

POLICY SERIES



Respecting the Seventh Generation: A voluntary plan for relocating non-viable Native reserves

By Joseph Quesnel



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Executive Summary

In 2006, the Canadian public and policy-makers were shocked at the situation on Kashechewan First Nation, a small indigenous community in Northern Ontario. The community faced continual flooding and chronic infrastructure issues, and it lacked employment and meaningful economic development. A controversy surrounded Alan Pope, a federal representative who stated that the isolated location of the reserve was actually the problem and that new funding would not only not make the problems go away, it would exacerbate them. He called for the reserve to relocate close to Timmins, Ontario.

Kashechewan is an example of a non-viable reserve, where isolation from the mainstream economy makes it virtually impossible for the community to enjoy a meaningful, independent economy.

When discussing the issues, policy-makers should bear in mind that a land base is not enough when building a viable economy. The land must be capable of being put to productive use. The community must also be able to produce a needed good or service that can be sold competitively in a global market.

Throughout Canada's history, Indian reserves were deliberately placed on marginal lands. They were intended to warehouse First Nations while they prepared for enfranchisement and settlers built the country.

This paper is an attempt to address the reality that rather than continually pumping money into the most isolated, non-viable reserves, First Nations would be better served by focusing on reserves that are closer to urban centres and are in a better position to become viable if reforms are made to allow true Native economic empowerment. Despite the attachment of many First Nations people to their ancestral homes, the long-term interests of the community and its members' human rights should come before that attachment.

One should also remember that, historically, indigenous peoples have always moved around and reserves are not their creation. In addition, attachment to a piece of land does not make one indigenous. Moreover, Canada should look to the extreme example of Australia as to where it does not want to end up. Serious sexual abuse and chronic child neglect forced its government to take control of some indigenous communities.

While this paper calls for voluntary solutions, constitutional protection of Aboriginal title prevents the federal government from taking over indigenous lands or reserves, so First Nations need not fear a coercive approach.

The only other possible remedy would be for Native communities to voluntarily surrender their Aboriginal title, but this requires a full community vote.

This paper calls for indigenous leaders to work voluntarily with Ottawa in developing a strategy for the relocation of the worst non-viable reserves. This could involve the creation of new reserves near urban centres as well as multi-year financial support for band members who opt to live in the city instead of an alternative reserve site. This assistance would include employment, social assistance, housing and life-skills training in lieu of reserve funding, so the proposal is as revenue neutral as possible.

After all, confinement in an isolated area without hope is a recipe for social dysfunction. It is no wonder communities such as Kashechewan suffer from obscene levels of suicide, addiction, marital breakdowns and violence.

This paper contends that these social ills are symptoms of the underlying economic problems. As Québécois singer Félix Leclerc said, "The best way to kill a man is to pay him to do nothing." Similarly, indigenous author Calvin Helin documented the psychological effects of government dependency in his book *Dances with Dependency*, noting that the worst effects are felt by the average people who lose their self-respect because they are not contributing to their own development and future. This paper is an attempt to change this all too-common occurrence.

“Historically, indigenous peoples have always moved around and reserves are not their creation. In addition, attachment to a piece of land does not make one indigenous.”

Background

Within many traditional indigenous teachings, there is the concept that one should respect the seventh generation. This is generally interpreted to mean that decision-making should always take into consideration the interests of those who come after. While this teaching is often used within an environmental context, it is true that it can equally be applied to issues of poverty, hopelessness and deprivation. I hope indigenous leaders will consider this teaching when they look at the condition of their people within communities that I describe as “non-viable reserves.”

This proposal involves First Nation treaty reserve lands. In some instances, this study envisions moving residents voluntarily

Reserves were usually placed on lands that are isolated from markets and are of marginal economic value. In contrast, this proposal calls for indigenous leaders to focus on allowing their communities access to employment and educational opportunities that may mean relocation.

through financial offers. It also involves the creativity of indigenous leaders in finding suitable alternative settlements in order to safeguard the interest of future generations. This paper also recommends assisting band members from non-viable reserves who opt to relocate to an urban centre. This proposal is not a secret plan to remove all Status Indians from their treaty lands through government decree so that commercial interests can exploit natural resources, which many indigenous leaders believe is behind any proposal that involves treaty lands. This plan does not alter treaty rights or constitutionally protected Aboriginal rights.

This proposal is also about an honest look at both the political economy of Canada and at why reserves were created in the first place. Unfortunately, the government did not intend for First Nations living on reserves to enter the commercial mainstream.

Reserves were created as places to warehouse Indians while they prepared for entry into life off the reserve and as a means to not inconvenience incoming settlers. Reserves were usually placed on lands that are isolated from markets and are of marginal economic value. In contrast, this proposal calls for indigenous leaders to focus on allowing their communities access to employment and educational opportunities that may mean relocation. This relocation, however, will be in the best interests of community members and their descendants.

It would also involve a tremendous amount of foresight about the viability of a new site. This proposal is not about repeating the failed relocation of the Davis Inlet Innu to Natuashish, Labrador, in 2002, where they were merely shifted from one hopeless area to another.

The Kashechewan Case

In November 2006, a special federal representative presented Indian Affairs Minister Jim Prentice with a series of unprecedented recommendations. Alan Pope strongly advised that the entire First Nation community of Kashechewan uproot itself and move to a nearby urban centre. Although Pope recommended many options, the fact that he tackled the matter of how isolation and location were part of the problem set his report above many that avoid this “elephant” in the room.

This came after the federal government’s earlier announcement that it could not afford to move the community a short distance away on higher ground. Pope put it this way:

I recommend that a new reserve be created for the Kashechewan First Nations, on the outskirts, but within the geographic boundaries of the City of Timmins because of the benefits it gives to the communities of Kashechewan and in particular the young people of Kashechewan. We’re talking about how to help a community that is in desperate need of help, with three evacuations in two years and all of the anxiety and unrest that comes from that, and the fear of the children and the families for more of the same.¹

The federal government and the First Nation commissioned the report because they were unsure of how to proceed after the community encountered so many distressing problems. Dangerous levels of *E. coli* bacteria were found in the reserve’s drinking water, which led to an evacuation of residents. Moreover, the community had to leave three times in 15 months due to constant flooding and the pollution in its water supply.

Kashechewan Chief Jonathan Solomon presented the proposals to the community of about 1,600. As part of the recommendations, residents would retain access to their traditional territories for fishing, hunting and gathering activities as well as any community or ceremonial events. Despite initial support for the move, the community eventually resolved to remain on the reserve. In fact, in July 2007, the federal government had already entered into an agreement with Kashechewan to redevelop the entire community, complete with an infrastructure overhaul.²

While it is hoped this community will advance socially and economically through this redevelopment, whether this is ultimately a wise decision is questionable. It is true that some of the problems confronting this reserve can be solved, such as the issues relating to water. However, it is undeniable that some problems are connected to the isolated nature of the reserve lands. Kashechewan is not close enough to Timmins to allow community members to take advantage of opportunities there. The *E. coli* outbreak is related to the decision to locate the intake pipe for the community’s water-treatment plant downstream from a sewage location as well as the lack of training among water-treatment personnel, not to mention the lack of government inspections. Arguably, these problems are solvable through concerted effort from all levels of government. The difficulty, as even Pope boldly identified, is that fixing the infrastructure will not address the underlying problems associated with its isolation and the lack of opportunities.

However, like many First Nation communities, Kashechewan has other problems that are not easily solvable. It is located on a flood plain on the Albany River.

Being in this geographic location, however, does not necessarily mean the community should be disbanded. After all, many communities are located near areas prone to flooding and earthquakes and many are even in the shadow of volcanoes. This geographic problem and other immutable conditions compel such a drastic move.

According to band officials, Kashechewan suffers from an 80 to 90 per cent unemployment rate.³ As with many reserves, the largest employer within the community is the band administration. Most funding comes from governments outside the community, e.g., the federal government. The problem, however, is exacerbated in isolated communities such as Kashechewan. The reserve is far from economic markets, and it sustains high transportation costs to bring in goods. Thus, the cost of living is relatively high. The community is linked to the outside world by a winter road and is only accessibly by plane for much of the year, which places it in a very non-competitive position economically.

Because of the low levels of private job creation and a high cost of living, residents not fortunate enough to obtain a coveted band administration position or a service-delivery job are abandoned to hopelessness and despair, as they are not able to change their condition. These realities are quite likely why Pope commented that despite his call for increased infrastructure and service dollars, there were systemic problems that cash could never solve. Pope concluded, "To remain in isolation and with no access to income or employment opportunities is to sentence this community to despair and poverty."⁴

However, it bears emphasizing that even isolated communities can take advantage of economic opportunities. These days, more jobs are reliant on the knowledge-based economy. Some U.S. tribes, despite some isolation, have created opportunities in fields as diverse as graphic design, insurance and financial management.

These jobs do not depend on natural resources, and with the Internet, employment opportunities can be created far from physical job sites. Therefore, communities should exhaust all their economic options before committing themselves to the path of a non-viable reserve in need of the options discussed herein.

To be confined to an isolated area without hope is a recipe for social dysfunction. Is it no wonder communities such as Kashechewan suffer from obscene levels of suicide, addiction, marital breakdown and violence. This paper contends these social ills are symptoms of the underlying economic problems. As Québécois singer Félix Leclerc said, "The best way to kill a man is to pay him to do nothing." Similarly, in his book *Dances with Dependency*, indigenous author Calvin Helin documented the psychological effects of government dependency, noting that the average people who lose their self-respect because they are not contributing to their own development and future feel the worst effects.⁵

Every year, the federal government must put money into management interventions on Native reserves. At any one moment, several dozen band administrations are under some form of co-management or third-party intervention. Some of the most non-viable reserves seem to be more susceptible to this type of intervention, which reportedly costs indigenous communities about \$10,000 to \$17,000 per month in fees that are paid to the outside management firm out of band operational

funds.⁶ The Ministry of Indian and Northern Affairs has a remedial management strategy that involves intervention in a band government's operations if a budget deficit becomes unmanageable for the administration. This is becoming increasingly common as more reserves are placed under co-management or drastic third-party management. Attempting to improve the conditions for some of the most isolated and non-viable reserves would serve to lower the cost of these constant interventions and prevent the undignified use of this instrument.

To be confined to an isolated area without hope is a recipe for social dysfunction. Is it no wonder communities such as Kashechewan suffer from obscene levels of suicide, addiction, marital breakdown and violence.

The Heart of the Matter: Non-viable Reserves

This conclusion is what really separates Pope's report from other commissioned studies. He uttered the unthinkable: The reserve location is the problem and more money cannot make the problems go away.

After all, numerous studies point to the reality that income, housing standards and other important indicators improve for First Nations people who live in urban centres as opposed to the reserve. Thus, we know better outcomes can come from moving.

This study asserts that governments should get out of the reactive game, develop a strategy to deal with what I call "non-viable reserves" and work with these First Nations to voluntarily relocate these reserves to better settlement areas. This is not a call for urbanization as the only solution to the problem. Many First Nations can survive economically without moving to urban centres. Rather, urbanization is one potential solution that First Nations should not be afraid of if it becomes necessary or inevitable. In addition, this proposal is aimed at First Nation leaders who wield great power over opinion within the indigenous community. For the sake of the next generation, they should forget their political squabbles with each other and governments and come together to improve their communities' living conditions. Indigenous philosophy calls for indigenous people to think of the seventh generation when making decisions. This involves considering descendants up to the seventh generation, which is approximately 200 years. This proposal is also conscious of the tremendous value indigenous peoples place on the concept of land and traditional territory. The plan outlined here attempts to engage that issue and to develop proposals that are sensitive to that value.

Non-viable Reserves and Canada's Political Economy

One wishes that Kashechewan First Nation were an isolated case study. Sadly, it is not. While all First Nation communities face challenges that are greater than the Canadian norm, certain First Nations contend with challenges that are more chronic and dire. Media and public attention placed Kashechewan on the government's radar. In other words, it takes a crisis to focus the attention. In some circles, it is often asserted in a tongue-in-cheek manner that a crisis is a terrible thing to waste. This particular crisis was indeed wasted. It should have led to a greater debate about the viability of many First Nation reserves; instead, it led to a muted discussion and a return to the status quo.

An often-stated claim is that First Nations only require a land base to prosper.⁷ At the third triennial Aboriginal Policy Research Conference, held in Ottawa in March 2009, (which this author attended), many First Nation activists and policy researchers claimed that securing a land base was the primary need of all First Nation communities. Issues such as economic development, democratic accountability and band reform were all secondary issues that flow out of that primary goal.

If one understands how a modern market economy works, one sees that this claim runs contrary to logic and the way the real world works. Having a land base in and of itself cannot bring about prosperity for indigenous peoples or anyone else. Having a secure land base will not create self-reliance. The problem is that not all land is created equal. This explains the difference in market prices for various pieces of land. What actually matters is what productive use the land is put to or as political scientist Tom Flanagan said, "Land is most valuable

when it can be put to its most profitable use."⁸ In other words, if a person cannot produce a good that other people actually desire and find a way to bring the good to market in a cost-effective way, the economy is not viable.

The Royal Commission on Aboriginal Peoples (RCAP) was based on the false premise that all one had to do was create Aboriginal economies and that all the First Nations need is a reliable land base and everything will work itself out. In their 2008 work *Disrobing the Aboriginal Industry*, Frances Widdowson and Albert Howard cleverly identify the problems inherent in this thinking by comparing it to ideas expressed in the 1989 film *Field of Dreams*. The protagonist, Ray Kinsella, is told to build a baseball stadium in his cornfield: "If you build it, they will come." The logic being that merely possessing the structures will guarantee a positive, desired outcome.

In the case of some Aboriginals, the belief is that if autonomous economic and political structures are put in place, dependency on government and dysfunction on the reserves will disappear. However, land and money alone do not create a viable economy; a viable economy needs a market before the production of needed goods.

Thus, it makes more sense to make sure in any discussion of Aboriginal economies or Aboriginal self-reliance that the central issue of whether a viable economy is being conceptualized is front and centre. RCAP's vision is useful insofar as it rejects state-based solutions, embraces the free market as the solution and recognizes the damaging effects of welfare dependency. However, it is clear that the 1966 Hawthorn Report, "A Survey of the Contemporary Indians of Canada," is more reflective of reality in its

understanding that the future of the First Nations lies in integrating into the modern economy, not retreating from it. As the report puts it:

What is suggested is that, insofar as the economic development of Indians lies primarily in wage and salaried employment, and that for most Indians such employment lies beyond commuting distance of their reserve, a large and increasing part of an expanded Indian Affairs branch budget should be used to support Indians who wish to leave the reserves.⁹

It is a sad fact of history that most reserve land is marginal land.¹⁰ Historically, the purpose of reserves was not to allow First Nations to become commercially viable communities but to place them on lands where they could prepare for "civilization."¹¹ They were to be protected from non-Aboriginal settlers during this time of tutelage in preparation for leaving the reserve and accepting the obligations of enfranchisement. Within the political economy of Canadian historical development, reserve lands were never part of the capitalist development of Canada.¹² When settlers were encouraged to come to Canada, they were placed on land that was economically viable and where they could prosper. This was not the case with First Nations. The best solution for most First Nations now is to find a way to make the best of this situation and integrate into the mainstream economy as much as possible.

To separate the reserves into viable and non-viable, it is necessary to identify the characteristics that make non-viable reserves unique.

- The first quality is their **isolation, both geographically and economically, from the mainstream.** By far, this leads to many other challenges. In a modern

context, a community cannot survive long if it does not possess the capability to produce a good or service that can be traded in the larger market. Under the *Indian Act*, First Nations face the added challenge of obstacles to private sector job creation.

- Another permanent feature of these communities is the tremendous added costs of living. Living in a community far from any highway requires goods and people to be flown in at great expense. In economic terms, this isolation creates high transportation costs. With these added costs, these areas would not be economically competitive even if capital were released.

Thus, a non-viable reserve lacks the foundations for economic success. The dictionary definition of "viable" is "capable of living" and "having the ability to grow, expand and develop." This second definition is closer to the definition meant by this study.

There are many reserves in a better position than the reserves identified here. In particular, those closer to urban centres and viable markets stand a better chance of growing and have done so. The Westbank reserve across from Kelowna and the Osoyoos reserve, also in British Columbia, with its own winery, are both good examples. Residents are able to obtain jobs in these centres or start businesses without prohibitive commercial transportation costs, which is not the case in isolated areas.

It should also be taken into consideration that indigenous people have an inherent human right to be exposed to all of the varieties that human life has to offer. In 1966, the government-commissioned Hawthorn Report stated, "[T]he growing danger that a majority of Indians may become more-or-less permanently isolated, displaced, unemployed and under-employed

and dependent group who can find no useful or meaningful role in an increasingly complex urban industrial economy.” Unfortunately, for many First Nations, Hawthorn’s prediction has become a reality.

As Aboriginal policy expert Gordon Gibson argues, First Nation individuals have a right to remain in their communities and live according to their traditional ways. However, it would be unfair that such a right combined with geographic isolation would then mean other individuals would be denied the right to experience the “other side” and decide for themselves if they wish to partake in that world.¹³ In the case of Kashechewan First Nation, Pope made an indirect reference to this right to a life of “meaningful options” when he recommended a move closer to Timmins. He noted, “[T]he young people of Kashechewan will be the greatest beneficiaries of a new era of intellectual and occupational advancement and fulfillment.”¹⁴

It should also be taken into consideration that indigenous people have an inherent human right to be exposed to all of the varieties that human life has to offer.

A New Economic Strategy for First Nations

Rather than maintaining, at great economic and human cost, all the reserves that were created out of the *Indian Act*, it may be time for First Nation communities to focus on following a more rational pattern of settlement. There are logical reasons Canada's settlement patterns follow a certain path: Towns and cities are located along a thin corridor that hugs the United States-Canada border. This is to be near to our largest trading partner and to benefit from economies of scale.

A better path is to recognize that some reserves are suited for viability and some are not. In addition, losses should be cut regarding non-viable reserves and attention should be given to making reserves with the most potential even more viable in the future.

If Native Canadians were excluded from the market economy, it would make sense for them to try to re-integrate into it. Unlike other groups whose populations had to follow and settle where the jobs were located, First Nations were confined to marginal lands and had little choice. During the middle of the last century, millions of Canadians left the farms and small towns in the country, and wage labourers and career professionals flooded into the new urban centres. Lacking education or oftentimes a basic proficiency in English or French and tied to their traditional communities, indigenous people did not make this move or they found it extremely difficult to make. Thus, their income and lifestyles did not advance apace with most Canadians, and Aboriginals were stuck in the paternalism of the "relief-based" economy of the reserve.

This was unfortunate, as it left indigenous people marginalized from the mainstream economy and denied them opportunity and choice. John Sutton Lutz, a professor of history at the University of Victoria, documented in his book *Makuk: A New History of Aboriginal-White Relations* how indigenous peoples in the nineteenth century were slowly beginning to integrate into the wage economy.¹⁵ Looking at the province of British Columbia, Lutz provided evidence of a migration of First Nations into the food processing and canning industries, logging/wood processing, shipbuilding, construction, milling and mining.

Political scientist Frances Widdowson, drawing upon earlier as well as contemporary political economists,¹⁶ points out how it was much easier for indigenous peoples to integrate into the Canadian economy when it was in its mercantilist stage (principally during the fur trade period), as First Nations became intermediaries within the economy and exchanged furs for modern European goods from the settlers. Moreover, mercantilist exchange did not disrupt their subsistence-based economies (hunting, fishing and trapping). The two economies could co-exist. When Canada, which experienced the Industrial Revolution later than other countries, began to develop into an industrial market economy, First Nations people experienced more difficulty adapting. They were not used to the disciplined aspects of wage labour, as hunter-gatherer economies did not divide work into hour-long intervals. Moreover, Native communities were based on kinship relations, whereas the capitalist economy required constant contact with people of all backgrounds.

A Proud and Independent Past

Despite these serious difficulties, many indigenous people did successfully merge into the new economy. In the nineteenth century, First Nations on the Prairies were beginning to incorporate into modern agriculture.¹⁷ What changed everything, political economists tell us, was the impetus to settle the rest of Canada, particularly the West. In the case of both wage labour and independent farming, it became obvious to successive governments that it would be cheaper to import wage workers, farmers and labourers from Europe than to expend money training First Nations people to learn the necessary skills to adapt into the capitalist economy.¹⁸ After all, most of the European countries the settlers were coming from had some experience in modern capitalism, as they had undergone the shift from feudalism to capitalism and had become accustomed to wage labour. In the area of agriculture, the federal government did provide training, tools and equipment for First Nation farmers. One problem was that they were not becoming self-sufficient fast enough for the government, so integrating them became less of a priority, as opposed to spending money settling immigrants who had centuries of experience in agriculture.

Although many indigenous people did enter into agriculture, as evidenced by strong communities in southern Alberta and elsewhere, other factors would force them out, as documented by historical research by Tom Flanagan in his book *First Nations? Second Thoughts*.

The mechanization of agriculture presented problems, as it required more land, which reserves did not have. It also required credit to purchase equipment, seed and livestock. Because reserve land is immune from seizure for non-payment of debts, Indian farmers could not secure loans for such

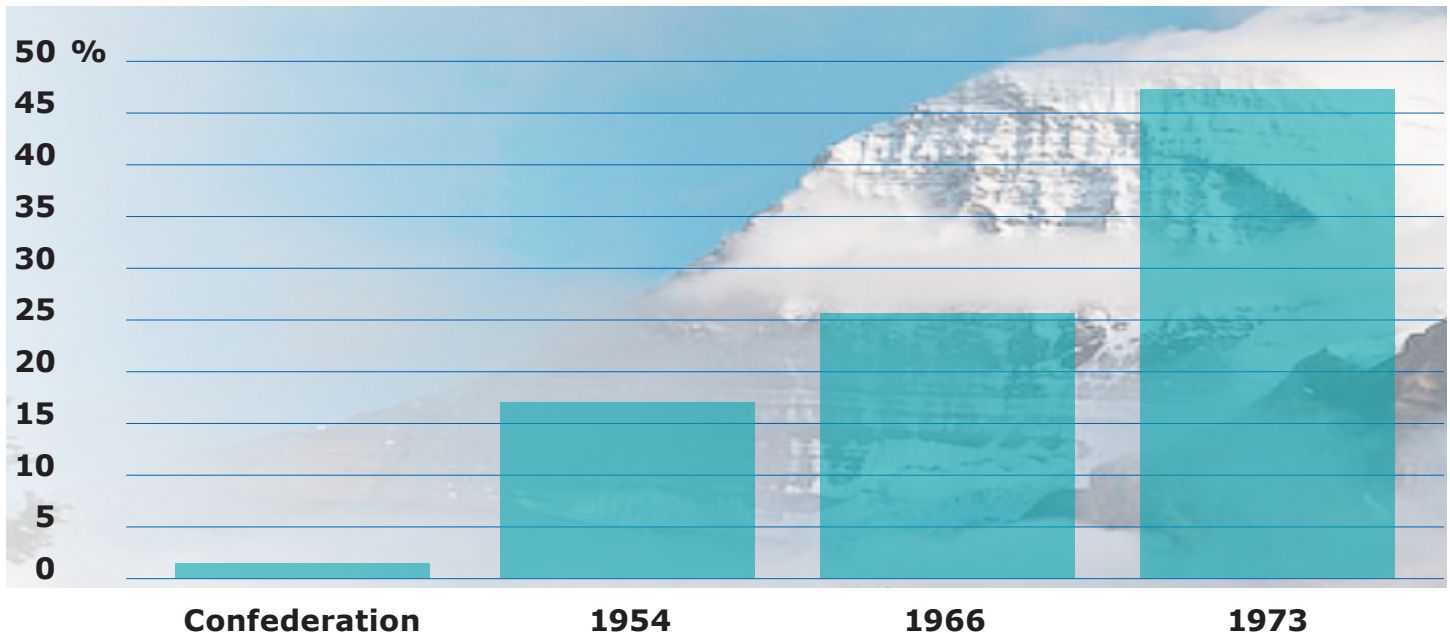
essential tools and before long, Indian farms were not very competitive. Eventually, agricultural labourers also became less in demand, which was what most workers on reserves were. In the West, the decline of the buffalo herds and traditional economic activities such as trapping and hunting made First Nations ripe for an impoverished life.

Historian Lutz documents how from the late nineteenth century onward, the provision of “relief” to supplement income came to be distributed through the local Indian agent and eventually would become a way of life for many. Since the government was preoccupied with settlement, it ceased allocating money and providing training to help these communities adjust.

In his studies of historical papers from British Columbia, Lutz documented how First Nations came to see welfare as an entitlement and a government obligation. This explains why, according to Indian agent estimates, at the time of Confederation, less than one per cent of income came from the government, but by 1954, it had risen to 17 per cent. In 1966, 25.4 per cent received assistance, more than eight times the provincial average.¹⁹ By 1972-73, dependency on social assistance had reached 47 per cent.

On a national scale, Flanagan has documented the data and observed a tendency toward increased dependency, not a movement from it. In *First Nations? Second Thoughts*, he notes welfare dependency rates on reserves sat at 36 per cent around 1966, well above rates for other Canadians.²⁰ In 1992, this rate reached 42 per cent compared to less than 10 per cent utilization by other Canadians. In 1998, the rate reached 45 per cent. Indian Affairs estimates it will reach 57 per cent by 2010. Of course, some regions were

Social Assistance Dependency among First Nations in British Columbia



Source: John Sutton Lutz, "A New History of Aboriginal-White Relations," p. 270.

much worse than others are. According to Flanagan, there was considerable regional variation, as on-reserve welfare utilization was reported to be within the 20-30 per cent range in Ontario and Quebec, 40-50 per cent in British Columbia, and 60-80 per cent in the Prairies and Atlantic Canada. Moreover, many Northern and Western reserves reported over 80 per cent social assistance, meaning almost everyone is dependent. Moreover, these numbers only reflected those 15 years of age and older. If it reflected children, he said, the picture would be even starker.

In summary, First Nations people were removed from the modern economy, dependent on social assistance for their livelihood and lived on marginal lands. This is the situation most First Nations, as well as most Inuit, are now in.

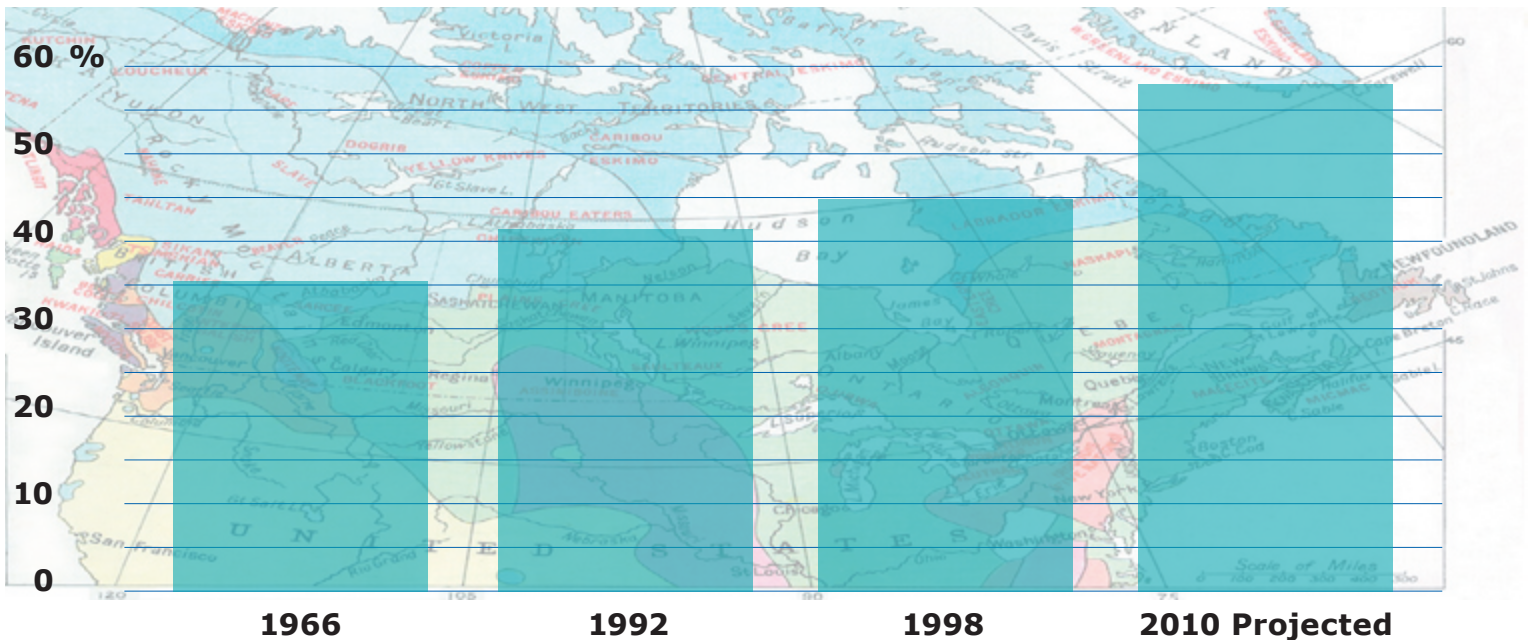
This is untenable and must change. Part of the problem is that many First Nations people live on lands that were not given

to them for reasons of progress, but their stagnation.²¹ Remaining on some of these reserves places these communities outside of global markets and economic opportunities. They are isolated from areas where they can obtain jobs in wage labour.

History cannot be reversed. Earlier decisions resulted in the pattern of settlements with which we are now familiar. Unless they are forced to move by a validly adjudicated land claim enforced by law, it is inconceivable to imagine non-Aboriginal communities relocating to accommodate past unfair land allocations.

Thus, the best strategy for Aboriginal communities is to make the best of the present land allocation. This does not include all the land that could be gained through land claims resolution and the treaty land entitlement. Some of the most non-viable reserves could be closed down and the settlements moved to better locations, and First Nations people could

National Social Assistance Dependency among First Nations



Source: John Sutton Lutz, "A New History of Aboriginal-White Relations," p. 270.

then focus on improving conditions on the most-viable reserves.

It is well known that some of the strongest impediments to viability in these communities are legislative obstacles, particularly those created by the *Indian Act*. It is roughly ten times harder for a business or investment activity to occur in a First Nations community than in a comparable non-Aboriginal community.²²

Manny Jules, head of the First Nations Tax Commission, estimates that the conversion of some reserve lands into protected fee simple property (fee simple

refers to property that can be freely sold or transferred) could increase their value by several thousand per cent. Rather than maintain the most non-viable lands, which only exist because of government policy, it would be rational to focus on commercializing the most viable lands. Business investors require stable land title and good infrastructure before they commit funds to a project. It would be a more economical use of resources to pour all efforts into making the viable lands more attractive to private sector capital.

It would be rational to focus on commercializing the most viable lands.

The Australian Case Study

In June 2007, the world took note of Australia when the country embarked on an ambitious program to combat child sexual abuse and other dysfunctions that had become common in Aboriginal communities. Of particular concern was the decision by the federal government to take over Northern Territory Aboriginal communities.²³ Although this prompted a number of Aboriginal organizations to protest the takeover, once the government spoke directly with indigenous leaders, many of them relented, as they realized how horrible conditions had become. One leader agreed to sign over a 99-year lease to the government, so it could address the sexual abuse issues.²⁴ Essentially, the government took over the territory to deal with the social dysfunction issues because they had become so bad.

In conjunction with indigenous communities, the program also included the quarantining of welfare payments to over 15,000 Aborigines.²⁵ This meant that the government would retain a portion of a social assistance cheque before it was delivered to individuals. Government leaders wanted to ensure the money was spent on essential items for children, as violence and child abuse had become rampant.

The point of mentioning the situation in Australia is to demonstrate how adverse conditions can become in some indigenous communities and to show the drastic measures one government was willing to take to correct the problem. It is not far-fetched to suggest that conditions could become as bad in Canada, if they are not already just as bad in some communities. We have the stories of Phoenix Sinclair and Gage Guimond,²⁶ which document some of the worst conditions in some communities, and they point to conditions that are ripe for more crises.

Dysfunctional behaviour is an issue that is becoming rampant on many reserves. Canadians were shocked a few years ago when two young children were left to die in the cold in Yellow Quill First Nation in Saskatchewan after their father dropped them in the snow during the dead of winter.

Whether or not Canada's reserves head toward a crisis on the level of Australia's, it is clear that dealing with the systemic issues now is better than waiting for things to reach the point where we have to discuss the constitutionality of taking over reserves or the quarantining of welfare payments. As mentioned above, it is also not clear if we have already reached this point on many reserves.

Government leaders wanted to ensure the money was spent on essential items for children, as violence and child abuse had become rampant.

Concepts of Land and the Reserve

This paper recognizes the importance that indigenous peoples attach to traditional land. For many, this attachment is primordial and spiritual, as their sense of place is connected to their religious mythologies. For many indigenous scholars and leaders, First Nations people belong on their lands because the Creator placed them there. Indigenous scholars such as Sakej Henderson, a professor of indigenous studies, argue that the relationship between land and water for indigenous peoples is distinct and resembles a covenant relationship similar to the bond between the Hebrew God and the land of Israel. This is odd given that many reserves are not located on land where the residents' ancestors lived. The colonial authorities developed the concept of the reserve, so it did not even originate within the First Nations. This should cause indigenous leaders and communities some pause when they attach eternal or primordial importance to this concept.

Within a secular and materialist context, this relates to the psychological sense of rootedness and stability. Mohawk scholar and activist Taiaiake Alfred asserts that finding their sense of place within their homelands is a necessary part of restoring healthy indigenous communities. Within the literature of psychology, there is indeed something to these arguments, as individuals develop their sense of a healthy self and the Other through their connection to ideas of home. These concepts, while sincerely held by spiritual people, have not been scrutinized when it comes to the modern realities of First Nation peoples. In Mohawk teachings, indigenous people are the Onkwehonweh (Original Beings), and they alone are the owners of the soil they occupy and none other shall hold it.²⁷

Although this attachment and its value to those who hold it should be acknowledged, this concept should not be shielded from scrutiny. The first issue is in recognizing that **indigenous peoples have always moved around throughout their history.** Tribal groupings have moved in response to population and food-source pressures. Despite this mythical belief in a primordial place, indigenous peoples are just as subject to decisions over whether to remain in a particular locale as is any other community.

Anthropological and archaeological data confirm that those whom we now call indigenous people were constantly on the move for environmental and survival reasons. In fact, the Bering Strait Theory, the most plausible explanation for the arrival of indigenous peoples, explains that indigenous people were originally immigrants to this continent, as they migrated from central Asia to North and South America via the Bering Sea land bridge. Thus, the ancestors of the modern First Nations likely came into North and South America via waves of migration, similar to the later arrivals from Europe. Other people arrived yet again from Asia during the last century.

It bears mentioning that in recent history First Nations have moved and resettled over different North American regions for economic and military-strategic reasons. For example, the modern Iroquois (presently known as Six Nations) are relatively recent arrivals to areas some of them inhabit in southern Ontario. Thus, while the sense of attachment is seen as primordial, in historical terms it is actually not. First Nations have indeed moved throughout history, both voluntarily and involuntarily. The difference with the

proposal envisioned here is that the reasons for moving would be economic and voluntary and would promote the non-oppression of indigenous peoples while providing them with the opportunities they are denied when they are restricted to living in isolated, non-viable communities.

Of course, this brings out the essential issue of what defines indigenous identity. Is it necessarily connected to land and other physical features such as lakes and forests? While many value these features, they do not actually constitute an identity. Are those First Nations people who move to urban centres suddenly not indigenous in their core identity because they have changed their address? Empirical data in Canada reveal that urbanizing does not necessarily mean a significant loss of indigenous language, spirituality or connectedness to place. Stripped of the elements that communities cherish, such as land, identity is reducible to the individuals who collectively believe they are a separate people with a specific destiny. It is the community and its members that define the people and are the most important.

The ultimate issue for indigenous leaders to understand is that individuals are more important than geography. One should never sacrifice individual well-being and human rights for a concept of attachment to land.

This reminds me of a scene in the film *Shake Hands with the Devil*. The film focuses on the struggles of Canadian General Roméo Dallaire, who is charged with the United Nations mission in Rwanda during the 1994 genocide.

At one point, Dallaire is told of a plan by the United Nations to exchange Tutsi civilians trapped in the capital city for Hutu collaborationists of the genocide. The Tutsis would go behind rebel lines where they would be safe from the

perpetrators of the genocide and Hutus would be safe from Tutsi reprisal from what happened during the genocide. To save lives, Dallaire approaches Tutsi leader Paul Kagame, who is forcefully trying to capture the city to stop the genocide of Tutsis. At first, Kagame rebuffs Dallaire's offer, saying he has no time, as he is fighting and "trying to save [my] country." Dallaire responds with the words, "And what is that country? Those mountains? Those trees? That lake over there? "

His point being that individual lives should always be of paramount concern.

In other international examples, it is also possible to conceive of indigenous people as divorced from the concept of a reserve. The Maori of New Zealand, although subject to treaties, do not have reserves, and they are heavily urbanized. Moreover, they retain their language and traditions and have organized politically and made gains in the nation's institutions. For example, Maori receive a guaranteed share of seats in the New Zealand parliament. When we know this, it becomes easier to see First Nations people maintaining an identity without necessarily living on a specific piece of land.

It is the community and its members that define the people and are the most important.

The Question of Treaty Rights and Aboriginal Title

Treaties in Canada envision an eternal relationship between the Crown and indigenous peoples (the title of “nation” is contested). At present and for the near future, First Nations will continue to prefer that the federal government treat them as collective bodies that are entitled to a bundle of rights. It is also highly unlikely that indigenous peoples in Canada will abandon their attachment to their ancestral homelands. Judgments from lower courts and the Supreme Court of Canada have declared that Aboriginal title is a constitutionally protected right guaranteed under section 35 of the Charter of Rights and Freedoms. Courts have also declared that Aboriginal title to traditional land does not derive from statute or even the English common law that grounds much of Canadian law but from the “long use and occupation” of indigenous peoples on that land. In other words, Aboriginal land title is treated differently than other forms of land ownership, or in legal terminology, the title is *sui generis*, meaning it is unique. Particularly worth noting is the historic 1997 *Delgamuukw* judgment, which ruled that Aboriginal land was different because it could only be held collectively and for the benefit of the community.

Historically, or at least from the *Royal Proclamation of 1763*, land occupied by indigenous peoples could not be transferred or sold to anyone but the Crown. This was to prevent the land from being sold to settlers who at the time were increasingly intruding on and claiming land that belonged to Indians.

Throughout history, courts have acknowledged that the central governments (at first the British colonial government and then

Ottawa at Confederation) maintain a fiduciary relationship with First Nation people. They have a constitutional duty to take care of First Nations and look after their best interests. Concerning land claims, for a long time it was arguable that the federal government did not exercise this obligation, as evidenced by the number of specific claims. These claims related to illegal breaches of signed treaties. Since the establishment of claims commissions across Canada, however, First Nations have been winning legal battles over land that was sold illegally to governments that granted rights to the land to third parties for development purposes. Nowadays, the legal position of Aboriginal title is much more secure and unlikely to change. Thus, this proposal does not affect claims to Aboriginal title over reserve lands.

Some legal practitioners and scholars believe it would be extremely difficult to alter the character of much reserve land. Lawyer and scholar Jack Woodward argued that one way for Aboriginal title to be extinguished in this post-Charter world would be through a voluntary extinguishment of an Indian community, which would quite likely necessitate a clear majority vote on the part of band members.²⁸

Thus, this proposal is not about necessarily affecting Aboriginal title or Aboriginal use of reserve lands; it is about a *voluntarily* negotiated settlement between the First Nation communities involved and the federal government.

Shutting Down the Rez?

This study does not advocate shutting down any reserves by force of law. Even if someone wanted to shut down a non-viable reserve, constitutional and legal issues would severely complicate doing so. Until 1982, Aboriginal title was capable of unilateral extinguishment by the federal government (as the only representative of the Crown). All that was necessary was a clearly defined federal law that called for it. Since the entrenchment of the Charter and legal Aboriginal rights, this has changed. Expropriation of reserve lands is still theoretically possible under sections of the *Indian Act*, but these actions must serve a legitimate public end or interest. It would seem this would not apply for the reasons discussed here.

It would seem to be a very difficult task to convince a court that the relocation of a reserve on even humanitarian or economic grounds is a justifiable infringement on Aboriginal title.

In the *Delgamuukw* decision, the court ruled that there was still a theoretical way to extinguish Aboriginal title unilaterally, but within the judgment, it appeared the justices were only envisioning that possibility for the sake of economic development or for reasons of dire federal importance.²⁹ The development of agriculture, forestry, mining and hydroelectric power, the building of infrastructure and the settlement of foreign populations to support these aims are all listed as potentially justifiable state objectives that might infringe on Aboriginal title.

However, it would seem to be a very difficult task to convince a court that the relocation of a reserve on even humanitarian or economic grounds is a justifiable infringement on Aboriginal title or that it could ever justify extinguishment of that title. Instead, it would be a more worthy course to engage in a discussion with First Nation communities and to provide financial inducements to relocate to more suitable areas.

Weighing the Options

Those are the constitutional and political realities, and they serve as a basis for this report's recommendations. Even if such realities did not exist, it would be unwise to try to force people from reserves even if governments had the unlimited right and power to do so. This paper sees voluntary relocation as an option *chosen by Canada's First Nations*.

With this in mind, some argue it is not worthwhile to move Indian reserves no matter how non-viable they are. They argue that the "harm" created by removing First Nations from their homes and traditional livelihoods would negate any benefits accrued by removing them from these environments. There is some sense and truth to this reasoning, as forcible removal from a community can be harmful. The strongest example is the residential schools system, where children were forcibly relocated to off-reserve schools in order to sever their connections with their communities.

Taiiaki Alfred is a Mohawk activist and director of the indigenous governance program at the University of Victoria. His research concerns the destabilizing effects of colonization, and he argues that disconnection from identity and community is one of the principal causes of dysfunction within First Nation communities.³⁰ He is partly correct, although other indigenous observers such as Calvin Helin argue that the disconnection from meaningful work and self-reliance as well as a dependency on the welfare system cause the great dysfunctions within Native societies. Some scholars such as Jeremy Kotkin and Thomas Sowell, however, point out that the absence of migration to places where opportunities are better is also responsible for much of the dysfunction.

Separation from traditional communities and lands can definitely be seen as a further

harm to indigenous peoples. This is also why this paper envisions a voluntary move on the part of these communities, which would ensure that First Nations people always maintain a connection to their traditional lands even if they do not live there. After all, there are Native reserves in northern parts of Alberta that are largely unpopulated, as the people chiefly live in non-Aboriginal centres, such as a First Nation community near Fort Smith, NWT.

Engaging with indigenous communities over the viability of certain reserves would be uncomfortable enough, but it seems that a protracted conflict with First Nations over closing certain reserves would breed more resentment toward the federal government for generations to come. It would make First Nation citizens and leaders more suspicious than ever before about government motives, and it would make Aboriginal support for positive public policy change that much more difficult to obtain. Thus, this paper sees a voluntary call from among First Nation leaders to create a strategy for dealing with non-viable reserves and to work with the federal and provincial governments to make that transition as well-thought-out and as comfortable as possible.

Retaining the status quo might be viable for some communities now, but there is no guarantee conditions would not worsen, even to the point where matters were in parts of Australia. The prevention of misery, the deprivation and the ongoing human rights abuses should outweigh the need to remain on a piece of land one considers integral to one's identity, especially considering that under constitutional arrangements in Canada, First Nation citizens would never lose access to their traditional homelands, as they would retain Aboriginal and and/or treaty title to them.

Voluntary Remedies

The proposal presented here foresees cooperation from indigenous leaders, and with encouragement and assistance from the federal government, the first proposal would call for the establishment of a national strategy to deal with the non-viable reserves. The federal government would develop a list of the most isolated, non-viable communities and provide assistance for relocation. As the Minister of Indian Affairs has statutory powers to divide reserves or create new ones, he or she could work with non-viable reserves to find a suitable alternative site. Many First Nations already have strong cases for Crown land under the treaty land entitlement process. This involves giving a First Nation primary consideration in the choice of unclaimed Crown land, because of an improper allocation of treaty reserve lands. Some authors estimate that many reserves could vastly expand in size due to this process. In Saskatchewan alone, most, if not all, reserves would experience growth due to treaty land entitlement.³¹ Why not use this land to secure viable settlement sites for the most isolated reserves? Many reserves did not receive the full allotment of land they were promised under the treaties. As part of this procedure, the communities located on non-viable lands could work with Ottawa to find settlement sites on unclaimed Crown land.

The main condition for receiving federal assistance should be that the First Nation must demonstrate the viability of the new site. It cannot share the same characteristics of the former site, and it must possess a potential economic foundation. Therefore, it would make sense for such communities to locate near viable urban centres. For example, for Kashechewan, Timmins, Ontario, was the logical location. For reserves in Manitoba,

this would mean locating close to Churchill, Brandon or Winnipeg.

One of the most encouraging factors under this proposal is that traditional territories belonging to the First Nations are quite large, so there is much space to choose from when selecting a new settlement site.

Option 1

The best option would be for First Nations to purchase lands closer to urban centres. For example, in the case of Manitoba, First Nations might select locations close to cities such as Churchill, Brandon or Winnipeg. Already, many First Nations have secured ownership over land that is far away from their actual reserves, so there is a precedent for this practice. Manitoba bands such as Long Plain First Nation have obtained land in Winnipeg, which they use for economic development purposes.

First Nations have already started this project through the treaty land entitlement process, where band governments are able to purchase land close to cities with their treaty entitlement money. It might also be wise to locate on lands that are closer to highways to tap into their commercial potential.

Lower transportation costs would decrease the transaction costs of doing businesses for First Nation communities. Further, it might also prove beneficial if groups of First Nations got together and co-operated on these moves. The fact that a former site is non-viable would necessitate the First Nation signing an agreement whereby they would not return to the site and use it as a permanent settlement. Using money that would have gone to band administration at the previous site, the federal government

would establish basic infrastructure, accommodations and service-delivery offices at the new site.

The main advantage of this plan is band members would never lose their inherent and constitutional rights to use the former site for traditional activities such as hunting, fishing and trapping as well as for community and ceremonial events. Constitutionally, members retain the Aboriginal title to the traditional site unless a legal or constitutional change is made to the land itself.

Option 2

Another voluntary plan would involve band members who opt out of relocating to a new site favoured by band council and the membership. These members may decide to live in an urban centre. The federal government should play a leading role in helping these individuals succeed in their new environment. Rather than waste time in endless squabbles with lower levels of government about responsibility for First Nation citizens, Ottawa should adopt the principal role, as they possess the constitutional authority under section 91 (24) over "Indians and Lands Reserved for Indians."

The federal government would be wisely exercising its fiduciary duty to help these band members. One proposal is for the federal government, as part of this non-viable reserves strategy, to create a new agency or department within Indian Affairs that would be dedicated to urban First Nation resettlement. Recognizing the tremendous challenges any on-reserve First Nations members face when coming to the city, this agency or department would extend to these individuals five to seven years of ongoing direct assistance for this move.

This would involve a guaranteed subsidized wage for full-time employment through the federal government, assistance with housing as well as assistance with any mental health issues, addiction services or life-skills training. This strategy would recognize the dysfunction that can come with reserve life and the unfamiliarity it brings with mainstream society and its expectations.

The individuals and families participating would have to maintain constant contact with department officials and provide regular progress updates. After their five-to-seven year contract expires, they will be asked to prepare for independent living. If they require assistance after that time, provincial or municipal bodies would provide it.

As much as possible, this new organization's creation and upkeep would be revenue neutral, as its funding would come from Ministry of Indian Affairs' monies that were already allocated to band services for those same individuals. Judging from current Indian Affairs' expenditures, data indicate that it takes as much as \$80,000 a year to support a typical family living on a typical reserve, although one suspects this figure may not exclude Indian Affairs and band-level administrative costs, so the figure is probably lower.³² Currently, more than half of the federal funding for First Nations is diverted through First Nation governments. Thus, this plan would use the money-follows-the-client model, as those services would be neutral to where that individual lives.

Conclusion

For decades, emphasis within Aboriginal policy has been placed on continuing the status quo where the dominant concern was to fund all First Nation communities as equally as possible and to deal with constant cost pressures created by the growing First Nation communities. Despite the billions spent, signs of social, psychological and economic dysfunction continue to grow. No one within government or dominant opinion-making communities really questions (openly at least, although there is evidence that many recognize this reality) whether the structure or very nature of these indigenous communities is exacerbating the problems. The situation on Kashechewan in Northern Ontario caused the public and elites within the government and media to consider whether isolation from the mainstream is the prime reason for dysfunction among so many First Nations. Similarly, Davis Inlet served to remind Canadians that hundreds of millions of dollars (about \$165-million according to Indian and Northern Affairs³³) and the best of intentions have brought no progress to that reserve's occupants and solved no pathologies.

The reason is that life on historically marginal lands that are isolated from global markets has cut off many remote communities from ever having a chance at viability. Even with reforms, many of these communities are not capable of generating long-term employment for their residents. Without access to meaningful career opportunities, many of the people have become despondent, which leads to high rates of alcoholism, domestic strife and other forms of violence.

This paper makes the case that indigenous leaders need to take seriously the call to consider the seventh generation in their decisions. Maintaining some of the most isolated communities indefinitely confines people to a life of misery, dysfunction and lack of opportunity. The leadership must work with the federal government to find alternative settlements in order to broaden the prospects of the next generations.

Even with reforms, many of these communities are not capable of generating long-term employment for their residents.

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Further Reading



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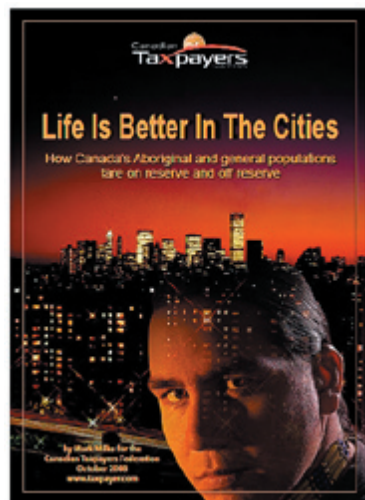
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