

Treaty 8 First Nations of Alberta

Written Submission to the Standing Committee on Finance; August 14, 2009

Executive Summary

From 1996/97 to 2005/06 Department of Indian and Northern Affairs (DIAND) direct transfers to Canadian First Nations increased 0.59% per capita, per year. This figure was well below inflation, (2.36%) the growth rate of federal government revenues (4.21%), and the growth rate of gross domestic product (4.81%). Since 1993 the First Nations have been forced to accept funding agreements with annual increases of approximately 2%. These funding arrangements are based upon a formula calculated by the Department, which allocates according to the trickle down availability of funds from Main Estimates, and an internally calculated formula. The effect of this long term fiscal disparity is an annual recurring deficit. Currently, the benefits of citizenship accrued by an average First Nation member are approximately 45% of those accrued by an off-Reserve individual in Alberta. The financial transfer arrangements lack transparency, predictability, sustainability, and in no way reflect an equitable exchange of value compared to the lands described in Treaty No. 8.

The British North America Act (1876) contained specific provisions for the equitable treatment of First Nations people. This was an extension of the *Royal Proclamation (1763)*, by the Crown of the British Empire. The guiding principle of equitable exchange with First Nations and other aboriginal people around the world was formed by the Crown of Britain through more than 200 years of experience in managing the greatest colonial empire in the history of the world. For whatever reason, the Crown of Canada has not abided this time honoured policy – and to Canada's great economic and social detriment. The Equitable Principles contained in the *Constitution Act (1982)* and the *Royal Proclamation (1763)* are there to assist the long term well being of all citizens, not just First Nations' citizens. The British Empire understood through experience that it did not benefit trade and peaceful commerce to marginalize the aboriginal society. The recommendations herein are the first necessary steps towards a radically new plan to immediately begin an inclusive and prosperous vision for all Canadians.

Recommendation 1:

Index the Direct Transfers to First Nations to an equitable proportion of collected revenues from all levels of government on a regional basis.

There are a set of “indivisible benefits” which are accessible by First Nations’ Members; however, it is most important to recognize the disproportioned government spending that does not reach the land or people within the boundaries of First Nation Reserves. This is a vital distinction, as the primary benefit of government spending is not the services that are provided: it is the long term employment and real property appreciation created by programs that drives the largest benefits to Canadian citizens. For example, it is better to be a doctor than to be treated by one, it is better to be a builder of hospitals rather than a user, and so on.

Cost estimate: The current estimated shortfall of an equitable funding model is approximately 11 billion dollars in new spending per year, Canada wide (indexed to First Nations’ population growth and total Crown Revenue Growth).

Formula:

$$FT_{(n)} = \left(\left[\frac{R_{\text{Can}(n-1)}}{P_{\text{Can}(n-1)}} \right] + \left[\frac{R_{\text{Muni}(n-1)} + R_{\text{Prov}(n-1)} - T_{\text{Prov}(n-1)}}{P_{\text{Prov}(n-1)}} \right] \right) * (1 + r) * P_{\text{FN}(n)}$$

$FT_{(n)}$ is the Net Funding Transfer in the current year;

$R_{\text{Can}(n-1)}$ is the sum of all Federal Crown revenues in the previous year;

$P_{\text{Can}(n-1)}$ is the total Canadian population in the previous year;

$R_{\text{Prov}(n-1)}$ is the sum of all provincial crown revenues in the previous year;

$R_{\text{Muni}(n-1)}$ is the sum of all municipal property tax revenues in the previous year;

$T_{\text{Prov}(n-1)}$ are transfers from the federal crown to that province in that year;

$P_{\text{Prov}(n-1)}$ is the total provincial population in the previous year;

r is a floating average of growth in Crown revenues from year to year (8 year); and

$P_{\text{FN}(n)}$ is the First Nation Population projected for the current year.

Sample Calculation (Alberta Region only)

2007-08 Budget Revenue	242,420,000,000	35,013,000,000	745,700,800	
Population	33,441,277	3,585,100	3,585,100	
Per Capita	7,249	9,766	208	17,223

*net of transfers

Growth Factor Calculation

2007-2008 Revenue (Nation and Region)	278,178,700,800	
1999-2000 revenue	185,512,000,000	
8 Year Average Growth	5.19%	\$18,118

First Nation Population	94,025
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Total Transfer Amount required for fiscal parity - Alberta First Nations	\$1,703,553,219.24
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Actual Nation Revenues, Alberta Region, 2007-2008	703,869,000.00
Shortfall - Alberta Region only	999,684,219.24
Actual per capita	7,485.98
Per capita shortfall	10,632.11
Fiscal Comparison - First Nation individual to non-First Nation individual	43.46%

Recommendation 2:

Implement the recommendation of the Section 33.43 Auditor General's Report, 1996, through a transparent, predictable, and fair multi-year agreement structure.

Excerpt from: 1996 Report of the Auditor General of Canada

33.43: In 1996 the Department [of Indian and Northern Affairs] published its adoption of three principles of accountability, defined as follows:

- Transparency: the government's (First Nation as well as Department) method of operation is known by citizens.
- Disclosure: citizens are informed of the government's (First Nation as well as Department) plans and actions.
- Redress: citizens can appeal decisions affecting them individually or collectively.

Report of the Auditor General of Canada

Cost Estimate: less than 10 million dollars, one time.

This entails a simplification and redirection of accountability structures towards membership and away from the department. The

restructuring of multi-year agreements is being undertaken by the Department of Indian and Northern Affairs presently.

The current multi-year funding arrangements have no meaningful consultative redress to the actual community needs or the immense pressures of an increasingly young population. The arrangements have become predictable only insofar as they are predictably inadequate, and require year-to-year program reductions on a per capita and inflation adjusted basis. The disclosure of plans and actions of the Department, for example in the review of funding arrangements, is late, not substantive, and predetermined.

The current arrangements (due to shortfalls described in Recommendation 1) present planning challenges across all programs; however, the structure of disclosure, transparency, and redress complicate specific programs. The most notable areas are education, economic development, and capital:

- Long term planning for First Nations is a considerable challenge because of the variability of funding streams, in particular in the program area of Economic Development. Education standards are challenged year after year, as multi-year agreements do not accommodate the explosive growth in First Nations' school age populations. There is no redress for unusually high nominal rolls or for highly variable provincial tuition agreements.
- Capital and infrastructure allocations are inconsistent, arbitrary, and appear to be based on a highly politicized model requiring consistent lobbying by Chiefs and Councils to fund essential projects, such as water and wastewater.

Each First Nation files more than 1,000 pages of reporting each year under an administrative relationship. These arrangements have been repeatedly condemned by the Auditor General of Canada as wasteful and not meaningfully accountable.

Recommendation 3:

Negotiate direct “Treaty Based Funding Agreements” which create a government-to-government relationship between the Crown of Canada and First Nations’ governments and appropriate funding arrangements thereto.

Cost Estimate: as per Recommendation 1.

All First Nations in Alberta have a relationship with the Crown of Canada through the Department of Indian and Northern Affairs – Alberta Region, and the current arrangements/administration of the relationship is consistent with 142 year old *Indian Act*. The very title of the legislation is derogatory to First Nations people, and the content is no better. The Act enables a system of ‘enfranchisement’, which is a euphemism for cultural genocide. The Act was created unilaterally without consulting First Nations. The Treaties, by contrast, were enacted through a more consultative and good-faith negotiation. Most First Nations continue to hold the Treaties as a sacred trust between their First Nation and the Crown. Therefore, the Treaties are a more legitimate basis for good faith negotiation than the *Indian Act*.

A Treaty-Based funding arrangement would create an unconditional transfer to a First Nation. This would then permit an appropriate flow of accountability from the First Nations’ electorate to its Council. Currently, First Nations’ councils in Alberta have split accountability: they are financial accountable to the DIAND – Alberta Region, but politically accountable to their electorate. This split accountability creates no real accountability.

A Treaty-Based relationship would simplify reporting to key Quality of Life indicators and annual Audited Financial Statements. First Nations membership would be responsible for holding their Councils accountable through direct democratic action.