

**ABORIGINAL NATIONALS/CANADIAN CITIZENS:
TOWARD A NEW INSTITUTIONAL AND GOVERNANCE
INFRASTRUCTURE FOR CANADA'S FIRST NATIONS**

BY

THOMAS J COURCHENE
(tom.courchene@queensu.ca)

Paper Prepared for

Canadian Federalism and Infrastructure

Queen's Institute of Intergovernmental Relations

2015 *State of the Federation* Conference

Donald Gordon Centre

Queen's University, Kingston, ON

June 4-6, 2015

Second draft

Comments invited

Not for general circulation

I: Introduction

Canada's first peoples have not shared in Canada's post-war prosperity, even in those times that we topped the global rankings as the most livable nation on the planet. Indeed, and as will become evident below, the community well-being (CWB) of Canada's First Nations relative to CWB of Canada's non-aboriginal peoples has not improved over the 1981-2011 time frame and in terms of several key indicators their relative position has deteriorated. While the reasons for these unacceptably inferior performance indicators for incomes, education, housing and labour-force activity are no doubt manifold and complex, our approach Canada's approach is akin to fire-fighting when disasters strike rather than providing insurance against their reappearance. As a result, we are ignoring the underlying challenge at play here, namely that in order to improve the First Nations socio-economic role within the Canadian fabric we need to rethink and rework not only the First Nations institutional and governance infrastructure as this relates to their citizens but, as well, the manner in which the First Nations interact inter-governmentally with Ottawa and the provinces. Intriguingly, we have made much progress on these challenges in our northern territories. The time has come to design and to implement creative institutional and governance infrastructure south of 60°.

With this as prelude the paper proceeds as follows. Section II presents the already referenced comparative Aboriginal/rest-of-Canada data on key socio-economic indicators. The role of the remainder of the paper will then be to outline the dimensions of an institutional/governance model designed with the intent of transferring the First Nations from dependence on Canada to autonomy within Canada and, in the process, ameliorating these socio-economic disparities.

Toward this end, sections III- V present analytical and operational approaches to rethinking/reworking First Nations governance: section III summarizes *A First Nations Province* (Courchene and Powell, 1993) arguably among the earliest calls for provincial-type powers for the First Nations; section IV

highlights aspects of the Royal Commission on Aboriginal Peoples (henceforth RCAP) as it relates to institutional redesign; and a lengthy section V elaborates in considerable detail the infrastructure and governance dimensions of the Yukon First Nation agreements.

Following a brief revue in section VI of those parts of the *Constitution Act, 1982* dealing with Aboriginal rights and title, section VII revues, selectively, the rather dramatic series of the Supreme Court of Canada decisions advancing these Aboriginal rights and title.

Section VIII draws from the above material to design an institutional and governance infrastructure with application to the geographical area of the province of Saskatchewan. Section IX summarizes with suggestions for further research/applications.

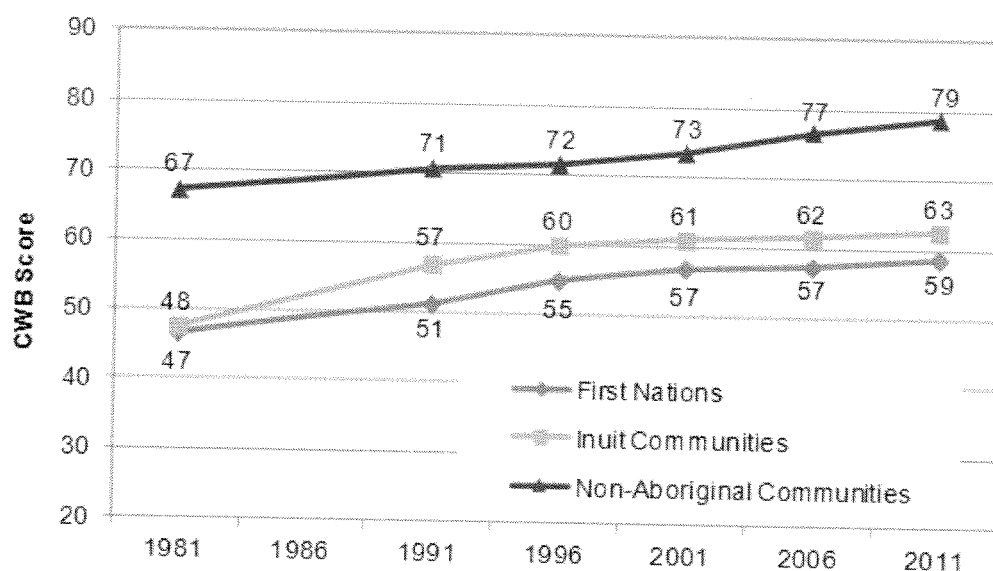
There is a short addendum that focuses on the growing phenomenon of urban reserves. Whatever their value, they are not substitutes for the role that could and should be played by the systemic infrastructural reforms advanced in the paper proper.

II: Indices of First Nations Comparative Community Well-Being (CWB)

Drawing more or less verbatim from Aboriginal And Northern Development Canada's (henceforth AANDC's) *The Community Well-Being (CWB) Index, 1981-2011*, Figures 2 through 5 present comparative data for First Nations, Inuit communities and Non-Aboriginal communities. The CWB index (Figure 1) is made up of the following four components, measured using Statistics Canada's Census of Population (1981-2006) and its National Household Survey (2011):²

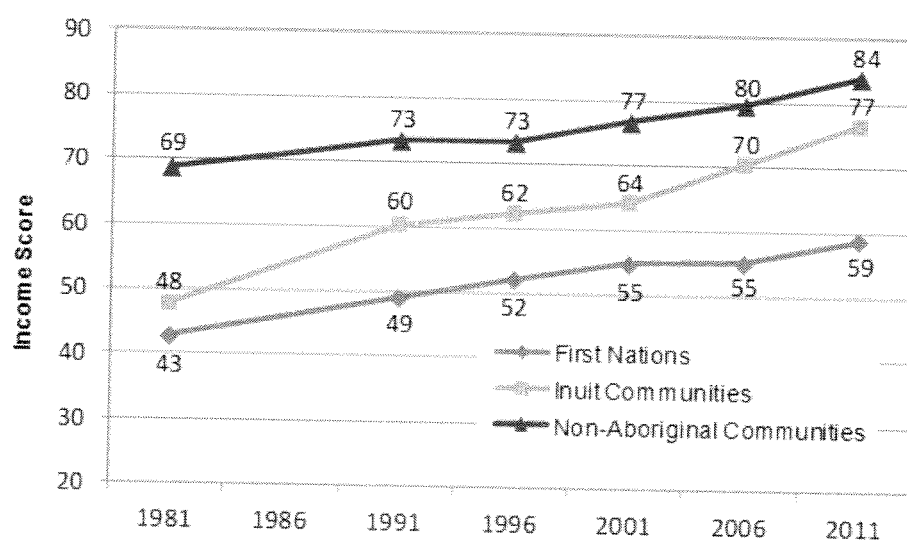
- ² **Income** is calculated based on total income per capita (Figure 2);
- ² **Education** focuses on how many community members have at least a high school education and how many have attained a university degree (Figure 3);

Figure 1: Average CWB scores, First Nations, Inuit and non-Aboriginal communities, 1981-2011



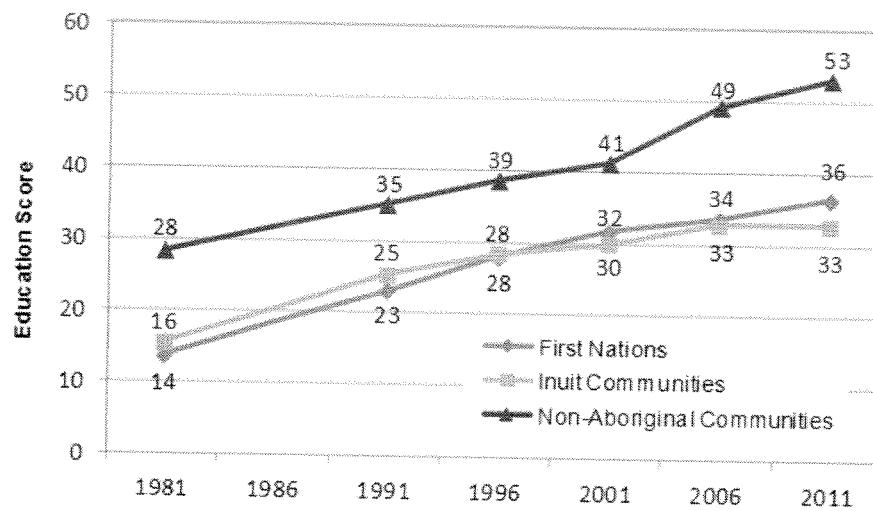
Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

Figure 2: Average income scores, First Nations, Inuit and non-Aboriginal communities, 1981-2011



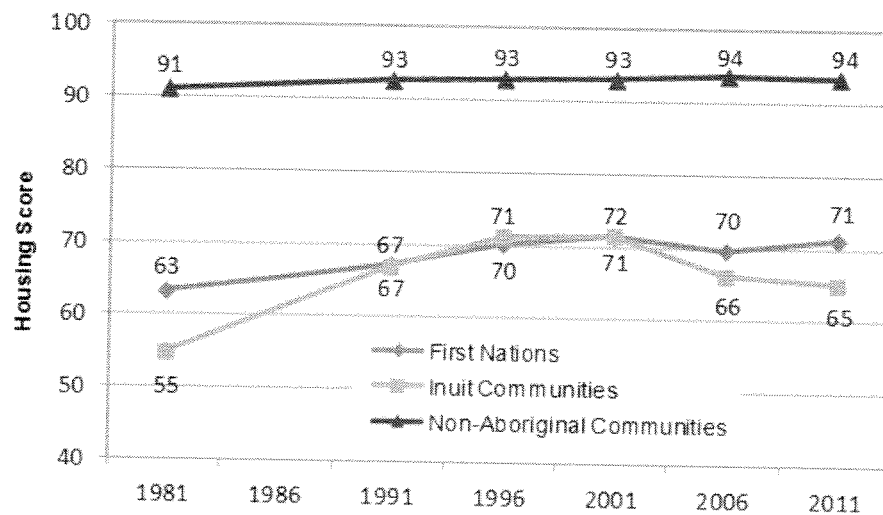
Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

Figure 3: Average education scores, First Nations, Inuit and non-Aboriginal communities, 1981–2011



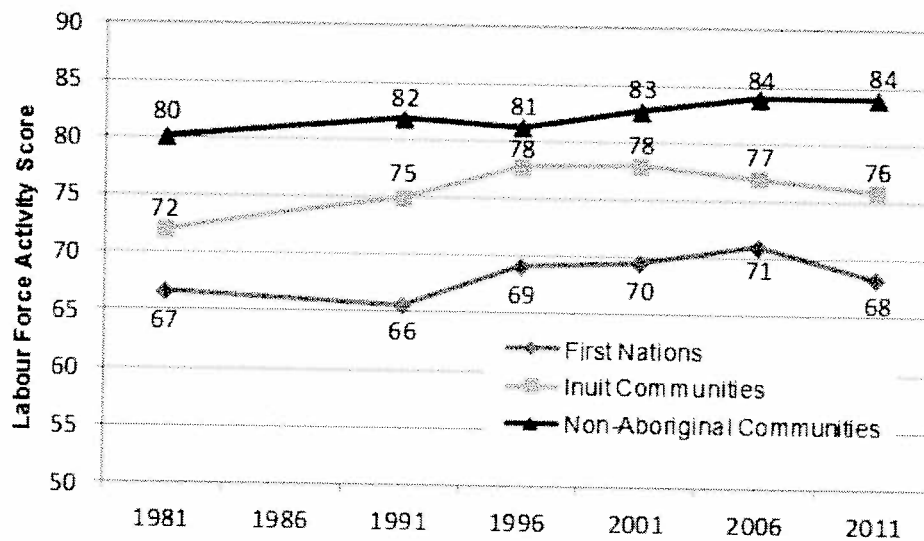
Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

Figure 4: Average housing scores, First Nations, Inuit and non-Aboriginal communities, 1981–2011



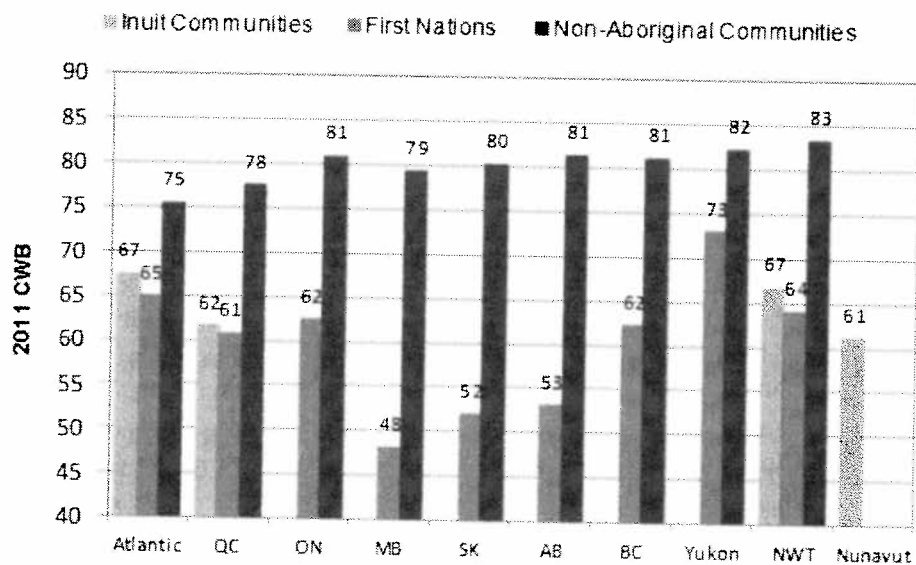
Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

Figure 5: Average labour force activity scores, First Nations, Inuit and non-Aboriginal communities, 1981-2011



Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

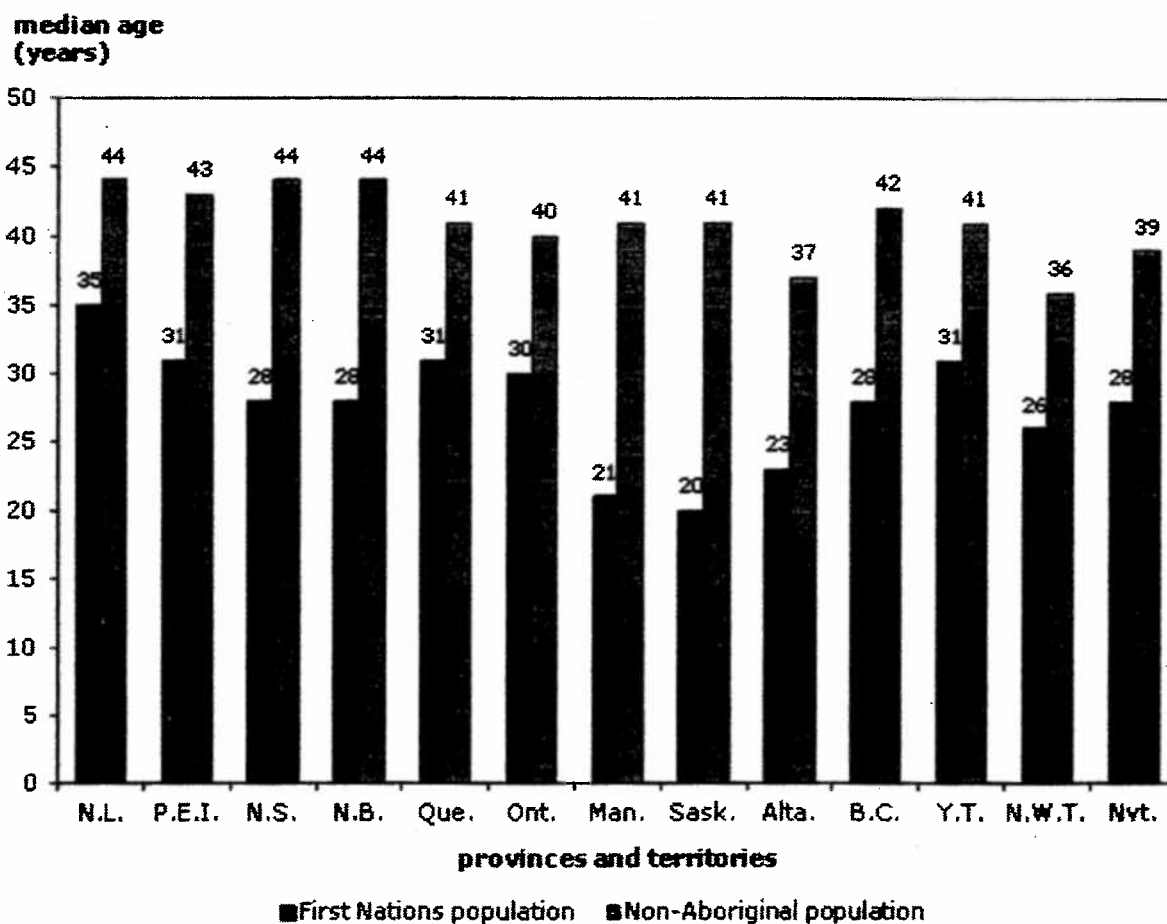
Figure 6: Regional CWB Scores for First Nations, Inuit and Non-Aboriginal Communities, 2011



Source: Statistics Canada, Censuses of Population, 1981-2006 and National Household Survey, 2011.

FIGURE 7

Median age for First Nations and non-Aboriginal population, provinces and territories, 2011



- ❑ **Housing** assesses the number of community members whose homes are in an adequate state of repair and are not overcrowded (Figure 4) and
- ❑ **Labour force activity** records how many community members participate in the labour force and how many in the labour force have jobs (Figure 5).

In Figure 1 these four CWB components are combined to create a single well-being score for each community. CWB scores can range from a low of zero to a high of 100. In 2011 these scores were available for 50 Inuit and 3,784 non-Aboriginal communities and 594 First Nations. While the principal interest for what follows is on the comparison between First Nations and Non-Aboriginal communities, the analysis will include some assessment of the relative position of the Inuit communities.

From Figure 2, while the average income scores for First Nations have increased by 16 points from 1981 to 2011 (from 43 to 59) the gap between First Nations and Non-Aboriginal income scores remains essentially unchanged at 26 points in 1981 (43 and 67) and 25 points in 2011 (59 and 84). This is because the relative gains over the 1981-2001 period were eroded by 2011. Note, however, that the gap between Inuit communities and Non-Aboriginal communities has decreased sharply – from 21 points in 1981 to 7 in 2011. From the perspective of the theme of this paper, the reason for this may well be the institutional and governance infrastructure associated with the creation of Nunavut in 1999.

The gap for education scores between First Nations and Non-Aboriginal communities in Figure 3 narrows slightly from 1981 to 2001 (from 12 to 9) but then rises sharply to 17 points in 2011.

From Figure 4, while the gap in housing scores narrows from 28 in 1981 to 23 in 2011, the major story here is the absolute size of the gap. This is even more the case for the Inuit where the 1981 gap was 36 points and remained high (at 29 point) in 2011.

The labour force activity data in Figure 5 reveal that First Nation scores remain essentially unchanged in 1981 and 2011 albeit with the gap rising from 13 to 18 points respectively.

Finally, Figure 1 aggregates the data in Figures 2 through 5 and presents the overall Community Well-Being (CWB) indices. The overall scores for First Nations, Inuit and Non-Aboriginal communities increased slowly but steadily between 1981 and 2001. However, in 2011 the average score for First Nations was 20 points lower than the average score for Non-Aboriginal communities, a gap the was the same as that in 1981.¹

The AANDC paper presents a final CWB chart broken down on a provincial/territorial basis. This is reproduced here as Figure 6. Immediately apparent are the very low scores for the prairie First Nations. Arguably this is so because there are roughly 70 First Nations in Saskatchewan and 63 in Manitoba (many of which are small and isolated) and most of these were presumably in the AANDC data.²

The data in Figures 1 through 6 are very disturbing for First Nations and for Canadians. First Nations are not closing the socio-economic gap between themselves and other Canadians. Rather, they are filling our prisons, especially on the prairies. To be sure they have suffered mightily at the hands of Canadian public policy, of which the Residential Schools system is the most obvious but hardly the only example. As will be clear later in the paper, the Supreme Court of Canada (henceforth SCC) has rendered successive decisions, post Charter, that privilege the First Nations. Yet they are far from able to accede to the lifestyle that ordinary Canadians view as their birthright – a birthright that too often escapes, indeed is denied to, Canada's first peoples.

My response to this is that the First Nations are trapped in an environment within which it is well nigh impossible to achieve the Canadian dream. In part at least, the reason for this is that the First Nations are saddled with an institutional and governmental infrastructure the traps them into second-class citizenship.

¹ Except for housing (Figure 4) the Inuit tended to register higher scores than the First Nations. This was especially true for the average income scores in Figure 2.

² By way of an important aside, the low score for Saskatchewan First Nations in Figure 6 provides an additional rational for selecting this province for the reworking of institutional and governance infrastructure in section VIII.

Moreover, the way forward does not depend only on Ottawa and the provinces altering their approaches to the First Nations. As I shall argue in what follows, the First Nations leadership also needs to undergo significant rethinking with respect not only to its citizenry but as well to the FN relationship to other levels of government.

In what follows I shall focus on theoretical First Nations governance models, on modern treaties, and on SCC decisions with the aim of designing a model in the final substantive section that may hold some promise for better tomorrows for Canada's First Nations.

Attention now focuses on alternative ways and means to ensure that, in the words of the title, the First Nations can at the same time embrace both Aboriginal nationality and Canadian citizenship.

III: A First Nations Province

In the 1990 I published a *Globe and Mail* op ed ("How About Giving the Natives a Province of their Own"³ followed in 1993 by *A First Nations Province*⁴ (co-authored with Lisa Powell). As these titles indicate the goal was to conceptualize a single non-contiguous First Nations province (FNP) comprising the 600+ reserves across our land. Readers can readily fill in the relevant details – provincial powers for expenditures and revenues; a confederal overarching FNP government (confederal because political power rests ultimately with the Chiefs); perhaps with a second chamber composed of elders; election of MPs to the House of Commons in accordance with FNP's population (roughly 800,000 at that time); assignment of Senate seats; and so on. At the operation level what is now called Aboriginal And Northern Development Canada (AANDC) would be devolved to the FNP along with the existing annual funding for First Nations. In effect, the FNP would constitute a third order of government (or, as the First Nations would prefer, one of the three orders of government) within the Canadian federation. And because the ultimate

³ October 18, 1990.

⁴ Institute of Intergovernmental Relations, Queen's University, Kingston. Ontario.

authority in Indian country rests, as already noted, with the chiefs, a FNP would be a confederal government within federal Canada.

One area that was problematical in that time frame related to the immunity from taxation on reserves (section 87 of the Indian Act). Since this will issue will resurface later in the analysis the federal proposal by the then federal Finance Minister Don Mazankowski merits current attention.

III.1: The Section 87 Taxation Exemption and the Mazankowski Proposal

Speaking on the topic of the Section 87 tax exemption at a Whistler, B.C. conference on "Indian Government and Tax", Finance Minister Mazankowski noted:⁵

Since before Confederation Indian individuals and bands have been subject to special statutory arrangements for tax purposes. The property of Indians and Indian bands has been exempted from all non-Indian taxation when situated on reserves. These arrangements reflect the unique position of Indian peoples within Canada. I want to state clearly that the government is committed to the basic principle of this tax exemption.

Nonetheless, Mazankowski went on to say the following;

Up until now, the legislative regime has recognized only one tupe of tax power for Indian governments – municipal-like property taxes. But the status quo is unacceptable. For strong self-government to be a reality, Indian governments must have a wide range of tax powers – not just the authority to levy property taxes (op. cit.).

Toward this end, The Finance Minister offered to administer/collect taxes on Indian territory and, as I interpret the offer, to return *all* tax revenues this derived back to the First Nations. In this sense no non-Indian government would be accessing taxes on First Nations reserves. However, were the resulting revenues then be an offset to the funding otherwise provided (as is the case with the financing of the three territories) then this would constitute an indirect way of removing the tax

⁵ "Notes for an Address to the Indian Government and Tax Conference" (Whistler, B.C., November 12, 1991.

exemption. The analysis will return to this taxation issue later in the context of the Yukon First Nations agreements.

It is fair to say that in the 1990-92 time frame the FNP proposal was greeted more with passing interest than as a realistic blueprint for the future, I was nonetheless invited to present the FNP proposal before the Royal Commission on Aboriginal Peoples (henceforth RCAP). While I was unable to discern the overall response of the Commissioners to my presentation, Commissioner George Erasmus did note that to the extent that the FNP was a relevant model there would have to be more than one of them across the land, perhaps along linguistic lines. This led me to think in terms of more than one FNP as a way forward, an approach that will characterize the FNP proposal developed in this paper.

I now turn in more detail to the RCAP report.

IV: The RCAP Report

Commissioned in 1991 and reporting in 1996, the RCAP report was by far the largest and most expensive of our many Royal Commission. The final report (*People to People, Nation to Nation*) consisted of 5 volumes with over 4,000 words, 440 numbered recommendations (actually in the thousands when one takes account of the fact that most of the recommendations incorporated substantial sub-recommendations), 80,000 pages of public hearings, and 250 commissioned research papers (100,000 pages). While the report remains an essential source for understanding the history and evolution of Aboriginal Canadians and their relationship with Canada's governments and institutions, the sheer magnitude of the Report and the seemingly limitless number of recommendations meant that no core message was able to surface. In part this was because the Chrétien government effectively buried, or at the very least ignored, the RCAP report.

Thankfully, in 1999 Mary Hurley and Jill Wherrett of the Parliamentary Research Branch of the Library of Parliament presented the following capsule summary of the major recommendations of RCAP⁶:

- ⑦ legislation, including a new Royal Proclamation stating Canada's commitment to a new relationship and companion legislation setting out a treaty process and recognition of Aboriginal nations and governments;
- recognition of an Aboriginal order of government, subject to the *Charter of Rights and Freedoms*, with authority over matters related to the good government and welfare of Aboriginal peoples and their territories;
- replacement of the federal Department of Indian Affairs with two departments, one to implement the new relationship with Aboriginal nations and one to provide services for non-self-governing communities;
- creation of an Aboriginal parliament;
- expansion of the Aboriginal land and resource base;
- recognition of Métis self-government, provision of a land base, and recognition of Métis rights to hunt and fish on Crown land;
- initiatives to address social, education, health and housing needs, including the training of 10,000 health professionals over a ten-year period, the establishment of an Aboriginal peoples' university, and recognition of Aboriginal nations' authority over child welfare.

My perspective with respect to RCAP and its relation to the institutional and governance infrastructure issues now in play is that it is on the wrong side of history. RCAP's focus, clearly influenced by the Assembly of First Nations (AFN), was to ignore the ongoing and dramatic movement of First Nations citizens off reserves, largely to urban areas.⁷ Rather the RCAP vision was to (have Ottawa) acquire

⁶ <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb9924-e.htm>

⁷ Indeed, former Saskatchewan premier, Allan Blakeney, resigned as an RCAP Commissioner because RCAP was essentially ignoring off-reserve Indians.

appropriate parcels of land in order to establish 60 reserves, each of which would accommodate a deemed-viable 5,000-7,000 Indians and would be self-governing entities. This was in spite of the fact that, according to the 2006 census, an estimated 40% of Indians lived on reserve, while the remaining 60% lived off reserve. This off-reserve proportion was up slightly from 58% in 1996, i.e., in the time frame of RCAP. The vast majority (98%) of the First Nations people living on reserve in 2006 were Status Indians. In 2006, 50% of Status First Nations women lived off reserve, compared with 45% of their male counterparts. While much newspaper attention is devoted to Aboriginal urban violence in prairie cities, Alan Cairns in his Queen's MacGregor lecture (Cairns, 2002, 12) notes that "other data is much more positive about the off-reserve, largely urban population, pointing to higher incomes, lower unemployment, superior educational attainment, the highest life expectancy among Aboriginal peoples..." Newhouse and Peters (2003, 3 and 5) echo this view that RCAP marginalized urban Aboriginal peoples whereas their own view of reality is that "city life is now an integral component of Aboriginal peoples lives in Canada".

Therefore, valuable as the RCAP report is in its many other dimensions, in my view it does not have much to offer in terms of an appropriate institutional and governance infrastructure for Canada's First Nations. This is definitely not the case for the Yukon First Nations self-government agreements, to which I now turn.

V: Yukon First Nations Agreements

V.1: The Umbrella Final Agreement

In the time frame of the Globe and Mail op ed and the later publication of *A First Nations Province*, but initially unbeknownst to me, Canada, the Yukon Government and the Yukon First Nations negotiated the 1993 *Umbrella Final*

Agreement (UFA), the overview framework document facilitating the ensuing individual Yukon First Nations self-government agreements that 13 Of the 14 Yukon First Nations have now signed. The chapter-listing of the UFA appears an Appendix to this paper. The areas falling under the UFA are rather predictable – citizenship and enrollment, various land issues, surface rights, water management, renewable and non-renewable resources, taxation, fish and wildlife, etc. One issue merits highlight in terms of what follows, namely taxation (under chapters 20 and 21 of the UFA). Because the Yukon Indians do not have reserves that would exempt them from taxation under the Indian Act and because YFN citizenship was based on qualifying as a registered Indian, the Yukon First Nations did not want to embrace two types of citizens based on taxation status. Accordingly, they accepted an offer in the range of 25 million dollars from Ottawa to buy out their “right”, as it were, to be exempt from federal taxation on their settlement lands.

V.2: The Self Government Agreements⁸

i) Principles

Pursuant to section 24 of the UFA each Yukon First Nations would enter into a self-government agreement with Ottawa and the Yukon government.⁹ Among the principles embodied in these agreements were:

- The Champagne and Aishihik First Nations has traditional decision-making structures and desires to maintain these traditional structures integrated with contemporary forms of government.

⁸ It was my good fortune to be invited to become the fiscal adviser to the four initial YFNs in these tripartite negotiations leading up to their self-government agreements.

⁹ For example, see the 1993 *Champagne and Aishihik First Nations Self Government Agreement*: <https://www.aadncaandc.gc.ca/eng/1100100030683/1100100030691>. In what follows, while the elaboration of YFN power will be from this First Nation the agreements are essentially identical. Indeed, in order to get the an individual First Nation to sign its agreement the parties invoked GATT trade principle variant, namely the “most favoured First Nation clause”, i.e., if a later YFN agreement embodies a preferential provision this will apply to all earlier agreements, if the FN so desires.

- The Parties are committed to promoting opportunities for the well-being of Citizens equal to those of other Canadians and to providing essential public services of reasonable quality to all Citizens.
- The Parties recognize and wish to protect a way of life that is based on an economic and spiritual relationship between Champagne and Aishihik people and the land;
- The Parties wish to protect the cultural, political and economic distinctiveness and social well being of the Champagne and Aishihik people, and so on.

ii) Powers of the YFN:

Under the self-government agreements the YFNs have provincial powers on their settlement lands and have some considerable influence beyond their own territory over the social envelope but only within Yukon.

In more detail, off their settlement land but in the Yukon, the YFNs can provide programs in relation to: spiritual and cultural beliefs, languages, training, adoption, wills, resolution of disputes outside the courts, solemnization of marriage, etc. They can also legislate for the provision of health care, social and welfare services, guardianship, custody and care of First Nations children. However, they cannot license and/or regulate facilities-based services off Settlement Land.

On Settlement Land, the YFNs have additional powers, e.g., use, management, administration, and control of Settlement Land, and of natural resources under the ownership, control or jurisdiction of the YFN; administration of justice; licensing and regulation of any business, trade, profession; control or prevention of pollution and protection of the environment, control of firearms, and many other powers including “matters coming under the good government of Citizens on Settlement Land.”

In brief, the YFNs essentially have provincial powers with the addition of some extraterritorial influence on social and cultural (i.e., citizenship) activities within the Yukon

iii) Taxation and Financing

From the self-government agreement:

14.1 The Champagne and Aishihik First Nations shall have the power to enact laws in relation to:

14.1.1: Taxation, for local purposes, of interests in Settlement Land and of occupants and tenants of Settlement Land in respect of their interests in those lands, including assessment, collection and enforcement procedures and appeals relating thereto;

14.1.2: Other modes of direct taxation of Citizens ... within Settlement Land to raise revenue for Champagne and Aishihik First Nations purposes.

In effect, the individual YFNs will have a combination of provincial and municipal taxing powers. Indeed, were they to establish the equivalent of Crown Corporations these would not be subject to taxation by other levels of government, in line with S. 125 of the Canadian Constitution that implies that “the crown cannot tax the crown”.

The formula financing for the YFNs follows the approach for the three Territories. Ottawa calculates a “gross expenditure base” (GEB) that is intended to provide a level of financing that allows the YFN to provide public goods to its citizens that are reasonably comparable to those available to other Canadians. This GEB will be escalated annually to account for increases in the cost of living and in population growth. From this total GEB total, deductions will be made for other sources of income the YFN receives (e.g., federal social policy transfers). In order to encourage the YFN to levy taxes on its citizens, Ottawa would (after allowing for collection costs) reduce the financial transfer by 70%, not 100%, of the tax revenues collected by the YFN. To further encourage the YFN’s to engage in taxation there would be an implementation “grace” period where TYB taxes would not decrease the GEB.

On the negative side of the ledger, creating 14 self-governing entities with an overall First Nations population of approximately 7,000 citizens (a substantial proportion of which reside in Whitehorse) raises optimal-size concerns for the exercise of self-government. To be sure, the presence of the Council of Yukon Indians (now the Council of Yukon First Nations) as an overarching body allows for some of the YFNs powers and/or responsibilities to be rationalized by passing them

upward. Presumably, these and other economies of scale have been (or at least should have been) achieved.

V.3: Summary

In terms of the aim of this paper, namely to design an institutional and governance infrastructure appropriate to the addressing of many of the challenges facing First Nations, the Yukon First Nations framework and self-government agreements have a lot to offer, including i) provincial- type powers; ii) self-government on FN territory with some extraterritorial influence with respect to citizenship and the social envelope; iii) a financing model designed to allow for the YFNs to provide levels of public goods and services comparable to those available to other Canadians; iv) embracing taxation of its citizens and v) institutions that allow full participation in the areas of commerce and finance.

There is another powerful “agent for change” that is having a profound impact on the future of Canada’s First Nations, namely Constitution Act 1982 and the ensuing Supreme Court of Canada (SCC) decisions. Although related they will be dealt with in successive sections.

V1: The Constitutional Act, 1982 and Aboriginal Rights and Title

Aboriginal rights are collective rights that flow from Aboriginal peoples’ continued use and occupation of certain areas. They are *inherent rights* which Aboriginal peoples have practiced and enjoyed since before European contact. *Aboriginal title* refers to the inherent Aboriginal right to land or a territory. The Canadian legal system recognizes Aboriginal title as a *sui generis*, or unique *collective right* to the use of and jurisdiction over a group’s ancestral territories.

VI;A The Constitution Act, 1982

With this definitional forward as prelude, the purpose of this section is to trace the role of the Supreme Court in advancing the understanding and the substance of Aboriginal rights and title. The driving forces behind this evolution are

the sections of the *Constitution Act, 1982* relating specifically to Aboriginal Canadians, i.e. Section 25 of Part I (normally referred as the *Canadian Charter of Rights and Freedoms*) and Section 35 of Part II). Section 35 reads as follows:

- (1) The existing Aboriginal and Treaty Rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.
- (2) In this Act “aboriginal peoples of Canada” includes the Indian, Inuit, Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Section 25 of the Charter reads as follows:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763, and
- (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

In the hands of our SCC Justices, Aboriginal rights and title have been radically transformed, as the following section documents.

VII: Selected SCC Decisions and the Evolution of Aboriginal Rights/Title

VII. 1: R v. Calder (1973)

The Supreme Court’s 1973 decision was the first time that the Canadian legal

system acknowledged the existence of Aboriginal title to land and that such title existed outside of, and was not simply derived from, colonial law. While the Nisga'a did not win their case and the ruling did not settle their land question, it did pave the way for the federal government's comprehensive land claims process, which sets up a process for Aboriginal groups to claim title to their territory. As a landmark case, the Calder decision continues to be cited in modern Aboriginal land claims across Canada, as well as internationally in Australia and New Zealand.

VII.2: *R. v Guerin (1984)* The Honour of the Crown (fiduciary responsibility)

The Supreme Court of Canada ruled that the federal government, as trustee of the Musqueam band lands, had not provided the band with all the necessary information and had not leased the land on terms favourable to the band. Chief Justice Brian Dickson described First Nations' interests in their lands as a "pre-existing legal right not created by the Royal Proclamation...the Indian Act...or any other executive order or legislative provision." The ruling was especially significant because it recognized pre-existing aboriginal rights both on reserves and outside reserves. It also confirmed that the federal government has a "fiduciary responsibility" for aboriginal people – that is, a responsibility to safeguard aboriginal interests. This has come to be known as "the honour of the Crown," namely the obligation on the Crown to act ethically in its dealings with First Nations.

VII.3: *R. v Sioui (1990)* More on the "Honour of the Crown"

In 1990, the Supreme Court of Canada in the Sioui case determined that "treaties and statutes relating to Indians should be liberally construed and uncertainties resolved in favour of the Indians." In that case, the court introduced into Canadian jurisprudence a principle adopted from a 19th-century ruling in the United States that such treaties "must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

VII.4: *R. v Sparrow (1990) When is infringement of Aboriginal rights is acceptable?*

The Supreme Court noted that aboriginal and treaty rights are capable of evolving over time and must be interpreted in a generous and liberal manner and that governments may regulate existing aboriginal rights only for a compelling and substantial objective such as conservation and/or management of resources. Further along these lines the Court added: "Section 35(1) does not promise immunity from government regulation in contemporary society but it does hold the Crown to a substantive promise. The government is required to bear the burden of justifying any legislation that has some negative effect on any aboriginal right protected under s. 35(1)."

VII.5: *R. v Delgamuukw¹⁰ (1997): A role for oral history*

From the Canadian Encyclopedia entry for Delgamuukw (emphasis added):

The Delgamuukw case (1997) concerned with the definition, the content and the extent of aboriginal title. The Supreme Court observed that aboriginal title constituted an ancestral right protected by Section 35(1) of the *Constitutional Act, 1982*. Aboriginal title is a right relating to land *sui generis*, held communally and distinct from other ancestral rights. Aboriginal title is, therefore, in substance, a right to territory and encompasses exclusive use and occupation. The native people concerned must tender evidence of the existence of aboriginal title in respect of the following requirements: "(i) they must have occupied the territory before the declaration of sovereignty; (ii) if present occupation is invoked as evidence of occupation before sovereignty, there must be a continuity between present occupation and occupation before the declaration of sovereignty; (iii) at the time of declaration of sovereignty, this occupation must have been exclusive." *It is not necessary to prove a perfect continuity; the demonstration of a substantial maintenance of the bond between the people concerned and the territory is sufficient. In this respect the Supreme Court held that oral evidence could be admitted as proof.*

VII.6: *R. v Haida Nation (2004): The duty to consult and accommodate*

¹⁰ Delgamuukw is the native name for Earl Muldoe of the Gitksan First Nation,

From Wikipedia (Haida Nation v. British Columbia):

Chief Justice McLachlin, writing for a unanimous court, found that the Crown has a "duty to consult with Aboriginal peoples and accommodate their interests". *This duty is grounded in the Honour of the Crown, and applies even where title has not been proven.* The scope of this duty will vary with the circumstances; the duty will escalate proportionately to the strength of the claim for a right or title and the seriousness of the potential effect upon the claimed right or title. However, regardless of what the scope of the duty is determined to be, consultation must always be meaningful. ...

Sébastien Grammond (2013, 315-) notes that the duty to consult and accommodate has transformed native law. In particular, "the focus of judicial inquiry has shifted away from the proof of aboriginal rights, which is less and less contested, to the actual measures deployed by governments to consult and accommodate the native peoples" and, as a result, "indigenous peoples are now routinely involved in the planning stage of many natural resource development projects."

VII.7: *R. v Tsilhqot'in Nation (2014): A Game Changer*

On June 26, 2014, the Supreme Court of Canada rendered a historic judgment in the Tsilhqot'in Nation's Aboriginal title case. All 8 judges agreed with this decision. The Court declared Aboriginal title to approximately 1900 km² of the Claim Area, including Xeni (Nemiah Valley) and much of the surrounding area, stretching north into Tachelach'ed (Brittany Triangle) and along the Tsilhqox (Chilko River). This is the *first time in Canadian history* that a court has declared Aboriginal title to lands outside of a reserve.

The Court rejected the "postage stamp" view of Aboriginal title once and for all. Aboriginal title is not restricted to small, intensively used sites. Aboriginal title extends to all the territory that a First Nation *regularly* and *exclusively* used when the Crown asserted sovereignty. This means ownership is of areas that were used regularly and only by the Tsilhqot'in at the time the Canadian government staked its

claim. In terms of the rights that flow from aboriginal title, *Duhaime Law Notes*¹¹ reflects as follows:

The implications of this Supreme Court decision are potentially enormous. As Chief Justice Beverly McLachlin noted in her ruling, “this is not merely a right of first refusal with respect to Crown land management or usage plans ... rather it is a right to proactively use and manage the land.” One should note, however, that this ruling applies only to *unceded territory*: those First Nations that have treaties are not affected by this judgment since the essence of a treaty was to cede claim to all territory except that “reserved” to them. Hence the full impact will be felt in provinces like British Columbia and Quebec where there are few reserves. This is especially the case since the recent series of court rulings makes it much easier for First Nations to claim control over their traditional lands. Once aboriginal title is established, the government can only go against a First Nation’s wishes if it proves that it is justified to do under the Constitution. Indeed, the ruling also said that once title is established it may be necessary for the government to reassess its prior conduct in light of its new obligations. ...

and

The rights confer on the First Nation, in this case the Tsilhqot’in First Nation, the exclusive right to decide how the land is used and the right to benefit from the use of the land. In other words, to “use it, enjoy it and profit from it.” These rights are subject only to the restriction that the land uses must be collective and for the enjoyment of future generations.¹²

VII.8: Summary Comments

Drawing on the *Royal Proclamation* and the Aboriginal provisions of the *Constitution Act, 1982* the recent Supreme Court of Canada decisions have certainly empowered the First Nations in terms of articulating and expanding Aboriginal rights and Aboriginal title. In terms of the present paper, the implication I draw from the above analysis is that, on reserve land and on unceded lands on traditional territory over which the First Nations have been assigned title, the nature of this

¹¹ <http://www.duhaimelaw.com/2014/07>.

¹² Obviously, not everyone is enamored with this decision. For example, see Harry Swain and James Baillie, “Commentaries: Tsilhqot’in Nation v British Columbia: Aboriginal Title and Section 35,” *Canadian Business Law Journal*, Volume 56 (2015), 264-279.

title is along the lines of Section 92A of the *Constitution Act, 1867*.¹³ Section 92A gives provinces control over the exploration, development, management of non-renewable natural resources, forestry resources and electrical energy in each province. The implication is that 92A would now apply where there is Aboriginal title. To be sure, this is may be a “leap of faith” but it seems to follow from the series of SCC decisions, especially *R. v Tsilhqot’in Nation*.

VIII: Toward A New Institutional And Governance Infrastructure For Canada’s First Nations

VIII.1: Saskatchewan as an Appropriate Test Case

This paper began by presenting a most discouraging socio-economic portrait of Canada’s First Nations relative to other Canadians and, in several cases, relative to the Inuit population. While there are no doubt several alternative explanations or reasons for these results, the hypothesis driving this analysis is that prominent among the underlying causes is the utter inadequacy of the First Nations institutional and governance model. Toward this end, the ensuing sections then focused of alternative approaches to First Nations governance/infrastructure drawing from existing models as well as potential frameworks made possible by recent Supreme Court decisions. For the purpose of envisioning what a preferable institutional infrastructure and governance model might look like, the chosen geographical area will be First Nations residing in the territorial boundaries of the province of Saskatchewan. Indeed, this model will be referred to in what follows as INIS – Indian Nation In Saskatchewan

To be sure, this choice may be questioned because Saskatchewan’s First Nations engaged in comprehensive tripartite negotiations in the late 1990s and the early 2000s in search of a new relationship. In the end the exercise was not

¹³ Section 92A was added to the list of provincial powers by the *Constitution Act, 1982*. Section 92A gives provinces control over the exploration, development and management of non-renewable natural resources, forestry resources and electrical energy.

successful although the process did yield many excellent background papers and proposals.¹⁴

Nonetheless, Saskatchewan is ideal for expository purposes. First, the province has a large Indian population -- as of 2009 there were 123,000 First Nations citizens living in Saskatchewan, 94,000 of whom were registered or status Indians (see Table 1). Moreover, with 20 years as the average age of First Nations population (Figure 7) Statistics Canada's 2011 National Household Survey notes that First Nations children account for 20% of the children 14 and under in the province (roughly double their population share), thereby highlighting the critical role of education in their collective future. Second, Saskatchewan's First Nations already have a long-standing and effective pan-provincial organization -- FSIN, the Federation of Saskatchewan Indian Nations. FSIN has 9 tribal councils embracing the 73 Chiefs of the First Nations' reserves drawn from six political nations -- Cree,  Saulteaux,  Assiniboine,  Dakota/Sioux, Nakota/Lakota, and Dene.

Residence-wise, 57.3 per cent of Saskatchewan's 94,160 registered Indians live on reserve (Table 1 again). However, if one counts the 9,045 non-status Indians and the M tis (now that the courts have proclaimed them to be Indians under the Constitution) one can assume that off-reserve Indians are in the majority. To be sure there is likely considerable movement of and on the reserves.¹⁵

On the cultural/educational front, FSIN oversees the Saskatchewan Indian Cultural Centre, the First Nations University of Canada (formerly the Saskatchewan Indian Federated College) and the Saskatchewan Indian Institute of Technologies (SIIT). On July 1, 2000, the Saskatchewan government recognized SIIT as a fully functioning provincial post-secondary institution, with the ability to award its own certificates and diplomas and to be recognized by both Indian and non-Indian communities. This certification allows students to transfer

¹⁴ For example, see David Hawkes "Rebuilding the Relationship: The "Made in Saskatchewan" Approach to First Nations Governance", in Canada: *The State of the Federation, 2003: Reconfiguring Aboriginal- State Relations* (Queen's University: The Institute of Intergovernmental Relations: McGill-Queen's Press, (2005, 119-132).

¹⁵ A new factor that is complicating the on/off reserve pattern is the emergence of several "urban reserves", on which more later.

their credits to other institutions and have their certificates and diplomas recognized by all employers in the province. SIIT has campuses at nine different locations: Saskatoon, Regina, Fort Qu'Appelle, Prince Albert, Yorkton, Onion Lake, North Battleford, Meadow Lake and La Ronge.

A final but most important introductory observation is that all of Saskatchewan First Nations are Treaty First Nations – Treaties 2, 4, 6, 8 and 10 cover the entire province and extend into parts of Alberta, Manitoba and the Northwest Territories (see Figure 1). As part of the earlier noted tripartite negotiations, the Office of the [Saskatchewan] Treaty Commissioner issued the *Statement of Treaty Issues: Treaties As A Bridge To The Future (2008)*. The thesis therein is that the treaties are the building blocks for renewing the First Nations relationship with Canada. Aboriginal Affairs and Northern Development Canada reflects on these post-confederation numbered treaties as follows:

Between 1871 and 1921, the Crown entered into treaties with various First Nations that enabled the Canadian government to actively pursue agriculture, settlement and resource development of the Canadian West and the North. Because they are numbered 1 to 11, the treaties are often referred to as the “Numbered Treaties.” The Numbered Treaties cover Northern Ontario, Manitoba, Saskatchewan, Alberta, and parts of the Yukon, the Northwest Territories and British Columbia. Under these treaties, the First Nations who occupied these territories gave up large areas of land to the Crown. In exchange, the treaties provided for such things as reserve lands and other benefits like farm equipment and animals, annual payments, ammunition, clothing and certain rights to hunt and fish. The Crown also made some promises such as maintaining schools on reserves or providing teachers or educational help to the First Nation named in the treaties. Treaty No. 6 included the promise of a medicine chest that is the origin of free medical care for First Nations

Beyond this, the earlier referenced *Statement of Treaty Issues (2008,40)* notes:

As a result of treaty negotiations, Treaty First Nations would retain certain lands for their sole use, and they would be given agricultural implements and stock to enable them to begin farming if they so desired. The Crown agreed to provide schools to enable Treaty First Nations to secure the skills and knowledge needed to fully participate in the new economies.

It is important to note that the numbered treaties are not the only source for the renewing the First Nations relationship with Canada. For many off-reserve Indians and the non-treaty First Nations the reworking of their relationship with Canada owes more to the Royal Proclamation and, as elaborated above, the Constitutional provisions and the series of Supreme Court decisions. Nonetheless the Nation-to-Crown relationship between Treaty Indians and Canada is a solemn, even sacred, covenant that not only remains extant but, arguably, can buttress the case for the proposed model that follows.

VIII.1: Building Blocks of a New Governmental Infrastructure For an Indian Nation in Saskatchewan (INIS)

The infrastructure of INIS would be a composite of the features of First Nations models that are already in place or that have received a Supreme Court imprimatur. The analysis will proceed via a succession of bullet entries.

- Citizens

The ISIN citizenry would be comprised of on-reserve and off-reserve Indians residing in the territory of the province of Saskatchewan. Hence, INIS citizenship would embrace status as well as non-status Indians.

- Internal Governance

Economies of scope and scale cannot be achieved with the roughly 70 independent reserves in the province. FSIN duly recognizes this in that for governance reasons these reserves are aggregated into 9 tribal groups, as noted earlier. Phrased differently powers need to be passed upwards for many key areas. And for some areas decisions may need to be centralized. Just how this aggregation challenge might be accomplished would be left to INIS but with the proviso that it must be adequately addressed.

- Powers on Indian Lands

Drawing analytically from *A First Nations Province* but substantively from the Yukon First Nations agreements, INIS would have provincial-type powers. Essentially, this includes most of s.92 of the *Constitution Act 1867*. These powers would be exercised on INIS lands.

- Extra-Territorial Powers (but within Saskatchewan)

Hopefully the province of Saskatchewan would allow INIS to have some influence outside of their lands on aspects of the social envelope. i.e., on some aspects of the Yukon First Nations powers (reproduced here from the earlier YFN section):

In more detail, off their settlement land but in the Yukon, the YFNs can provide programs in relation to: spiritual and cultural beliefs, languages, training, adoption, wills, resolution of disputes outside the courts, solemnization of marriage, etc. They can also legislate for the provision of health care, social and welfare services, guardianship, custody and care of First Nations children. However, they cannot license and/or regulate facilities-based services off Settlement Land

Some of these functions are currently undertaken in selected provinces by non-government institutions (e.g., adoption agencies run by religious groups) so that a role for INIS along these lines may be out of place.

- Education

Given the disturbing education data presented earlier in tandem with the need for generating economies of scale, education ought to be on top of the INIS reform list. Following the recommendation of David Hawkes (2005)), the obvious solution would be i) to create a province-wide INIS education system, perhaps along the lines of the Separate school or French School systems in some provinces, and ii) to integrate the on-reserve children into upward-cascading school districts that are of adequate size to lead to effective and efficient schooling across INIS land. Thanks to the work of former Prime Minister Paul Martin in collaboration with OISE, the

evidence is that reserve-based children in effective learning/teaching environments can match other Canadians in reading skills by grade 4. Ensuring that the INIS school system operates with the same standards as non-Indian systems is critical to overcoming the challenges flowing from the CWB data (Figures 1-5 above). Indeed, this is one area (among others) where the treaties are critical because they committed the Crown to provide for First Nations education.

- *Financing INIS: The Gross Expenditure Base (GEB) Approach*

The obvious financing model for INIS would be a variant of Territorial Formula Financing employed for the three territories, a version of which is also utilized for the YFN. As noted above, Ottawa would calculate a Gross Expenditure Base (GEB) for INIS that would allow INIS to provide public goods and services to its citizens that are reasonably comparable to those available to other Canadians. This GEB would be escalated annually to account for inflation and population growth. From the value of this GEB would be subtracted other sources of INIS revenue such as other transfers. The value of the GEB, net of such offsets, would be transferred to INIS.

- *Financing INIS: Taxation*

INIS faces more or less the same dilemma on the income taxation front as did the Yukon First Nations, namely that a majority of their citizens are taxable (i.e., those off reserve) while those registered Indians on reserve are tax exempt. To recall, the YFN solution was a generous federal buyout of the income tax exemption coupled with an increase in the GEB by 30% of any other revenues collected. No doubt there are many options for INIS, all of which have will pose challenges. For starters, the provincial portion of the income tax revenues currently paid by off-reserve Indians would now go to INIS. In turn, this would ensure that the province of Saskatchewan would have to be a participant in any and all taxation negotiations. Setting Saskatchewan's concerns aside for the moment, this option has the advantage of maintaining the existing tax exemption

in place. Still at issue here would be whether the GEB included these revenues or whether some portion of these revenues would be used to increase the GEB, and presumably the latter. Given the earlier noted Mazankowski vision that “for strong self-government to be a reality, Indian governments must have a wide range of tax powers – not just the authority to levy property taxes” and the willingness of Ottawa to help in the tax collection process suggests that the federal government may be willing, along YFN lines, to offer a generous buyout of the off-reserve tax exemption. While this on-reserve exemption tends to be viewed as sacrosanct INIS would gain significant powers and revenues should it choose to go this route.

Sales and property taxes could also be levied on INIS lands. In terms of property taxation for houses/buildings in Saskatchewan owned by INIS citizens, that component representing payment for services provided by Saskatchewan should remain with the province. The remaining portion would go to INIS—for example for the INIS school system. Again, negotiations are inevitable.

A further word on education is warranted. My interpretation is that Ottawa’s position is that the provinces are responsible for the education of Indians residing off reserve but in the province while Ottawa would look after on reserve education (in line with the provisions of some, if not all, of the numbered treaties). This limiting of Ottawa’s role to on-reserve education is not evident since s.91(24) of the *Constitution* states that Ottawa is responsible for “Indians and Lands reserved for the Indians” and not for “Indians on Lands reserved for Indians”¹⁶

- *Resources: Surface and Subsurface Rights*

When Saskatchewan and Alberta joined confederation in 1905 Ottawa

¹⁶ A related financial issue is addressed briefly under the later section – Intergovernmental Financial Relations.

withheld ownership of subsurface land. In 1930 the *Natural Resources Transfer Agreement* (enshrined in the *Constitution Act, 1930*) provided for the transfer of federal government interests on all Crown lands, mines, minerals and royalties derived therefrom to the Province of Saskatchewan, subject to any existing trusts and obligations, including those under treaty. Indian reserves and national parks remained with the federal Crown. Beyond this, section 92A (enshrined in the *Constitution Act, 1982*) gave the provinces the exclusive right to explore, develop, manage and raise money from non-renewable natural resources and electricity generation within their boundaries.

In light of the earlier review of recent Supreme Court cases relating to Aboriginal rights and Aboriginal title, and in particular the *Tsilhqot'in* decision, it seems to follow *that section 92A must also apply to reserve lands* and therefore to existing INIS lands and those that they might acquire.

- *INIS Political Structure*

The Federation of Saskatchewan Indian Nations' current internal governance structure seems fully capable of overseeing the additional powers and responsibilities that will come with provincial-type status. Beyond the earlier noted nine tribal groupings drawn from the 73 First Nations, FSIN has an elected Legislative Assembly, a Senate appointed by groupings individual First Nations, a host of committees covering many of the issues that will be relevant to INIS and, as a result of a memorandum between the Government of Canada and FSIN, a Saskatchewan Treaty Commissioner. In the most general of terms the mandate of the Office of Treaty Commissioner is to analyze treaty-related issues, develop options, and report to and provide advice to the FSIN and Canada regarding courses of action to achieve practical results that reflect the treaty relationship.

If there is an area where INIS would probably need to expand the scope of its internal structure it would be in relation to ensuring representation in INIS of those Indians resident in Saskatchewan whose home First Nation is not in the province.

- *Intergovernmental Political Relations: Federal*

With over 100,000 citizens INIS would merit a House of Commons seat. Ottawa should propose this in order to increase the bond between First Nations and Canada, even though the First Nations themselves may not accept the offer because this might in their view serve to diminish their longstanding traditional direct link to the Crown. INIS apart, long ago Ottawa should have allocated Senate seats to Canada's Aboriginals. Only four provinces have populations larger than Canada's Aboriginal population! Moreover, each of the three northern territories has Senate seat.

- *Intergovernmental Financial Relations: Saskatchewan*

Arguably, the interaction between INIS and Saskatchewan in allocating municipal-type revenues on the one hand and the cost of the provision of public services would be most daunting. This was certainly the case for the Yukon First Nations agreements since the transfer of any responsibilities from the Yukon government to the YFN would have to respect the interests of both parties. What might further complicate negotiations in relation to INIS would be the recognition that Saskatchewan's receipt of the \$1,200 per capita federal cash transfers (intended to help with provincial health, education and welfare expenditures) is based on the province's total population including the 100,000 plus Indians. Were INIS to become a reality would the presumption would be that INIS should be the recipient of these monies.

VIII: CONCLUDING COMMENTS

The foregoing analysis was motivated by the demonstrated inability of Canada's First Nations citizens to enjoy a standard of living anywhere near that of their fellow Canadians. Canada's piecemeal attempts to improve their First Nations' living Standards via a reactive series of policies that focus on one or another of the lagging socio-economic indicators will never be successful because the underlying problem is a systemic one. What the First Nations need is an effective institutional

and governance infrastructure that will provide them with a set of policy levers comparable to those in the provinces and territories and at the same time will transfer to them (and away from Ottawa) greater control over, and responsibility for, the well-being of their citizens.¹⁷

While the above model meets these criteria, one can be confident that it will find favour in precious few places, including the Assembly of First Nations (AFN) since it downplays the role of 600 or so Reserve chiefs. If this is so then it behooves Canada and Canadians to find an alternative model or models since the status quo data in Figures 1-6 above are completely unacceptable and can no longer be tolerated.

In summary, therefore, the thrust of the above model is to endow First Nations peoples with sufficient powers and funding to allow them to make the transition from political and financial dependency to the more autonomous and privileged position embodied in the title of this paper -- *Aboriginal Nationals/Canadian Citizens*.

ADDENDUM: URBAN RESERVES

As noted in the introduction, an alternative approach to First Nations economic development is taking hold across Canada, especially western Canada, namely the emergence of urban reserves. This development is welcomed by First Nations, by the cities and by the Government of Canada via the pronouncements of Aboriginal And Northern Development Canada (AANDC).¹⁸ The process works as follows (not necessarily in the following order). The city agrees to allow the First Nation to purchase land in the city limits for purposes of operating a business. The First Nation commits to purchasing the land, perhaps with financing from the First Nations Bank of Canada. Then both the FN and the city request the Government of Canada to agree to define the territory as part of the First nations' reserve replete

¹⁷ The focus of the model was on Saskatchewan First Nations, but it could be extended (with admittedly additional challenges) to apply to, say, the Prairie Provinces.

¹⁸ AANDC Backgrounder – Urban Reserves: A Quiet Success Story
(<https://www.aadnc-aandc.gc.ca/eng/1100100016331/1100100016332>)

with the privileges associated with the rights of reserves, in particular tax exemptions for registered employees and the business owners (as well as tax free gas and cigarettes for gas stations).

AANDC (op.cit.) comments on urban reserves as follows:

Urban reserves offer residents economic opportunities that are generally unavailable in more remote areas. They give First Nation businesses the chance to establish themselves and provide employment and training opportunities. At the same time urban reserves can create jobs for Aboriginal and non-Aboriginal people and contribute to the revitalization of the host municipality. There are now more than 120 urban reserves across Canada, established under the Additions to Reserve policy and Treaty Land Entitlement agreements. ... Urban reserves are viewed as a stepping stone for the development of new Aboriginal businesses and a way into the mainstream job market for First Nation people. However, they can also provide much-needed economic stimulus to urban centres as a whole. ...

Improving the social and economic circumstances of First Nation people is a major priority for the Government of Canada. By offering First Nations economic opportunities that are unavailable in rural areas, urban reserves serve as springboards into the mainstream economy. They reduce operating costs and provide better access to capital markets and transportation routes, enabling First Nations to diversify their economic base. At the same time, they contribute to the economic and business development of urban centres across Canada. All Canadians benefit from their success.

I agree that there are significant benefits as a result of these urban reserves. In particular, this is a way of getting around any hiring discrimination that exists. And beyond the economic benefits noted by AANDC one should add a greater sense of belonging and pride accruing to the urban First Nations citizens.

Nonetheless, my view is that urban reserves are not the solution to the challenges revealed in Figures 1-6 above. These challenges require systemic changes, namely changes that will allow First Nations on and off reserves to make the transition from political and financial dependency to the more autonomous and privileged position of self-governing internal nations. Urban reserves do not provide this: they are an extension of the current reserve-system dependency into the urban

environment. In this sense they are not meaningful substitutes for the combination of reforms presented in the core of this paper.

Chapter Overview of the 1993 YFN Umbrella Final Agreement

Umbrella Final Agreement Between The Government Of Canada, The Council For Yukon Indians And The Government Of The Yukon

(306 Pages)

Table of Contents

- **Chapter 1 Definitions**
- **Chapter 2 General Provisions**
- **Chapter 3 Eligibility and enrollment**
- **Chapter 4 Reserves and Land Set Aside**
- **Chapter 5 Tenure and Management of Settlement Land**
- **Chapter 6 Access**
- **Chapter 7 Expropriation**
- **Chapter 8 Surface Rights Board**
- **Chapter 9 Settlement Land Amount**
- **Chapter 10 Special Management Areas**
- **Chapter 11 Land Use Planning**
- **Chapter 12 Development Assessment**
- **Chapter 13 Heritage**
- **Chapter 14 Water Management**
- **Chapter 15 Definition of Boundaries and Measurement of
Areas of Settlement Land**
- **Chapter 16 Fish and Wildlife**
- **Chapter 17 Forest Resources**
- **Chapter 18 Non-renewable Resources**
- **Chapter 20 Taxation**
- **Chapter 21 Taxation of Settlement Land**
- **Chapter 22 Economic Development Measures**
- **Chapter 23 Resource Royalty Sharing**
- **Chapter 24 Yukon Indian Self-Government**
- **Chapter 26 Dispute Resolution**