Conversations from the FRONTIER CENTRE FOR PUBLIC POLICY

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WITH Robert Nault, *Former Minister of Indian Affairs*

Robert Nault served as the Member of Parliament for Kenora-Rainy River in Northern Ontario for sixteen years, and as federal Minister of Indian Affairs and Northern Development from 1999 until 2003. His length of service in that challenging portfolio is second only to the Rt. Hon. Jean Chrétien. Prior to becoming Minister, Mr. Nault took on a number of important and challenging tasks. He served as Parliamentary Secretary to the Ministers of Labour and Human Resources Development – during which time he was responsible for shepherding the Employment Insurance Act through the House of Commons and leading labour market training negotiations with the provinces. He also chaired the government caucus committee that recommended and took the lead on the commercialization of Canadian National. Upon retiring from politics in 2004 Mr. Nault founded Samdan Consulting. He has worked with a number of high-technology firms, First Nations, and major public sector organizations including Manitoba Hydro and the Government of Saskatchewan. He was an honored guest of the Frontier Centre's Aboriginal Governance Index project at the Centre's Big Bear Gala in Winnipeg on June 18th, 2010 which recognized high performing First Nations for good governance.

Frontier Centre: Can you recount your own experiences with the First Nations Governance Act?

Robert Nault: It started very early on in my political career. One of the things that came to light as a Member of Parliament before I was Minister was just how inadequate the Indian Act was and how difficult it was for First Nations to make progress using a piece of legislation that really didn't have the components necessary for success. What had become clear to me when I got a chance to be the Minister was that if we were going to make some serious progress in this country and have First Nations people part of our economy and have an order of government that really was taken seriously by other governments then we would have to move away from the Indian Act and put in some modern government structures. That really was the focus and it came from many people. You hear in the grassroots the frustration with elections, the frustrations with not knowing where the money went, frustrations with the lack of an economy and people being poor. They basically wanted to be lifted up. I think governance is where you need to start if you want to do that.

FC: During that time there was organized opposition from AFN and some chiefs. To what extent do you see organized Aboriginal interest groups and lobby groups involved in preventing reform in Aboriginal policy?

RN: I think the key word is mistrust. It's still not at the point where First Nations leaders believe that the government of Canada and the Ministers, like myself, were legitimately concerned and cared and wanted to see improvements. They still see it as maybe some sort of cheap parlour trick that we're trying to take away rights when in fact we were trying to bring alive rights that exist but that have been dormant for years and years and years. I still think there is a need for leadership to move beyond that fear and not to be out pushing against any good initiatives and any change. If we're going to see success in this country, as far as I can tell and so far I have not been proven wrong, the only way we're going to make progress is if you have a legislation coming out of the Federal House because First Nations are a part of the federal system so the federal government has a responsibility, a fiduciary obligation to bring that kind of legislation forward. People cannot be afraid of it if it's done collectively in partnership together. I don't see any reason why we can't make those changes and make them work for people.

FC: Looking back now, would there have been a different approach that you would have taken in reforming band election codes and bringing financial accountability?

RN: If I had to do it again I think I would have tried to convince the Prime Minister that we had to do this with a non-partisan committee of the House which includes all parties and get the politics out of it. I was quite shocked at how much politics were played with the lives of Aboriginal people. When the Governance Bill came through it was the NDP saying that we had no right to do it. The Reform Party totally opposed it for whatever reason I don't really know. So if I had to do it again I would try and get it out of the political arena in such to make it more non-partisan. Because really, this is about improving the First Nations peoples lives and Canada as a whole. It should be above politics. A second thing that I think is important to remember that we should look at next is that maybe we bit off more than we could chew by making it national. Maybe we should have started it in one region and then work our way through with the First Nations that wanted to do it and then at some point everybody would come in. Frankly, once they saw it in action I think everyone would have bought it in at some point.

FC: Drawing from your own experience, what role can the Minister of Indian Affairs play in advancing good Aboriginal policy?

RN: I think the Minister of Indian Affairs can be extremely important in the process. It's his job on behalf of Cabinet to bring forward the ideas and recommendations of the Aboriginal leadership, bring forward a voice for change and not being, as I've said many times, not being afraid of controversy because change brings controversy and it sometimes brings the downside of politics. It's easy to be loved if you don't do anything. That's always been my view.

Leadership and the elders that I've talked said that you're going to have to some heat if you're going to make change. So I think the Minister has to be proactive, has to be a person that can bring forward suggestions and arguments and move the debate forward. I never get too uptight with the fact that the Governance Bill never passed because the discussion of governance has really gotten to be a full blown process now on its own. It was just in its infancy, in my view, when I got there and now it's talked about all the time. Your organization has played a big role in that because now you are moving it out of politics even more and still discussing the importance of governance. I see the Minister's role as paramount but at the same time it's not just about one person. I once said on national TV and I said it to make a point "If you read the Indian Act the most powerful person in the Indian Act is the Minister of Indian Affairs and that shouldn't be the case. When you're running government the most powerful person in any community should be the electorate, the individuals who get to vote. They weren't really as in power as they thought they were it was really the Minister. I think that needs to change." I think that's a good example of why the Minister has to play an active role.

FC: How do you feel about what's happened on the Aboriginal file over the last few years?

RN: I don't think a whole lot has happened. I think it's been pretty quiet. There has been very little financial resources of any significance been put into the system. I still think the First Nations and because of the government's lack of interest are not moving as quickly on building a First Nation economy and on the economic development side I think there could be a lot more done by the Government of Canada working with First Nations governments. There's a lot of pent up need and I still think there's a lot of good partnerships and opportunities but a lot of times the First Nations don't have the beginnings of that equity necessary to buy into a partnership and I think Canada should play a role and help with that. On the other side, I don't see the First Nation leadership really pressing the government. Seems to me that I had a protest every second day and it's pretty quiet these days. Don't know if I'm just nostalgic or what but they don't seem to be near as aggressive as they were under my regime as they are now. Maybe Chuck Strahl is thankful for all that but I still think that if you want change then you have to be out there pursuing it, to work hard at it. I still think you need to make legislative change in the House of Commons if you're going to improve governance and the lives of First Nations people.

FC: What role do you see think tanks and advocacy organizations playing in improving Aboriginal policy?

RN: Don't forget, First Nations children and people generally are in the same information age as everybody else. One thing about think tanks and policy development is that now you can access First Nations citizens and they can talk to you on the internet and they can talk to policy think tanks and be more active. The other thing that I think has changed dramatically in the more than 20 years since I first started in politics is that there are much more engaged First Nations citizens with higher education levels and people who really can make a difference. Your kind of think tank and then others can bring those people together and make them a part of the solution to some of the issues that are confronting the First Nations citizens in this country.

FC: BC Aboriginal leader, Manny Jules, is working on bringing forward a property ownership act. First Nations like the Nisga'a in British Columbia that have introduced a few simple property rights. How do you feel about that initiative? Do you think that's something that could work in Canada?

RN: I know a bit more about that than you might think. I was over visiting Manny about a month ago. He asked me to come and do some taping advocating the importance of the Taxation Commission. He gave me a full briefing of the interest of having his own fee simple process and Indian land registry system in Canada so that the lands are no longer owned by the Crown but they're in essence owned by First Nations themselves and have a legal structure to go with it. I think that's just the next natural step in creating a real economy.

For Manny and people like myself we very much are of the same mind and have been for a long time in that you cannot create an economy with the Indian Act. It was never meant to be a piece of legislation that would build a vibrant First Nation community. It was meant to house First Nations and somehow protect them from Europeans to basically be a structure that you rely on the federal government and it's like a parent-child relationship instead of having a real partnership. These are the kinds of steps, that Manny's talking about, that really need to be put in place. They are governance in one piece of the puzzle and one step at a time. Maybe that's the only approach you can take is to take it one step at a time. I always believed you had to be a little more comprehensive but Manny's been proving me wrong for some time because he keeps moving on these agenda's and getting these pieces of legislation and these important changes in getting away from the Indian Act and into this whole issue of land fee simple.

I'm working now as a consultant with a First Nation and we're developing a land structure and we're looking at and are very interested in what the Nisga'a are doing because quite frankly that's how you build an economy, that's how you build a housing market. If you don't have a free market where mortgages are taken and where the houses are worth something on reserves you take away a big component of the value of the land on a reserve. I'm very much supportive of what those guys are doing and I hope Manny's successful because that's just another one of those small pieces of the puzzle and then pretty soon the whole picture and vision is there and that's what you need to do.

FC: What role do you see First Nations leaders and band leaders actualizing band governance reform in their communities?

RN: My advice, and I have given this same seminar and speech so many times, is fairly simple and clear at least to me. First Nations leaders don't have to accept the fact that they're under the Indian Act. They can just move away from it. They have jurisdiction and they have the abilities under custom to move right into good, modern governance and to build the codes, to put them in place, to build your

Constitution and just get on with the job and tell the Department just to get out of the way because we've got a lot of work to do here. If the leadership takes that kind of progressive step and just realize that they can do it and that there is no reason to be stopped, that there's no fear and to just move forward and be transparent, be accountable, be the leader for your people not the leader of the Indian Act and working for the Minister even though you're financed to some extent by the Feds as long as you're accountable you should have no fear in changing the governance structure in your community.

That's where I think the Frontier Centre for Public Policy really does make a big difference. You guys are out there saying go ahead and do it, here's what you need to do and here's why it's important. I think more and more leaders are seeing what happens when you do do that. There are enough examples now of successful First Nations that you can't say it's not possible or they're not capable. I think the next step is for people to grab on to it in a larger way and move quicker because they're missing a lot of great opportunities and we're missing a whole generation if we don't move faster than we are now.

FC: The Centre released a report recently on First Nations election reform and one of the main recommendations was that they wanted band to opt out of the Indian Act and go towards band custom elections. Do you see one system being better than the other?

RN: I've always believed that the Indian Act doesn't really have an election structure to it. It just basically says here's how you elect people and there's no real major description of function or roles and responsibilities. So you have no choice but to go to a custom process where you define the roles and responsibilities administratively and politically of your elected representatives. What they can spend, what the criteria is for not just when you're elected but how you're elected. None of those things are touched on at all in the Indian Act. So as I've said before I think the custom code is the way to go. As a matter of fact, I was with a band that we just passed their custom election code last week and it was in the works for the last couple of years and it's an awesome document. In the custom code it's not only about elections but it defines financially what they can and can't spend which is also important.

FC: Do you think we're going to have significant reform of the Indian Act or even repeal in our lifetime?

RN: I certainly hope so. I would be saddened to say otherwise. I honestly believe that the leadership is coming now in leaps and bounds with the understanding and the recognition that we've really got to get away from the Indian Act and not be afraid to understand that we have a treaty relationship, we have Aboriginal rights in this country that protect Aboriginal people. We don't need the Indian Act. What we need is progressive legislation and/or custom governance to get moving and get on with the job of structuring these communities so that it's understandable how you deliver services on the one hand but how you build the opportunities for the average First Nations citizen who lives there so that they can have what every other Canadian has: the opportunities for their children to be successful. I think it would be shocking and sad if, let's assume I last on this Earth for another 30 years and nothing has changed I think that would be hard to imagine. As progressive as Canada is it's hard to imagine that we still have a piece of legislation as old as the Indian Act on the books with virtually no change. Yes there have been a few amendments over the years but it's virtually the same as it was when it passed in 1873. That's amazing to think that Canada, as progressive as it is, how embarrassing to think that we can't make some improvements either to that legislation by bringing in something more successful for First Nations or get rid of it totally and let First Nations get on with governing.

Manitoba – 203 – 2727 Portage Avenue • Winnipeg, Manitoba CANADA R3J 0R2 • Tel: (204) 957-1567 • Fax (204) 957-1570 • **Sask** - 2353 McIntyre Street, Regina, Saskatchewan CANADA S4P 2S3 • Tel: (306) 352-2915 • Fax (306) 352-293 • **Alberta** - Stock Exchange Tower, Suite 1280, 300 – 5th Avenue S.W., Calgary, Alberta CANADA T2P 3C4 • Tel: (403)230-2435 • E-mail: newideas@fcpp.org • www.fcpp.org