

# Redefining Indigenous Peoples' Social Citizenship: the Case for A Trilateral Approach

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Martin Papillon, Associate Professor

Department of Political Science, Université de Montréal

# Policy Failure...

- Indigenous peoples at the margins of Canada's social citizenship regime

## Canada discriminates against children on reserves, tribunal rules

On-reserve child welfare  
CBC News Posted: Jan 26, 2016



## Poverty rates for indigenous children over twice non-aboriginals, study says

Canadian Centre for Policy Alternatives economist says strong Canadian economic

	Ind. People	Canadians
Single parent families	34%	17%
Post sec. diploma (working age pop)	41%	69%
Unemployment rate	18%	6.50%
Life exp. at birth (2006)	72	78.7
Crowded housing (2006)	11%	3%
% poverty	21%	11.10%

A supporter holds a sign up in Toronto to raise attention about violence against indigenous women in the wake of the Cindy Gladue murder case Photograph: Jordan Slobelen/Demotix/Corbis

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# A commitment to change ...

“Because it is both the right thing to do and a certain path to economic growth, the Government will undertake to renew, nation-to-nation, the relationship between Canada and Indigenous peoples, one based on recognition of rights, respect, co-operation and partnership.

Among other measures, the Government will work co-operatively to implement recommendations of the Truth and Reconciliation Commission of Canada, will launch an inquiry into missing and murdered Indigenous women and girls, and will work with First Nations so that every First Nations child receives a quality education.”

- Speech from the Throne 2015



# Many Challenges

- ▣ Multifaced, intertwined problems - need comprehensive, coordinated, approach
- ▣ Policy legacies: entrenched patterns, limited efficiency, limited trust
- ▣ **Changing expectations:**
  - ▣ **Indigenous peoples no longer willing to be passive partners**
  - ▣ **Federalism – what role for provinces?**

# Indigenous peoples as governing partners

- ▣ Changing expectations / self-determination
  - ▣ Seek substantive engagement in policy-making, as governing partners
- ▣ Efficiency: Localised, culturally relevant expertise / knowledge
- ▣ Legal/constitutional/international commitments
  - ▣ treaties / duty to consult
  - ▣ United Nations' Declaration on the Right of Indigenous Peoples

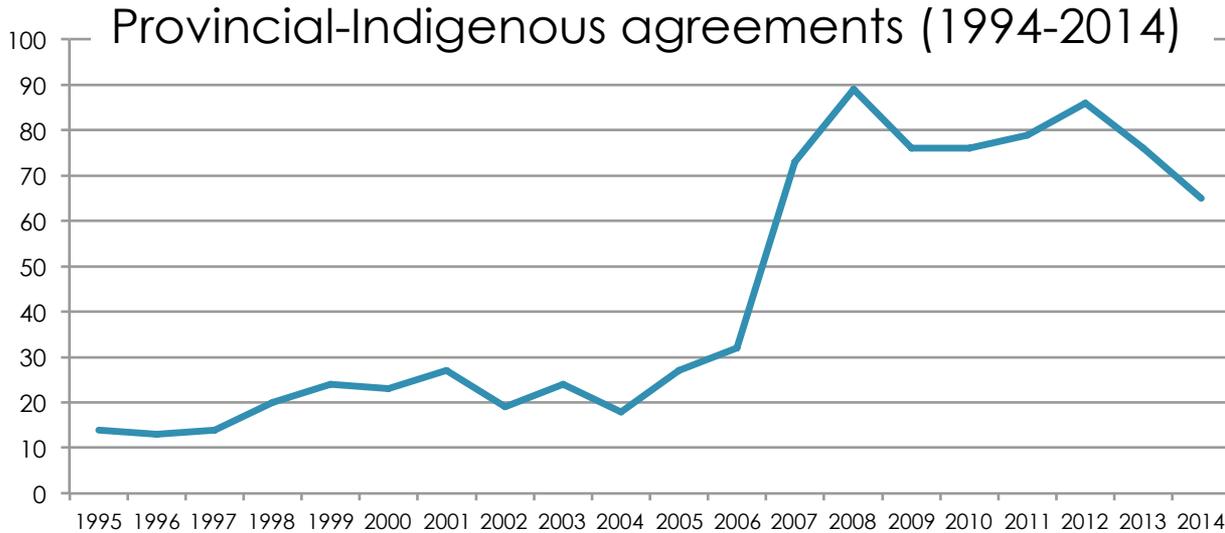
# Policy-Making and UNDRIP

- *Article 18* : Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- *Article 19* : States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

# Provinces as Governing Partners

- Provinces have expertise / capacity / infrastructure in key social policy areas
- Historical reluctance to engage in Indigenous policy
  - Section 91(24) vs Section 92 CA 1867
  - Indigenous peoples (especially FN) also reluctant
- Jurisdictional ambiguity creates policy gap/failures
  - Ex. Canadian Human Rights Tribunal on FN Child and Family Services

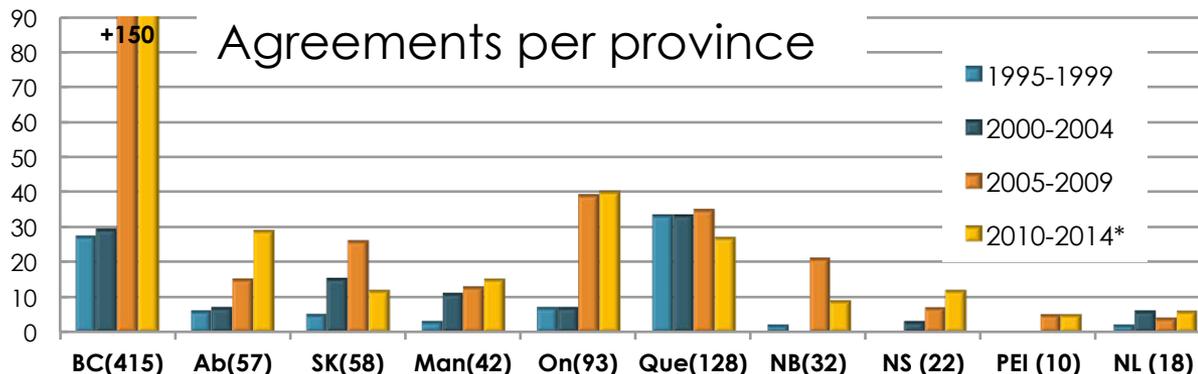
# A New Provincial Activism



Significant shift in provincial approaches to Indigenous policy

BC is early leader, but now Ontario, Alberta, NB, Quebec, etc.

\*substantive engagement



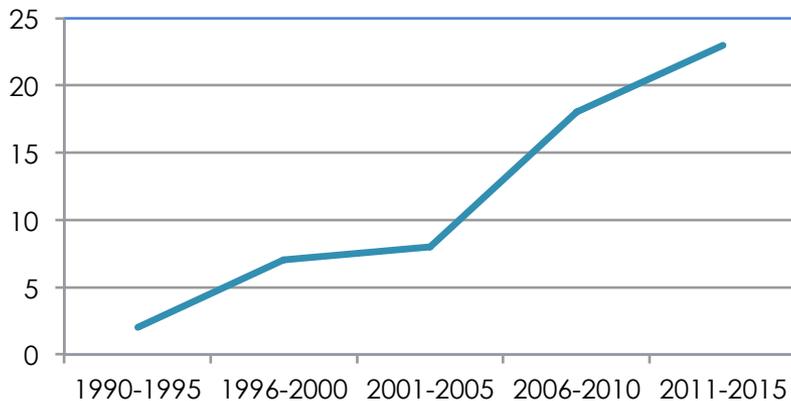
# Trilateral Governance?

- ▣ Many challenges...
- ▣ Key mechanism: trilateral agreements
  - ▣ Sector-specific (ex. health care) or comprehensive (ex. Kelowna)
- ▣ Do they work?
- ▣ We know very little about them...
  - ▣ Different from bilateral?
- ▣ Ongoing work
  - ▣ SSHRC, INAC funding

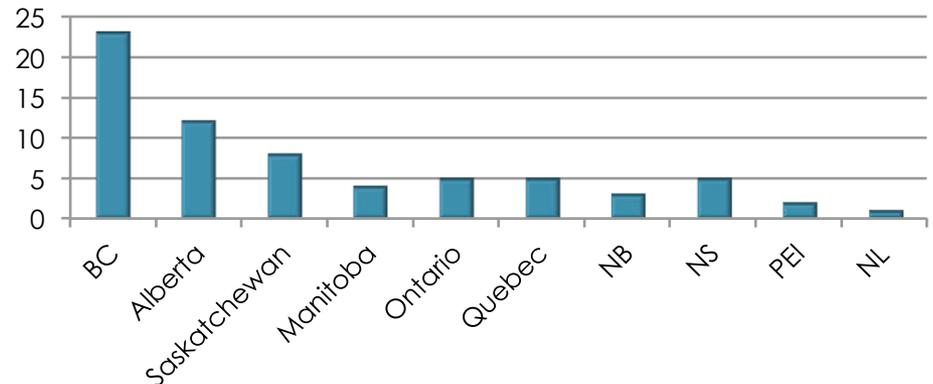
# Existing Models

- More than 250 trilateral agreements between federal, provincial and Indigenous partners since 1990s
  - Social policy: education (12); health care (9); child and family services (10); income support (4); others/ multiple (9)
- Uneven engagement of provinces : BC clearly “ahead”

**NB of Trilateral Agreements  
(social policy sectors only)**



**Agreements per provinces  
(1990-2015)**



# Trilateral Agreements...

- ▣ Level of engagement (intensity) vary
  - ▣ Statement of intent
  - ▣ Information-sharing
  - ▣ Collaboration, defining common goals
  - ▣ Pooling of resources / funds
  - ▣ Coordination in policy implementation / programs
  - ▣ Joint policy-making
  - ▣ Integrated governance

# Examples

- ▣ Most are mutual recognition / cooperation agreements
  - ▣ Ex. **Memorandum of Understanding on First Nations Health and Well-Being in Saskatchewan (2009)**
- ▣ Growing number of collaboration agreements
  - ▣ Ex. **Entente pour favoriser la réussite des élèves des Premières Nations au Québec (2012)**
- ▣ A few examples of joint policy-making, integrated governance
  - ▣ Ex. **Tripartite Framework Agreement on First Nation Health Governance in British Columbia (2011)**

# Lessons

- Real partnerships require real negotiations amongst *equal* partners
  - Tendency to impose “template” or strict negotiation mandate not conducive to success
  - Risk of disengagement if process is driven by a sole partner
- Takes a good dose of “principled pragmatism”
  - Importance of symbolic language (ex. nation to nation)
  - Agree to disagree on fundamentals (ex. Aboriginal and treaty rights, jurisdiction)

# Lessons

- ▣ More complex agreements take time
  - ▣ Need to build trust and capacity
  - ▣ Often start with collaboration, evolves into more comprehensive trilateral process
- ▣ An ongoing process, not a “one time” negotiation
  - ▣ Dedicated resources / plan for implementation
  - ▣ Dispute resolution mechanisms / evaluation processes

# Potential / Limits

- ▣ Can be transformative
  - ▣ Build trust, networks
  - ▣ Mobilize around common goals
  - ▣ Draw expertise and experience of all
  - ▣ If done well, a framework for implementing FPIC
- ▣ But...
  - ▣ Time consuming / efficiency (create more structures, processes)
  - ▣ Accountability
  - ▣ Transparency (often elite-driven / closed process)
  - ▣ Do not address fundamental structural issues
    - ▣ Ex. Obsolescence of Indian Ac as a framework for relationships

# Future?

- ▣ A new Kelowna Accord?
- ▣ Institutionalisation of the model in certain sectors?
  - ▣ Ex. health care, education
- ▣ Routinization of joint governance exercises?
- ▣ From bilateral federalism to *de facto* multilateral federalism?