Centres, would be responsible for 3<sup>rd</sup> levels services (see below). The Authority would have operational functions for schools delegated to it by First Nations which decide to opt in.

## **Opting in and opting out of a First Nations Education Authority**

The *Act* would define the way in which a First Nation would join a First Nations Education Authority. As in BC, this would likely require a number of clearly defined steps. The BC model does not allow opting out, but the proposed *Act* could allow opting out if there were a significant process with defined timelines (e.g., Band Council Resolution followed by a Band referendum after a waiting period).

## **Governance of the First Nations Education Authority**

The First Nations Education Authority would be governed democratically by First Nations themselves. The *Act* could allow for appointments by the Councils of participant First Nations or by elections at large from among participating First Nations members, or by leaders in Community Education Authorities, perhaps with flexibility to allow different methods of governance among different alliances of First Nations which have come together to form an Education Authority.

## **Establish minimum criteria for a First Nations Education Authority**

The *Act* would set out what is required to form a First Nations Education Authority, including a minimum population base sufficient to operate an Authority, perhaps a minimum number of on-reserve schools, and so on.

## **Set out federal responsibilities, particularly with respect to financing**

The *Act* would state the principle governing federal financing, most likely some form of ‘outcome parity’ with provincially financed schools. The latter would be set out in such a way as to allow the First Nations Education Authority or First Nations (depending upon the funding model) to use a dispute resolution mechanism to appeal the amount of financing. In other words, the *Act* would make Ottawa accountable to Parliament and to First Nations for providing sufficient financing to meet the

objectives of the *Act*. The *Act* could provide for a financial commitment to be overridden by an Order-in-Council or a Parliamentary vote as a ‘safety valve’ in times of severe economic duress.

### **Relation to province or territory**

The province or territory would likely have to pass complementary legislation to ensure that there is maximum transferability between systems, to allow for the use of provincial standards where necessary, for reciprocal tuition agreements, and for other complementary measures. The federal *Act* would establish the legal capacity for tripartite agreements where necessary.

### **A dispute resolution mechanism**

As in the BC *Act* a quick, disinterested and relatively inexpensive dispute resolution mechanism is needed. The latter would include financial disputes.

### **Establish several regional centres to provide 3<sup>rd</sup> level education services**

The federal government should, following the recommendation of the Royal Commission, establish several Regional First Nations Education Centres. Over time this would likely require one in each province from BC through Quebec, and one in the Atlantic Provinces, perhaps with services to the Territories from the Centres in the Western provinces. The Centres would become responsible for 3<sup>rd</sup> level education services, serving all First Nations Education Authorities established under the *Act*, and also providing some support to First Nation schools not under the new *Act* if requested by those First Nations. The Centres could be built up gradually over time. The governance of the Centres would need to be negotiated in each region, but would always be represented by a majority of First Nations individuals, perhaps with a Board of Directors made of representatives from participating First Nations with some Directors appointed by the federal government, and *ex officio* participation by the province.

### **Establish a Canadian First Nations Language, Culture and Education Institute**

Again, following the Royal Commission’s recommendations, the federal government should consider establishing a First Nations Language, Culture and Education Institute. This Institute would be responsible for national aggregation of data and other Canada-wide functions. It would undertake research and carry out training and ‘best practices’ workshops. Its governance would have to be worked out but, again, should be majority First Nations, to ensure that this is truly a First Nations-controlled education system.

## *Costs*

Obviously additional spending will be required, especially because the new *First Nations Education Authority Act* would not just be reorganizing existing elements of the education non-system for First Nations, but adding on the missing pieces. Moreover, if there is to be an enforceable commitment to parity in the new Act, most First Nations could anticipate an increase in their core school funding, as well as funding for 2<sup>nd</sup> level and 3<sup>rd</sup> level (and Canada-wide) First Nations education services.

The costs are not possible to estimate at this stage of policy development, since much about the shape of the system would be defined through negotiation. However, in comparison to the dire social crisis being addressed, the costs are not likely to be insurmountable. If school funding went up 10 percent overall, that would add \$120 million to federal costs. Say, for illustration, 80 First Nations Education Authorities require an incremental cost of \$2 million each (some of the costs would be absorbed by transfer of current functions), or \$160 million in total. Add six regional Centres at \$10 million each plus one Canada-wide Institute at \$20 million, for \$80 million. This gives a ballpark estimate of added cost at maturity (which would be at least a decade or more into the future) of about \$360 million. This is certainly not a trivial sum, but neither is it prohibitive. Given the slow buildup of costs, the added amounts could likely be accommodated within current federal five-year fiscal plans.

Costs, though, are only one part of the equation. Benefits are the other. Low educational attainment is associated with significant public costs: poor health and related health expenditures, higher likelihood of social assistance, lower income and therefore lower tax revenue, higher law enforcement costs, and on and on.

Assume an extremely modest lifetime added cost to the public sector of \$250,000 for every person who does not complete high school compared to those who do (given that those who do are also much more likely to go on and obtain a post-secondary degree or diploma). If there are roughly 10,000 potential on-reserve high school graduates each year, the current number graduating from high school would be roughly 4,000. If parity with the general population were to be reached, another 4,500 students would graduate each and every year from high school. But if only 1,500 more students eventually graduate each year from high school, the public sector savings just from that cohort would be about \$375 million over their lifetime. Since this would apply to each cohort graduating, this is equivalent to an annualized savings of \$375 million each year, more than paying for the public sector costs. In other words, just a little success will more than pay for the costs.

Of course, the calculations sketched out above are merely illustrative. Yet there are real benefits both in hard dollars and cents for the public sector and for individuals in completing high school and hopefully going on to post-secondary education. The precise quantum of those savings could doubtless be calculated any number of ways, but the likely return on investment to the public sector alone – and the much higher return on investment to those who obtain a better education – makes any effective intervention in improving education outcomes a good investment.

## **Conclusion**

The present non-system of education for First Nations children living on reserves is failing, and the overall results for Canada show no improvement over the last decade. It is difficult to think of another issue that is so clearly a social and economic disaster in the making.

It seems that almost everyone who has spent any time looking at the issue has concluded that the process of devolution of education is incomplete, as it has not included a plan to build and finance a new First Nations education *system*. A First Nations education system will not build itself and it will not arise for many generations to come if building it is limited to one-off developments with no overall plan.

This paper has outlined one strategy for constructing a First Nations education system. To quote once again the Hon. Jim Prentice, former Minister of Indian and Northern Affairs Canada, in his speech to the House of Commons upon introduction of the *First Nations Jurisdiction Over Education in British Columbia Act*: “First Nation children, frankly, have been the only children in Canada who have lacked an education system.” It is time for First Nations children to enjoy the same life chances as other Canadian children.

## **Endnotes**

1. All data from Statistics Canada website [www.statcan.ca/start.html](http://www.statcan.ca/start.html) (various Census tables).
2. Until 1950, the Indian Act also provided that any Indian who obtained a university degree or college diploma would automatically lose their Indian Status [McCue 2006].
3. This is not to say that First Nations education on reserve has no legal standing. The inherent right to self-government provides a basis for First Nations control over education, and various Treaties also have explicit or implicit requirements for the Crown to finance education.
4. Many students who are normally resident on reserve must take up temporary residence off reserve to go to high school. They are still classified as students resident on reserve.
5. Data from Indian and Northern Affairs Canada, [www.ainc-inac.gc.ca/edu](http://www.ainc-inac.gc.ca/edu)

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