



First Nations Post-Secondary Education: Rights, Responsibilities, and Recommendations

*Chiefs of Ontario
Post-Secondary Position Paper
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Drafted by Chiefs of Ontario's Education Department based on the full research and discussion paper
Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education by
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Introduction

This position paper flows from Dr. Pam Palmater's research on post-secondary education titled *Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education*.ⁱ Palmater's report builds on previous works from the 2012 report *Our Children, Our Future, Our Vision: First Nation Jurisdiction Over First Nation Education in Ontario* and 2004 in *The New Agenda: A Manifesto for First Nations Education in Ontario*. This is part of the ongoing work at Chiefs of Ontario to regain control over our own education systems, teaching methods, course content, and institutional settings in k-12 education and higher education.

First Nation higher education in Ontario is in a crisis. Decades of purposeful, chronic underfunding, funding caps, and outdated formulas have prevented thousands of students from accessing post-secondary education in violation of treaty and other rights to education. The resulting socio-economic outcomes have been described as nothing less than a "crisis" and "horrific". The federal government is not alone in its failure to act in good faith and abide by its legal and fiduciary obligations to address this urgent issue. The Province of Ontario, one of the largest benefactors of our treaties, has failed to contribute and ensure our right to post-secondary education is realized and has only recently begun to work in partnership with First Nations. Current socio-economic statistics show that the gaps are widening and will continue to widen unless the issues of chronic underfunding and discriminatory policies are finally addressed.

As First Nations, we have long known that higher education not only contributes to individual health and well-being, but is critical for our collective nation-building efforts. It is for this reason that our ancestors included this right in many of our treaties, and it remains an urgent priority today in our urgent call for needs and rights-based funding for our people to succeed in post-secondary education.

Our aim is not to fit our people into the current range of universities, colleges and training institutes in Ontario and their pre-determined courses and programs; our aim is for First Nations to have a say in what gets taught in mainstream colleges and universities, what gets researched, who is doing the teaching and researching, and who manages those institutions. Equally as important in our education advocacy is how to develop, support and strengthen our *own* First Nation post-secondary institutions. To that point, we have worked closely with the Aboriginal Institutes Consortium since their creation in 1994, to secure equitable funding for, and accreditation of, our own post-secondary institutes in Ontario.

The recommendations in this paper are nothing new, and each recommendation has been a critical part of COO's broader advocacy work. The problems are well-known and solutions are clearly identified; it is

implementation that is a matter of urgency, and steps must be taken to act now to end the cycle of putting First Nations learners at a disadvantage.

The federal government currently frames First Nations post-secondary education as a policy issue that is viewed as discretionary, and rejects any claims to treaty rights. First Nations post-secondary funding is a matter of rights and the Crown's fiduciary obligation, not a policy-driven social aid program. Our inherent rights are recognized in treaties, and the understanding of fully funded post-secondary at the time of treaty signing provides a helpful groundwork of this right to fully funded education for contemporary governments to understand.

"In 1928, Canada affirmed its treaty obligation to post-secondary education. In its *Annual Report (1929)* Indian Affairs stated 'Parliament has provided appropriation for the fiscal year 1928-29...Free education for the Indians was definitely imposed by treaty...In future the education [pertaining to post-secondary education] of these Indians shall be carried on without cost to them, thus completing a system of free education to all the Indian wards of the Crown in Canada...' *Indian Affairs Annual Report, 1929*ⁱⁱ

"Our education is not a welfare system. We have free education as a treaty right because we paid in advance for our education by surrendering our lands...We expect that the promises made when we signed the treaties ceding our lands will be honored." *Indian Chiefs of Alberta, 1970*ⁱⁱⁱ

"By the terms of Treaties 6, 7, and 8 we have prepaid for all time the total costs of educational services for all age groups of our people and, therefore, our entitlement is for comprehensive educational services in perpetuity."^{iv}

Creating complicated barriers to self determination and forced assimilation have been a consistent theme in Canadian policy as it pertains to First Nations' education. In the 1880's Canada proclaimed that "university educated Indians and those who had entered one of the professions" were to be enfranchised and lose their Indian status^v; the definition of post-secondary in the latter 20th century continued to narrow; and the post-secondary budget was indefinitely capped at 2% growth in the 1990's. In addition, Residential Schools themselves and their intergenerational effects are the hallmark example of First Nations being denied ownership and control over their right to education. It is imperative that First Nations jurisdiction over education is realized immediately, along with the appropriate funding to fully implement this right. It is both the duty and obligation of the Crown to satisfy the agreements it entered into with distinctive and self-determining First Nations peoples, and that the First Nations control, design, and implementation of our own systems be fully acknowledged and resourced to move forward together.

Background

Both the Federal government and the Province of Ontario have, at various points in history, denied, chronically underfunded, capped, and/or limited funding for First Nations post-secondary education. This has resulted in crisis-level socio-economic outcomes, and represents the core barrier for First Nations to reach their full potential. The existing socio-economic gaps will continue to widen until the discriminatory underfunding of First Nations education and barriers to post-secondary education are addressed. Going forward, addressing the discriminatory funding for First Nations must consider the unique rights and relationship First Nations have, recognized in both First Nation and Canadian society. Although we know our rights are inherent and are not granted from treaties, gleaning what was understood as education and access to education at the time of treaty signing provides a reference for understanding and implementing the continuous and ongoing right to fully-funded education.

Treaties

Treaties and other agreements were signed between Nations, and a legal and political relationship with self-determining nations was fully understood and recognized by the Crown. In fact, the British collectively referred to the First Nations on the east coast and those who lived in-land as *Nations*, and subsequently the Canadian government continued to use the term Nations. The perspective that guided Nations in these treaty agreements was mutual respect, benefits, and protection. In the context of education, First Nations understood this to mean fully funded lifelong education.

Through treaty-signing, sharing of the land in exchange for specific services was an opportunity for First Nations to participate fully in the new economy and establish new political relations to meet changing needs. Meeting “changing needs” was understood by First Nations before, during, and after the time of treaty signing, and included the right to fully funded lifelong education. The provisions for education therefore should not be limited to the categories of primary, secondary, and post-secondary education that we see prescribed today, but should match the spirit and intent of lifelong education to meet the needs of First Nations.

The federal government refuses to live up to these standards and rights as reflected in treaties. Satisfying education rights can be comparable to satisfying the rights to health-care, yet health-care provisions are not interpreted with the same narrow limitations. Although the constitutional responsibility for healthcare was set out in 1867, this does not and has not limited the kind of healthcare services afforded to Canadians as what was defined as healthcare in the 1860’s, including medicines, therapeutics, and hospitals. For adults and children alike, education was part of the treaty commitment to share in the success of new ways of living, the complex economies and lifestyles emerging from these

partnerships, and First Nations carried an inherent understanding of a changing landscape in forming these agreements. In the 21st century, post secondary is a vital component of that landscape of success.

Federal and Provincial Failures

It was soon after the formation of the Government of Canada where the *Indian Act* rather than treaties began to dominate and direct policies affecting Indians, including those around education. The Indian Act of 1867 interfered with treaty relations and rights through narrowing the approach to education to focus on elementary schools and residential schools, with no inclusion of higher education. The federal government forced Indians onto reserves, even those without treaties, and the running of reserve and residential schools was at the discretion of the federal government who outsourced most to churches or religious organizations. Although the fiduciary and legal obligation of the Crown to provide educational services flowed from treaties, religious-run residential schools were the broad-brushed policy to “deal” with this obligation by attempting to assimilate and eradicate distinctive treaty partners known as First Nations. This satisfied a broader agenda of eliminating the need to satisfy treaty obligations including higher education.

This approach undermined the First Nations right to self-determination, leaving the scope and content of education up to the discretion of churches, religious organizations, and the federal government, rather than First Nations themselves. Post-secondary as a treaty right was and continues to be excluded from the fulfillment of First Nations education rights, and is understood today by the federal government as a matter of social policy. The federal government has also historically affiliated the attainment of higher education with the loss of Indian status and those very treaty rights. The current statistics, including low graduation rates are the by-product of these unilateral government actions. While these complications occur at the federal level, the provinces also step away from fulfilling the First Nations right to post-secondary, while continuing to incarcerate Indigenous peoples in disproportionate numbers; apprehend children in numbers higher than during residential schools; and leave thousands of Indigenous women who have gone murdered and missing with provincial law enforcement doing little to stop it.

Former Auditor General Sheila Fraser called the government’s failure to act on her recommendations “unacceptable”, “discriminatory”, “a continuing crisis”, and “inequitable”. The Auditor General identified that it would take at least 28 years to close the education attainment gap and urged the federal government to recognize their duty and take immediate action on First Nation education.

Several unilateral attempts by the federal government to change Indian policy and reduce federal funding have failed due to strong opposition from First Nations, including the *1969 White Paper, Buffalo*

Jump of the 1980's, and the *First Nations Governance Act*. None of these federal initiatives dealt with the treaty right to education or addressed the financial needs for post-secondary education.

Although First Nations had some success in getting Aboriginal and treaty rights protected in section 35 of the Constitution Act, 1982, the constitutional talks left First Nations with a vague set of section 35 rights to be defined and limited by the courts. There has been a long history of reports and commissions by federal and provincial governments, including The Marshall Inquiry, Manitoba Justice Inquiry, and Royal Commission on Aboriginal Peoples (RCAP), which have clearly and substantially outlined the failures of provincial and federal governments. Issues including discriminatory funding formulae have been highlighted through these recommendations, but with little action followed through. These include recommendations for treaty discussion and renewal on education matters, the recommendation to prioritize education, stable multi-year funding for First Nation institutions of higher learning, centralizing Traditional Indigenous Knowledges at all levels of education, and even examining racism in the criminal justice system that many young Indigenous people may come into contact with. All of these issues provide unique barriers for First Nations learners that unfairly limit access to their right to education.

First Nation Control of First Nation Education

As part of the vision of mutual prosperity at the time of treaty-signing, First Nations and our political organizations have consistently advocated for full jurisdiction over adequately funded education as the path forward for First Nations people and our Nations. Bill C-33 proposed federal legislation that would provide increased federal oversight and control. This Bill, erroneously titled the *First Nations Control Over First Nations Education Act* was soundly defeated through our advocacy efforts for full control over the education of our own peoples.

The *1969 White Paper on Indian Policy* was one explicit government effort of many to eliminate Indian rights and title and relieve the federal Crown of its distinctive responsibility to First Nations. The following year we responded with the *Red Paper* to counter this extermination policy and affirm the position that we as First Nations should be in control of our own governments, including education. The National Indian Brotherhood (NIB – now the Assembly of First Nations - AFN) *Indian Control of Indian Education* policy document that followed shortly after cites the treaty obligation for Canada to fund First Nation education and a self-determined learning system based on language and culture.

COO's position in 2004's *The New Agenda: A Manifesto for First Nations Education in Ontario* and 2012's report *Our Children, Our Vision: First Nation Jurisdiction over First Nation Education in Ontario* First Nations repeatedly arrives at the same conclusions. AFN's consistent position also emphasizes First Nation sovereignty over education and federal treaty obligations to pay for education as outlined in

NIB's *Indian Control of Indian Education* in 1972, the *Tradition and Education* report in 1988, and the *MacPherson Report* of 1991. Every major report and study on First Nation education has come to the same conclusions; First Nations must be in control of their own culturally-relevant lifelong learning education systems, and the government must live up to its treaty obligations to fund lifelong learning.

More recently, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) adopted by the United Nations General Assembly in 2007 clearly states that Indigenous Peoples “have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”

First Nations Jurisdiction

Education is a significant aspect of First Nations jurisdiction, and the First Nations right to education is part of our inherent rights that derive from our prior occupation and governance of our territories. The RCAP report explained that post-secondary education is not just about individual benefit, but about supporting families and rebuilding strong communities and Nations. RCAP recommendations pertaining to education include the acknowledgement of education as a core area of First Nation jurisdiction, and calls for governments to work with First Nation groups to develop First Nation-controlled institutes. The TRC arrived at similar conclusions, which also draw on UNDRIP affirmations of the right of First Nations to control their own education systems and content.

Jurisdiction and control over post-secondary manifests at local First Nation levels, tribal council, and or regional levels, as First Nations so choose. It also includes the management and operation of First Nation-controlled post-secondary institutes. It is impossible to continue with the status-quo and expect different outcomes. It is only through comprehensive participation and asserting jurisdiction over post-secondary education that First Nations in Ontario will make a significant difference in the lives of students and communities.

First Nation Rights

First Nations education rights did not start with, nor are they limited to, the treaties signed with the British Crown, federal, or provincial governments. Additionally, much of the work on international rights and human rights laws and mechanisms are helpful in recognizing these education rights, but they are not the source of these rights.

It is important to understand that the inherent right to lifelong education is also a human right, and distinctly affirmed in treaties with First Nations. While there are many approaches to learning and

knowing across Nations and territories, broadly speaking traditional Indigenous knowledge(s) were passed on from generation to generation using oral and symbolic forms of communication, as well as hands-on experience. The knowledge was refined, tested, replaced and updated on a regular basis and shared through lifelong learning and education. Indigenous languages were (and still are) an integral part of First Nations higher learning; i.e. the critical keys to understanding Indigenous knowledge systems and worldviews. The transmission of traditional Indigenous knowledge(s) is also about solidifying and maintaining relationships – an important part of nation-building and political alliances with other Nations.

In addition to being a longstanding part of First Nations' understanding of learning as a lifelong process, treaties identified the Crown's obligation and fiduciary responsibility for education. The treaty commitments established the right to and policy context for the provision of education, and the understanding at the time of treaty signing included the full scope of educational services for students which includes college, university, professional training, and skills development. Included in the spirit and intent of these agreements to education was to provide First Nations people with the knowledge and skills necessary to participate and prosper in the economy for generations to come.

The Crown has an ongoing obligation for education in the 21st century consistent with what treaty partners understood education to encompass in the 19th century. First Nations' concepts of learning, along with the normalized practices of education and skills development, demonstrate that post-secondary is an inextricable part of the education to economy continuum as envisioned by treaty partners and still envisioned by First Nations today.

Beyond the rights to education, recognizing and implementing Indigenous rights to education, including post-secondary, is morally sound in a country as wealthy as Canada. The wealth and prosperity that Canadians enjoy stem directly from the dispossession of our lands, waters, resources, and economies, along with the devastating inter-generational impacts of Canada's residential schools. Thus, there is a moral obligation to support Indigenous post-secondary education. With our lifelong learning systems derived from our customs, traditions, languages, homelands, knowledge systems, supporting their development provides the necessary tools to achieve the personal and collective aspirations of our communities and Nations.

Funding

Current funding levels are insufficient to achieve the treaty vision of mutual prosperity and success, and are unable to close the gap in education between First Nations and the general population. Funding

must be provided based on needs and rights, not on a percentage of pre-established and shared funding envelopes or loan programs.

Every single First Nations student must be provided with an opportunity to acquire post-secondary education to the highest level desired. Our institutions must also be funded to reflect the real costs of offering programs and supports while building for accreditation.

Federal and provincial governments must live up to their treaty and other legal obligations to provide First Nation controlled, culturally-relevant, fully-funded post-secondary education and related supports, while also funding First Nations post-secondary institutions. Rising costs of tuition, growing population, and inflation must be reflected in these funding provisions.

Language and Culture

A distinctive financial need is the cost of preserving and teaching Indigenous languages, which is recommended by both TRC Calls to Action and the RCAP recommendations. The province of Ontario spends over \$623 million annually, or \$1,275 per person on French language preservation for a population less than 1.7%. INAC's current \$5 million budget for Indigenous languages equates to approximately \$5 per person. In the calculations for post-secondary education, the cost of language preservation is vital.

RCAP stated that increasing the “number, capacity, and stability of Aboriginal institutions” would promote “culturally-based, relevant learning opportunities” which ultimately leads to the success of First Nations learners and communities. First Nation jurisdiction and control over our own post-secondary education, together with adequate funding based on our rights and needs, will help not only increase access to post-secondary education, but will increase success rates and provide the strong foundation needed to save our languages from extinction. Nothing less will suffice if we are to truly realize a relationship based on the original treaty vision and a contemporary path of reconciliation.

Moving Forward

Conservatives in 2014 allocated \$1.25 billion for First Nations K-12 education over three years starting in 2016-17, but this dollar amount was quietly cut as it was contingent on the support of Bill C-33, which never materialized. Harper also committed \$12 million over three years to the Indspire program, which provides post-secondary scholarships and bursaries for Indigenous students, yet the need is for an increase in First Nations-controlled post-secondary education funding and eliminating the 2% cap.

Prime Minister Justin Trudeau pledged during his campaign an extra \$50 million each year for the First Nations' Post-Secondary Student Support Program (PSSSP) and a commitment to lift the 2% funding cap on the program. Only recently have we seen some evidence of delivery on these campaign promises in the federal budget announcement for 2017-18 which commits to a \$90 million increase over two years to the PSSSP and a review, in collaboration with Indigenous partners, of all current federal programs that support Indigenous students in accessing and attaining post-secondary. While this is a short-term addition, long term reforms of a chronically underfunded system are yet to be seen and realized.

Our vision is that through education, skills, and experience, First Nations learners can effectively rebuild our Nations and ensure the well-being and prosperity for our people seven generations into the future. With this in mind, and as stated by the Auditor General, there is an urgent need for the INAC to redefine its roles, responsibilities, and duties as it pertains to post-secondary education. This includes working in full partnership with First Nations to identify and address barriers posed by government policy.

Since the creation of the PSSSP in 1977 the program has been rife with mismanagement and administrative problems. The 2% funding cap introduced in 1996, as well as 1989 policy that modified funding to a closed envelope, has significantly reduced the number of students funded and bumped many eligible students onto waiting lists because of the inability to secure funding. Despite internal audits and recommendations in 2007 by the Standing Committee on Aboriginal Affairs and Northern Development INAC fails to take action to address the chronic underfunding and mismanagement. As a result, 18.3% fewer First Nations are receiving federal funding for post-secondary since 1997, despite the direct link between lack of education and poverty, unemployment, ill health, homelessness, and even missing and murdered Indigenous women and girls.

The need for overall well-being, sustainable economies, the preservation of languages and cultures, and nation-building, along with the lack of First Nation faculty and staff in colleges and universities, a lack of First Nation courses, programs, and research, and the ever increasing backlogs of students, complicate and inflate the socio-economic crisis facing First Nations.

First Nation efforts to address barriers preventing the success of our learners in the post-secondary realm have resulted in the creation of nine First Nation Institutes of High Learning in Ontario. Collectively, these nine institutes form the Aboriginal Institutes Consortium (AIC). All nine institutes receive funding to develop and deliver First Nation Post-Secondary programs through federal and provincial government funding streams. These institutions draw upon the evidence-based goal of First Nations control over First Nations education to improve outcomes and increase the well-being of First Nation peoples and Nations. Despite the persistent emphasis on First Nations design and implementation of curriculum and learning, federal funding cuts and program limitations on Aboriginal Institutions have been severe. Funding provided on a year-to-year basis destabilizes these institutes by

hampering long-term planning which compromises their ability to meet community needs for current capacity and future prosperity.

In addition to rights and legal obligations, meeting the urgent post-secondary education needs of First Nations has garnered public support of broader Canadian society by simply being the “right” thing to do. Challenging discriminatory practices and policies has been voiced by the Canadian Federation of Students, the Canadian Association of University Teachers, faculty, and political leaders across the country including John Ralston Saul and Paul Martin. Current funding levels are insufficient to achieve the treaty vision of mutual prosperity and success, and are unable to close the gap in educational opportunities between First Nations and the general population. This longstanding funding discrepancy requires more than funding levels at parity; it requires First Nations and settler governments to determine how to reduce gaps and barriers to ‘level the playing field’ as a first step.

RCAP’s vision was for a Nation to Nation relationship where the First Nation treaty and other rights to education were acknowledged and funded. The TRC’s vision of reconciliation is one where the treaty right to education is implemented, First Nations languages are protected, and every First Nation student on the waiting list is funded to attend post-secondary education. Even the United Nations has warned Canada about its “grave” human rights violations which have led to the “crisis” of poverty that could be addressed through addressing land rights, resources and the right to Indigenous-controlled education in particular. How many more reports, inquiries and commissions will be required before the federal and provincial governments come to the table and develop a plan in joint partnership with First Nations in Ontario on how to implement the original treaty vision of mutual prosperity? It is our position that the time for studies are over. It is time for action and to live up to the promises made in our treaties and share in the prosperity promised for First Nations and Ontarians alike.

As First Nations leaders, we support the following recommendations, which come with the spirit of self-determination, mutually beneficial treaty relations, and reconciliation. They form a solid foundation to honour treaty and other legal obligations to move towards First Nation-controlled, culturally-relevant, fully-funded post-secondary education.

Recommendations

1. Federal and provincial governments must fully implement the inherent, Aboriginal and treaty right to education which includes First Nation-controlled, culturally relevant early childhood education, k-12 education, post-secondary and adult lifelong learning.
2. Federal and provincial governments must establish a table(s) with First Nations in Ontario to immediately and jointly review governments programs, laws, policies, guidelines and funding

mechanisms with a view to identifying and removing all barriers and creating a stable rights-based post-secondary education agreement(s) based on First Nation Control of First Nation Education.

3. Federal and provincial governments should ensure that First Nation rights to fully-funded funded and culturally relevant to post-secondary education are protected and meet the minimum domestic and international human rights standards necessary to preserve our cultures, languages, and rights for current and future generations.
4. Federal and provincial governments must ensure that post-secondary education funding is based on needs (actual costs, increases and backlogs) and rights (permanent and stable), not based on equity (percentage of pre-established and shared funding envelopes) or loan programs.
5. The federal government must permanently remove the 2% cap on social program funding, including post-secondary education (PSE) funding, and increase PSE funds to reflect actual needs and costs.
6. The province of Ontario must tie future funding to universities, colleges and training institutes in Ontario, conditional on their demonstrated commitment to work in collaboration with First Nations to:
 - a) Jointly determine suitable numbers of First Nation faculty and senior administration to be hired,
 - b) Jointly agree upon additional First Nation courses, programs and research supports.
7. Federal and provincial governments must, in full partnership with First Nations in Ontario, develop an emergency action plan, with required funding, to immediately address the socio-economic crises in First Nations so as to remove all social and economic barriers for First Nations accessing and succeeding in post-secondary education.
8. The inherent right of First Nations to be self-determining in post-secondary education must be respected in the funding, design, delivery, and evaluation of First Nation post-secondary education programs.
9. Federal and provincial governments must establish needs/rights-based funding mechanisms to address the crisis of language loss.
10. Federal and provincial governments should officially and publicly acknowledge the section 35 inherent, Aboriginal and treaty rights of First Nations to fully-funded, culturally-relevant First Nation-controlled post-secondary education systems.

11. The federal and provincial governments must acknowledge that traditional Indigenous knowledge(s) are part of a holistic education system focused on lifelong learning for the purposes of individual well-being, sustainable economies, the preservation of cultures, and nation-building and must form the basis of post-secondary education budgets, programs, initiatives and agreements.

ⁱ P. Palmater, "Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education" (2017)

ⁱⁱ Sheila Carr-Stewart, "A Treaty Right to Education" (2001) 26:2 *Canadian Journal of Education* 125 at 126 [*Treaty Right to Education*], p 103

ⁱⁱⁱ Carr-Stewart, p. 102

^{iv} National Indian Brotherhood, "Resolution 17/78", 1978, as quoted by Palmater, page 37

^v RCAP 1996, Vol 1, p. 287, as quoted by Carr-Stewart