



Our Nations  
Our Future  
Our Vision

Transformative Change  
through First Nation  
Higher Education





# Our Nations, Our Future, Our Vision

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### Disclaimer

This report has been produced for the Chiefs of Ontario and synthesizes information previously published in other studies, reports and papers, together with input from First Nations, surveys, technicians, the New Agenda Working Group and the Chiefs of Ontario Education Coordination Unit. This report does not claim to represent the views of any individual First Nation in Ontario and is published without prejudice to any ongoing or future legal proceedings. This report does not constitute legal advice, nor should it be relied on as such.



## Acknowledgements

This report, *Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education*, would not have been possible without the hard work, dedication and sacrifices of so many First Nation students, parents, educators, and leaders. Our children are the true heroes; for without their persistence to succeed in spite of the monumental barriers placed before them by successive federal and provincial governments, we would not have the benefit of their expertise as First Nation advisors, researchers, and advocates. This report is the culmination of many decades of work by these First Nation education experts, many of whom have used their solid base of traditional Indigenous knowledge(s) to bolster their formal education with a view to envisioning a better path for our current and future generations.

This report, like so many before it, has been informed and shaped by the contributions, comments and directions of First Nations families and communities in Ontario; as well as the many regional First Nation organizations, tribal councils and individual experts. This report builds on the research and analysis done in: *The New Agenda: A Manifesto for First Nations Education* in Ontario in 2004, and the most recent k-12 education report: *Our Children, Our Future, Our Vision: First Nations Jurisdiction Over Education* in Ontario in 2012. Both of those reports have helped guide our collective discussions on how best to move forward in higher education for First Nations.

It would not be possible to thank everyone who has had a hand in the research required for this report, as it was truly a collective effort. Thanks specifically to: Julia Candlish, the Director of Education at Chiefs of Ontario, who coordinated the research, multiple surveys, meetings and drafting of this report; Robin Cavanagh, Education Policy and Research Analyst at Chiefs of Ontario, who contributed significant research to this report; Dr. Barry Montour for providing the post-secondary education survey analysis which serves as the foundational research for this report; Murray Maracle, Director of Education at Anishinabek Education Institute for sharing his wisdom and guidance; the First Nation Education Coordination Unit who have made significant contributions to First Nation higher education strategic planning and coordination; the First Nation post-secondary institutes who have persisted in their collective goal to assert jurisdiction and control over higher education and promote our own institutions; and to everyone else behind the scenes who work tirelessly to advance First Nations peoples in higher education.

Thanks especially goes to the leadership of Chiefs of Ontario and all the First Nations in Ontario who continue to make higher education for First Nations a political priority, when there are so many competing social pressures.

Welal'in, Nia:wen, Ekosi, Miigwetch, Thank you for allowing me to be part of this important work.

## Dr. Pamela D. Palmater, Mi'kmaq Nation



# Our Nations, Our Future, Our Vision

## Executive Summary

The Chiefs of Ontario is the coordinating body for the 133 First Nations located within the boundaries of what is now known as the province of Ontario. The mandate of the Chiefs of Ontario is to facilitate the discussion, planning, implementation and evaluation of all local, regional and national matters affecting First Nations peoples.

Since its creation in 1975, the Chiefs of Ontario have always made First Nation education, including higher education, a priority in all of our local, regional and national advocacy efforts. We have always known that higher education is one of the tools which can help bring health, well-being and prosperity to our Nations.

From our earliest resolutions in the early 1970's to our more recent resolutions in the 2010's, common themes emerge of chronic underfunding of post-secondary education for First Nations. Despite our advocacy, federal funding cuts and caps have resulted in longer waiting lists for students to attend university, more impoverished students struggling to provide for their families while getting a higher education, little control over university programs, and dwindling support for First Nation-run post-secondary institutions.

**Resolution 8 (1978)** called for an increase in funding for all levels of education, including post-secondary, to enable First Nations to participate effectively in their First Nations;

**Resolution 95/106 (1995)** stressed that post-secondary education is critical to the well-being of First Nations and called for the full implementation and funding of the treaty right to education;

**Resolution 12/19 (2012)** emphasized that current funding levels do not cover inflation, population increases or tuition increases, and called for increased funds for post-secondary education to be provided immediately to address the crisis.

**Resolution 39-17 (2017)** fully supports the recommendations in this document and requires the provincial and federal governments to work in full partnership with First Nations to develop, design, implement and evaluate potential solutions.

In the most recent review of Canada by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, Canada was grilled by committee members as to why they had not addressed the lack of funding in post-secondary education for First Nations, when all the research shows that a higher education is one of the most effective ways to lift people out of poverty. Canada's failure to respond to this fundamental question at the United Nations and here at home in our First Nations is the biggest challenge facing us moving forward.

The Chiefs of Ontario will continue to push for agreements that better reflect our inherent, Aboriginal and treaty rights to higher education. Anything less would condemn our children to more generations of poverty and dispossession - something we cannot accept. This report, *Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education*, reconfirms our commitment for a better future for our First Nations, and lays out an achievable path forward based on equitable/rights-based funding and First Nation control, with a special emphasis on preserving our cultures, languages and identities.



# Our Nations, Our Future, Our Vision

## (1) Introduction

*Our children are our best resource and it is of the utmost importance to us that they receive education.<sup>1</sup>*

The Chiefs of Ontario have led the way in advocating for improved life-long learning for First Nations, including post-secondary education. Their tireless work has focused on making First Nation education generally, and post-secondary education specifically, a priority issue in their dealings with federal and provincial governments, and within First Nation advocacy nationally. This has not always been easy and, at times, it has caused strong political differences to emerge on the national stage, but the Chiefs of Ontario First Nations have remained united in their cause. Their commitment to realizing their inherent, Aboriginal and treaty rights, and basic human rights to quality First Nations education has remained steadfast from their creation as an organization in the 1970's.<sup>2</sup> The long list of resolutions passed by the Chiefs in Assembly bear witness to the significant barriers they have faced in trying to change the status quo in all areas: health, housing, land, treaties, and education.

Chiefs of Ontario advocacy, in its many forms, including calls, meetings, letters, resolutions, research, community consultations, reports, position papers, government negotiations and on the ground rallies and demonstrations, have been met by promises from government officials of more meetings, joint roundtables, endless studies and sometimes prolonged silence. Meanwhile, First Nation children and young adults miss out on a quality education that could help alleviate many of the social crises facing First Nations in Ontario.<sup>3</sup> In some cases, the lack of proper schools and educational supports, have led to the pre-mature deaths of youth who have to travel off-reserve for an education.<sup>4</sup> While suicides amongst First Nation youth are epidemic in some Ontario First Nations<sup>5</sup>, other students suffer accidental and suspicious deaths<sup>6</sup>, or are murdered or go missing<sup>7</sup>. The quest for a quality education has literally become a life or death struggle for First Nations.

1 Chiefs of Ontario, "Resolution #8/78" (Ontario: Chiefs of Ontario, 3 August 1978) [COO Res 8/78].

2 Chiefs of Ontario, "History of the Chiefs of Ontario", online: <<http://www.chiefs-of-ontario.org/history>>. The Chiefs of Ontario was formed after the First Annual All Ontario Chiefs Conference in 1975.

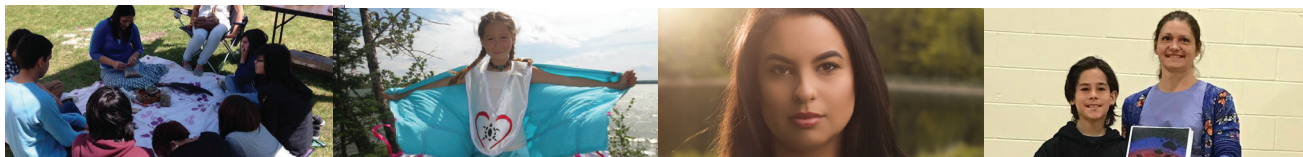
3 Royal Commission on Aboriginal Peoples, "Report of the Royal Commission on Aboriginal Peoples" (Ottawa: Minister of Supply and Services, 1996), vols.1-5, online: <<https://qspace.library.queensu.ca/handle/1974/6874>> [RCAP], at vol.3 "Gathering Strength".

4 The Globe and Mail, "Lives Lived: Shannen Koostachin" (Toronto: The Globe and Mail, 28 July 2010), online: <<http://www.theglobeandmail.com/life/facts-and-arguments/shannen-koostachin/article1387951/>>. Kate McLaren, "Attawapiskat mourns teen's tragic death" (Timmins, Ontario: Timmins Press, 2 June 2010), online: <<http://www.timminspress.com/2010/06/02/attawapiskat-mourns-teens-tragic-death>>.

5 Jody Porter, "First Nations losing 'babies' to suicide, chief says after 10-year-old dies" (Toronto: CBC News, 20 January, 2016), online: <<http://www.cbc.ca/news/canada/thunder-bay/first-nations-suicide-ontario-youth-1.3410909>> references the Northwest Local Health Integration Network report from 2010 which says suicide rate for some Ontario First Nations is 50 times the national average.

6 CBC news, "First Nations student deaths inquest: 5 recommendations we've heard before" (Toronto: CBC News, 1 July 2016), online: <<http://www.cbc.ca/news/canada/thunder-bay/selena-sakanee-inquest-repeat-1.3660371>>.

7 Native Women's Association of Canada, "Fact Sheet: Missing and Murdered Aboriginal Women and Girls in Ontario" (Ottawa: NWAC, May 2015), online: <<https://www.nwac.ca/wp-content/uploads/2015/05/2010-Fact-Sheet-Ontario-MMAWG.pdf>>. In Ontario, those First Nation girls 18 and under, that are murdered or go missing represent 25% and 10% (respectively) of all Indigenous women murdered or missing in Ontario.



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The lack of substantive progress in First Nation education is felt most directly by our First Nation children.<sup>8</sup> Their daily lives at school are impacted by the multi-generational socio-economic crises in our First Nations.<sup>9</sup> Chronic underfunding of social programs like water, sanitation, housing and health care means that many of our students go to school without a good night's sleep, healthy meals, or access to safe drinking water.<sup>10</sup> Once they do get to school, they lack critical education resources like: a safe and healthy classroom and supporting infrastructure, proper books, technology and equipment, access to academic enhancements and supports, and robust intra-mural sports and extra-curricular activities. When taken together with insufficient resources to hire and train adequate numbers of teachers, aides and special education experts and clinicians, it is no surprise that there is an expanding gap in education attainment levels.<sup>11</sup>

There is currently a 28-year gap in educational attainment levels between First Nation students and Canadians, and all indications are that this gap is widening.<sup>12</sup> Lower k-12 attainment levels have directly impacted post-secondary graduation rates of First Nation students who often struggle in their first few years of post-secondary given their lack of quality k-12 education. This struggle to get our students a post-secondary education is further challenged by discriminatory and severe funding cuts, caps, and outdated formulas; all of which result in long waiting lists and impoverished students who struggle to feed their families while going to school.<sup>13</sup> The impact of less education has resulted in an income gap between First Nations and Canadians that would take 63 years to close at current rates - a staggering statistic that will only get worse unless substantive changes are made to First Nation education, including post-secondary education.<sup>14</sup>

Sadly, this is nothing new for First Nations in Ontario and throughout the rest of Canada. While conditions may vary from region to region, the majority of First Nations are still struggling. This is not from lack of researching, studying and consulting on the issue. In fact, there are literally hundreds of academic articles, research studies,

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8 Best Start Resource Centre, "Why am I poor? First Nations Child Poverty in Ontario" (Toronto: Best Start Resource Centre, 2012), online: <[http://www.beststart.org/resources/anti\\_poverty/pdf/WhyAmIPoor.pdf](http://www.beststart.org/resources/anti_poverty/pdf/WhyAmIPoor.pdf)>.

9 RCAP, vol.3, *supra* note 3.

10 P. Palmater, "Stretched Beyond Human Limits: Death by Poverty in First Nations" (2011) 65/66 *Canadian Review of Social Policy* 112-127 [*Death by Poverty*].

11 Chiefs in Assembly on Education, "Federal Funding for First Nations Schools" (Gatineau, Quebec: Chiefs in Assembly on Education, 1-3 October 2012), online: [http://www.afn.ca/uploads/files/events/fact\\_sheet-ccoe-8.pdf](http://www.afn.ca/uploads/files/events/fact_sheet-ccoe-8.pdf) [*Federal Funding Facts*].

12 Auditor General for Canada, "Report of the Auditor General for Canada: Chapter 5: Indian and Northern Affairs Canada – Education Program and Post-Secondary Student Support" (2004), online: <<http://www.oag-bvg.gc.ca/internet/docs/20041105ce.pdf>> [*OAG Report 2004*] at 20. Statistics Canada, "A profile of Canada's North American Indian population with legal Indian status", (Ottawa: Statistics Canada, 2004) [*Status Profile*] at 10.

13 J. Tasker, "Cap leads to steep drop in First Nations students receiving post-secondary support" (Ottawa: CBC News, 12 September 2016), online: <<http://www.cbc.ca/news/politics/first-nations-cap-higher-education-1.3753021>> [*Cap leads to steep drop*]. Standing Committee on Aboriginal Affairs and Northern Development, "No Higher Priority: Aboriginal Education in Canada" (Ottawa: Standing Committee on Aboriginal and Northern Development, February 2007), online: <<http://www.parl.gc.ca/content/hoc/Committee/391/AANO/Reports/RP2683969/aanorp02/aanorp02-e.pdf>> [*No Higher Priority*]. See also: *Federal Funding Facts*, *supra* note 11. *First Nations Child and Family Caring Society of Canada and the Assembly of First Nations v. Attorney General of Canada (Minister of Indian Affairs and Northern Development Canada)*, (2016) 2 CHRT, online: <<http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/127700/1/document.do>> [*CHRT decision*].

14 D. Wilson, D. MacDonald, "The Income Gap Between Aboriginal Peoples and the Rest of Canada" (Ottawa: Canadian Centre for Policy Alternatives, 2010), online: <[http://ywcacanada.ca/data/research\\_docs/00000121.pdf](http://ywcacanada.ca/data/research_docs/00000121.pdf)> [*Income Gap*] at 3.



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government reports, First Nation reports and independent analyses on the subject - the majority of which have come to very similar conclusions and recommendations on how to change the status quo.<sup>15</sup> The problem has never been a lack of direction on how to change the system, the issue has always been, and continues to be, a lack of political will by federal and provincial governments to take the necessary steps to bring about substantive change. Tinkering with existing education programs and funding levels has not brought about the kind of improvement we need to eliminate the widening gaps. Yet, real transformative change in First Nations is not only possible, but almost guaranteed with renewed commitments and investments in First Nation post-secondary education in Ontario.<sup>16</sup>

Post-secondary education is one of the key tools to addressing poor socio-economic conditions and is a necessary tool for Nation-building.<sup>17</sup> The *Report of the Truth and Reconciliation Commission* (TRC) highlighted the great harms that were done to First Nation children by the residential school system – in part from the abuse suffered by so many, but also in part from “what they have taught, or failed to teach”.<sup>18</sup> Not only were Indigenous languages, cultures, practices and identities forbidden in most schools, but First Nation students were also deemed to “lack great mental capacity” and teachers assumed they could not learn reading, writing and other subjects.<sup>19</sup> Despite all the damage that has been done to so many generations of First Nations, we have always known that properly funded educational systems, which include both Indigenous and western knowledge(s), that are controlled by First Nations, is the key to rebuilding our families, communities and Nations. Tinkering around the edges with pilot projects and limited program changes won’t get the job done for our children.

This report, *Our Nations, Our Future, Our Vision: Transformative Change through First Nation Higher Education*, builds on our previous work from 2004 in *The New Agenda: A Manifesto for First Nations Education in Ontario*<sup>20</sup> and our 2012 report *Our Children, Our Future, Our Vision: First Nation Jurisdiction Over First Nation Education in Ontario*.<sup>21</sup> This report is part of the ongoing work done at Chiefs of Ontario to regain control over our own education systems, teaching methods, course content, and institutional settings - both in k-12 education and particularly in higher education. We have lobbied strenuously for needs and

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15 RCAP, *supra* note 3. Truth and Reconciliation Commission of Canada, “Final Report of the Truth and Reconciliation Commission of Canada”, (Ottawa: Truth and Reconciliation Commission of Canada, 2015), online: <<http://www.trc.ca/websites/trcinstitution/index.php?p=890>> [TRC Report]. Pamela Palmater, “Our Children, Our Future, Our Vision: First Nation Jurisdiction over First Nation Education in Ontario”, (Toronto: Chiefs of Ontario, 2012), online: <<http://www.peopleforeducation.ca/wp-content/uploads/2012/02/COO-Education-Report-Feb-8-20121.pdf>> [Our Children, Our Future]. National Indian Brotherhood, “Indian Control of Indian Education” (Ottawa: NIB, 1972) [Indian Control].

16 W. Riddell, “The Impact of Education on Economic and Social Outcomes: An Overview of Recent Advances in Economics” (Ottawa: Canadian Policy Research Networks, 2006), online: <[http://www.cprn.org/documents/44362\\_en.pdf](http://www.cprn.org/documents/44362_en.pdf)>.

17 S. Cornell, J. Kalt, founders, “The Harvard Project on American Indian Economic Development” (Cambridge, Massachusetts: Harvard University, 1987), online: <<http://hpaied.org/publications-and-research>> [Harvard Project]. This citation includes many books, papers and research publications. Akwesasne Mohawk Nation, “Akwesasne Freedom School” (Cambridge, Massachusetts: The Harvard Project on American Indian Economic Development, 2005), online: <<http://hpaied.org/sites/default/files/publications/Akwesasne%20Freedom%20School.pdf>>.

18 TRC Report *supra* note 15, vol. 6, chap. 4 at 117.

19 *Ibid.* at vol. 5 at 61.

20 Chiefs of Ontario, “The New Agenda: A Manifesto for First Nations Education in Ontario” (Toronto: Chiefs of Ontario, 2004) [Manifesto].

21 *Our Children, Our Future*, *supra* note 15.



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rights-based funding for our people to succeed in post-secondary education – but that is not the end of the story. Our advocacy for improved First Nation higher education is not about trying to fit our people into the current range of universities, colleges and training institutes in Ontario and their pre-determined courses and programs. Higher education for First Nations also includes having a say in what gets taught in 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 support and develop our own First Nation post-secondary institutions. 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.<sup>22</sup>

To this end, our report will review what we already know and how best to move forward in a spirit of reconciliation in First Nation higher education. It is impossible to review the entire history or development of First Nation higher education within the limited space of this report. Instead, we build upon our previous works to confirm our position with regards to First Nation post-secondary education and the path forward that will bring about transformational change to our First Nation students, families, communities and Nations. 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.<sup>23</sup> It is for this reason that our ancestors included this right in many of our treaties.

First, this report will briefly review the history of higher education in First Nations, which includes traditional Indigenous knowledge(s) and education processes that were focused on lifelong learning and were intricately linked to our economies. It is from this traditional, holistic way of learning and contributing to one's Nation, from which the treaty vision of education and prosperity emerges. Yet, our treaties have never been honoured and the education promised within them has been used by federal and provincial governments as a tool of oppression designed to “get rid of the Indian problem” through assimilation into mainstream society.<sup>24</sup>

It is from this historical overview, that the report moves into a closer examination of these broken promises, specifically, the many federal and provincial failures in First Nation education. It is because of these broken treaty promises and related government failures that First Nations have endured devastating socio-economic conditions for many generations. Yet, despite the many challenges, First Nations have persistently advocated for

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22 Aboriginal Institutes Consortium, “About Us” (Ohsweken, Ontario: Aboriginal Institutes Consortium, 2016), online: <<http://www.aboriginalinstitute.com/about.html>>. There are currently six institutes including: First Nations Technical Institute, Anishinabek Education Institute, Six Nations Polytechnic, Oshki-Pimache-O-Win Education and Training Institute, Kenjgewin Teg Education Institute, and Iohawhi'io Adult Education.

23 Joseph Zajda, Holger Daun, Lawrence Saha, eds., *Nation-building, Identity and Citizenship Education: Cross-Cultural Perspectives*, (New York: Springer Science & Business Media, 2010). Duane Champagne, “Education for Nation-building” (2003) Winter 27:4 *Indigenous Education and Prospects for Cultural Survival*, online: <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/united-states/education-nation-building>>. Manley Begay, “Importance of Culture and Education in Indigenous Nation-building” (Winnipeg: Say Magazine, 2016), online: <<http://www.saymag.com/wpsay/importance-of-culture-and-education-in-indigenous-nation-building/>>.

24 First Nations Child and Family Caring Society of Canada, “The Legacy of Duncan Campbell Scott Deputy: More than just a Canadian poet” (Ottawa: FNCFCSC, 2016), online: <[https://fncaringsociety.com/sites/default/files/Duncan%20Campbell%20Scott%20Information%20Sheet\\_FINAL.pdf](https://fncaringsociety.com/sites/default/files/Duncan%20Campbell%20Scott%20Information%20Sheet_FINAL.pdf)> at 3.



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a better life for our people. Locally, regionally and nationally, First Nations and our representative organizations have consistently advocated for adequately funded, First Nation-controlled education as the path forward.

The next section of the report takes a closer look at the First Nation right to post-secondary education and specific government failures in this regard. The report briefly examines not only constitutional rights to First Nation education, but also compares this to corresponding international standards. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) is an important development in First Nation education, but it is not the only international instrument that supports these rights and the United Nations has taken notice.<sup>25</sup> Even without these well-established rights, we assert that First Nation access to post-secondary education is also the “right” thing to do. We know from endless studies that higher education leads to more opportunities and better quality of life not just for individuals, but also for families, communities and Nations. True reconciliation with First Nations cannot happen in Ontario or Canada with continued deep inequalities between treaty partners.

Our report will end with our position on what needs to happen and include high level recommendations on how to move forward to once and for all eliminate the gap in post-secondary education between First Nations, Ontarians and Canadians. Our position has been stated and re-stated clearly throughout the years and our recommendations have been consistent with the vast majority of surveys, research studies, and reports – all of which support our position on this issue. To this end, we have included copies of many of the resolutions passed by Chiefs of Ontario calling for urgent action on post-secondary education. Also attached are two of the most recent surveys conducted on First Nation higher education in Ontario which clearly demonstrate the need. This report is not the end of our work on higher education but instead a call for action to bring about true reconciliation and a better life for our First Nations.

We have always known that our children represent our greatest hope for the future. It is through their education, skills, and experience that we will have the citizens we need to rebuild our Nations and ensure the well-being and prosperity for our children seven generations into the future.

It is in this spirit of self-determination, mutually beneficial treaty relations and reconciliation that we offer you this report:

## **Our Nations, Our Future, Our Vision: Transformative Change Through First Nation Higher Education.**

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25 United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, (2 October 2007) A/RES/61/295 [UNDRIP].



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## (2) History of First Nation Higher Education

*We want education to give our children the knowledge to understand and be proud of themselves and the knowledge to understand the world around them.*<sup>26</sup>

First Nation higher education in Ontario is in a crisis.<sup>27</sup> Decades of purposeful, chronic federal underfunding, funding caps and outdated, arbitrary formulas have prevented thousands of students from accessing post-secondary education in violation of our treaty and other rights to education.<sup>28</sup> The socio-economic outcomes which have resulted have been described as nothing less than a “crisis”<sup>29</sup> and “horrific”.<sup>30</sup> 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 crisis. The Province of Ontario, which has been one of the largest benefactors of our treaties, has failed to step up in any meaningful way to contribute to, and ensure our right to post-secondary education is realized. The poor socio-economic statistics show that the gaps are widening and will continue to widen unless this discriminatory underfunding is addressed.<sup>31</sup>

The current crisis in First Nation k-12 education and higher education is not one of our own making.<sup>32</sup> Traditionally, our citizens were educated in a holistic manner that focused on life-long learning in order support our nation-building efforts. Everyone had an education suited to their role in their particular Nation which supported their individual sovereignty and independence, which in turn supported their Nation’s sovereignty and independence. This is why, when we participated in treaty negotiations and other agreements, our ancestors focused so heavily on mutual respect, responsibility and benefit. The treaty negotiators were steadfast in their focus on mutual prosperity through education, knowing that the future economy would be different. Our people saw all of these issues as intricately related to one another. Peaceful relations, lifelong education and sustainable economies were and are still seen as necessary for our collective well-being and prosperity.

This treaty vision was shattered by the devastating multi-generational impacts of land theft, treaty violations and violent colonization. Education became a tool used by the colonizing governments to oppress and assimilate our people. The residential school experience was a violent form of genocide that resulted in the deaths of thousands

26 Indian Control, *supra* note 15 at 1.

27 P. Palmater, K. Pate, “Reply to Issues 2, 3, 16 & 18: Indigenous Women and Women in Detention: Report to the Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee’s Eighth and Ninth Periodic Review of Canada” (Toronto: Chair in Indigenous Governance, Ryerson University, Feminist Alliance for International Action, Canadian Association of Elizabeth Fry Societies, October 2016), online: <<http://fafia-afai.org/wp-content/uploads/2016/10/Canadian-Association-of-Elizabeth-Fry-Societies-Chair-in-Indigenous-Governance-FAFIA.pdf>> [FAFIA report] at 6. Senate Standing Committee on Aboriginal Peoples, “Reforming First Nation Education: From Crisis to Hope: Report of the Senate Standing Committee on Aboriginal Peoples” (Ottawa: Senate Standing Committee on Aboriginal Peoples, December 2011), online: <<http://www.parl.gc.ca/content/sen/committee/411/appa/rep/rep03dec11-e.pdf>> [Crisis to Hope].

28 *Death by Poverty*, *supra* note 10.

29 Christina Comisso, “Canada faces a crisis on aboriginal reserves: UN investigator” (Toronto: CTV News, 15 October 2013), online: <<http://www.ctvnews.ca/canada/canada-faces-a-crisis-on-aboriginal-reserves-un-investigator-1.1497612>> quoting former United Nations Special Rapporteur for Indigenous peoples, Dr. James Anaya.

30 *Crisis to Hope*, *supra* note 27 at v.

31 OAG Report 2004 note 12.

32 RCAP, *supra* note 3. TRC Report, *supra* note 15.



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of innocent children.<sup>33</sup> Far from the treaty vision of mutual prosperity, education became a weapon to separate our children from our Nations and take away the heart of our Nations – our cultures, languages and identities. The section which follows briefly reviews this history of First Nation higher education to better understand the crisis we are facing today.

## (a) Traditional Indigenous Knowledge, Education and Nation-Building

Since time immemorial, Indigenous Nations all over Turtle Island, in what is now known as Canada, thrived in every aspect of life. This was no less true for the thirteen Indigenous Nations in what is now known as Ontario; namely, the Algonquin, Mississauga, Ojibway, Onondaga, Mohawk, Seneca, Oneida, Cayuga, Tuscarora, Cree, Odawa, Pottowatomi and Delaware.<sup>34</sup> These Nations lived as strong, independent, sovereign Nations within their own vast territories. They had time-tested laws, governments, economies and societies, all supported by lifelong learning and education by their citizens for their citizens, since long before contact. The historical record and modern research has shown that Indigenous education was holistic and transmitted not just practical knowledge, but important cultural values and traditions.<sup>35</sup>

There is no uniform or simple definition of traditional Indigenous knowledge(s) because it represents a vast array of knowledge(s) spread out over expansive territories, which are interpreted and applied in very specific ways by each Indigenous Nation.<sup>36</sup> It not only includes local knowledge about the plants, animals and environment; but also includes highly specialized knowledge about physical and mental health, science and engineering, math and astronomy, and medicine and medical procedures.<sup>37</sup> While many early non-Indigenous researchers and scientists scoffed at the value of traditional Indigenous knowledge(s) compared to western science, today, scientists and pharmaceutical companies are scrambling to access this advanced knowledge(s) – so much so, that legal protections are urgently needed to prevent their theft.<sup>38</sup>

Traditional Indigenous knowledge(s) were passed on from generation to generation using oral and symbolic forms of communication, as well as hands-on experience.<sup>39</sup> The knowledge was refined, tested, replaced and updated on a regular basis and shared through lifelong learning and education. Indigenous languages were an

33 *TRC report, supra* note 15.

34 *Manifesto, supra* note 20.

35 Province of Ontario, “For the Love of Learning: Report of the Royal Commission on Learning” (Toronto: Queen’s Printer for Ontario, 1994) at 409.

36 Marie Battiste, James Sa’ke’j Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon: Purich Publishing, 2000) [*Protecting Indigenous Knowledge*] at 35-41.

37 Dawn Hill, “Traditional Medicine in Contemporary Contexts: Protecting and Respecting Indigenous Knowledge and Medicine” (Ottawa: National Aboriginal Health Organization, 19 March 2003), online: <[http://www.naho.ca/documents/naho/english/pdf/research\\_tradition.pdf](http://www.naho.ca/documents/naho/english/pdf/research_tradition.pdf)>.

38 Assembly of First Nations, “Aboriginal Traditional Knowledge and Intellectual Property Rights” (Ottawa: AFN, undated), online: <[http://www.afn.ca/uploads/files/env/atk\\_and\\_ip\\_considerations.pdf](http://www.afn.ca/uploads/files/env/atk_and_ip_considerations.pdf)>. Tonina Simeone, “Indigenous Traditional Knowledge and Intellectual Property Rights” (Ottawa: Parliamentary Research Branch, 17 March 2004), online: <<http://www.lop.parl.gc.ca/content/lop/researchpublications/prb0338-e.pdf>>. Jane Anderson, “Indigenous Traditional Knowledge and Intellectual Property” (Durham, North Carolina: Centre for the Study of the Public Domain, 2010), online: <[http://web.law.duke.edu/cspd/pdf/ip\\_indigenous-traditionalknowledge.pdf](http://web.law.duke.edu/cspd/pdf/ip_indigenous-traditionalknowledge.pdf)>.

39 *Protecting Indigenous Knowledge, supra* note 36 at 48-56.



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integral part of Indigenous higher learning; i.e. the critical keys to understanding Indigenous knowledge systems and worldviews. But it wasn't just about disseminating technical knowledge; it was also about solidifying and maintaining relationships – an important part of nation-building and political alliances with other Nations.

*Our Native language embodies a value system about how we ought to live and relate to each other. ...[I]t gives a name to relations among kin, to roles and responsibilities among family members, to ties with the broader clan group. ... [T]here are no English words for these relationships. ...Now if you destroy our languages you not only break down these relationships, but you also destroy other aspects of our Indian way of life and culture, especially those that describe man's connection with nature, the Great Spirit, and the order of things. Without our languages, we will cease to exist as a separate people.<sup>40</sup>*

Traditional Indigenous education was an informal process that passed on Indigenous knowledge(s) to prepare each for adulthood and their contributions to their Nations starting from birth.

*Traditionally, education was largely, an informal process that provided the young with the specific skills, attitudes, knowledge and values required to function in everyday life. The development of the whole person was emphasized through teachings that were often shared in storytelling using “tricksters of learning”... through which children learned such values as humility, honesty, courage, kindness and respect.<sup>41</sup>*

But Indigenous education did not stop in childhood nor was it confined to a limited geographical space during a set time of the day. Higher education was a lifelong learning process and there were many ceremonies, practices, customs and laws related to the transition to adulthood that came with higher learning. It was a practical, physical, mental and spiritual process.<sup>42</sup>

Traditional Indigenous higher education and higher learning cannot be separated from the political, cultural, social and language context from which it originates. At the same time, traditional Indigenous higher education was also about more than learning, for learning sake; but was tied to one's role in nation-building - be it as a mother, father, elder, hunter, warrior, trader, manufacturer, negotiator, law-maker or leader. Preparing an individual for their valued role in the Nation was fundamental to the Indigenous concept of lifelong learning and higher education. This kind of education was land-based, as were the Nations engaged in it – each with their own defined and defended territories. With every citizen having a role in supporting themselves, their extended families and Nations; there was enough knowledge, skills, experience and ingenuity to sustain vibrant economies

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40 Assembly of First Nations, Canadian Museums Association, “Turning the Page: Forging New Partnerships Between Museums and First Peoples” (Ottawa: AFN & CMA, 1994), online: <[http://museums.in1touch.org/uploaded/web/docs/Task\\_Force\\_Report\\_1994.pdf](http://museums.in1touch.org/uploaded/web/docs/Task_Force_Report_1994.pdf)> as quoted in *Protecting Indigenous Knowledge*, *supra* note 36 at 49.

41 Verna Kirkness, “Aboriginal Peoples and Tertiary Education in Canada: Institutional Responses” (1995) vol. 11 *London Journal of Canadian Studies* 28 at 29.

42 Marie Battiste, “Indigenous Knowledge and Pedagogy in First Nations Education: A Literature Review with Recommendations” (Ottawa: Indian and Northern Affairs Canada, 2002), online: <[http://www.afn.ca/uploads/files/education/24\\_2002\\_oct\\_marie\\_battiste\\_indigenousknowledgeandpedagogy\\_lit\\_review\\_for\\_min\\_working\\_group.pdf](http://www.afn.ca/uploads/files/education/24_2002_oct_marie_battiste_indigenousknowledgeandpedagogy_lit_review_for_min_working_group.pdf)>. Julian Robbins, Jonathan Dewar, “Traditional Indigenous Approaches to Healing and the modern welfare of Traditional Knowledge, Spirituality and Lands: A critical reflection on practices and policies taken from the Canadian Indigenous Example” (2011) vol.2, issue 4 *International Indigenous Policy Journal* 1.



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and trading networks. In this way, traditional Indigenous higher education cannot be separated from economic development, sustainability and prosperity.

Indigenous Nations have always known that education is one of the keys to nation-building.<sup>43</sup> Strong, independent sovereign Nations raised knowledgeable, skilled citizens who could perform many functions to not only provide for their families (hunting, fishing, fowling, gathering, agriculture, building) but also to support the sovereignty and strength of their Nations (military defense, political negotiations, multi-language translation and interpretation, manufacturing, trade, governance, law-making).<sup>44</sup> All of this learning was done within the context of specific Indigenous cultures, traditions, values and belief systems tied to a spiritual context and worldview.<sup>45</sup> In order to impart all of this information in a holistic way, they relied on their own higher education processes based on traditional Indigenous knowledge(s) gained over many generations from their own Nations, and knowledge(s) acquired through interaction with other Nations.

*The process of nation-building consists of many layers, including the development of behaviours, values, language, institutions, and physical structures that elucidate the community's history and culture, infuse and protect knowledge of the past in present-day practices, and ensure the future identity and independence of the nation.*<sup>46</sup>

The continued transmission of traditional Indigenous knowledge(s) is critical to the preservation of Indigenous cultures and identities into the future – which lies at the heart of nation-building. Indigenous higher learning must be understood in this light. Higher education has largely been misunderstood by federal and provincial levels of government as merely a program of knowledge and skills training for individuals to ready First Nations people for employment – i.e. to be economically self-sufficient as individuals within modern economies. However, this is a limited view of Indigenous higher education which excludes the collective interest in nation-building as a core function of higher education.<sup>47</sup> This forms part of the disconnect between federal and provincial policy objectives (priority of basic numeracy and literacy) versus Indigenous objectives (sovereignty, cultural preservation, and nation-building).

Without Indigenous traditional knowledge(s) incorporated in k-12 or post-secondary education, First Nation students will only learn about Canada's culture, languages, history and economic theories. This may further Canadian nation-building, but it does so at the expense of Indigenous knowledge, education and nation-building. It is for this very reason – the enduring assimilatory forces of colonial state nation-building - that

43 Bryan McKinley, et al., *Postsecondary Education for American Indian and Alaska Natives: Higher Education for Nation Building and Self-Determination* (vol.37 No.5) (San Francisco: Wiley Periodicals, 2012) [*Higher Education for Nation Building*]. See also: Joseph Zajda, et al. eds., *Nation-Building, Identity and Citizenship Education: Cross-Cultural Perspectives* (Germany: Springer Science & Business Media, 2009).

44 *Higher Education for Nation Building*, supra note 43 at 12-27.

45 Angela Weenie, "Toward an Understanding of the Ecology of Indigenous Education" (2009) 2:1 *First Nations Perspectives* 57.

46 *Higher Education for Nation Building*, supra note 43 at 12.

47 S. Cornell, J. Kalt, "Sovereignty and nation-building: The development challenges in Indian country today" (2003) 22:3 *American Indian Culture and Research Journal* 187. See also: T. Alfred, *Wasase: Indigenous pathways of action and freedom* (Peterborough, ON: Broadview Press, 2005). T. Alfred, *Peace, power, righteousness: An indigenous manifesto* (Don Mills, ON: Oxford University Press, 1999).



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the critical need to preserve, protect and transmit traditional Indigenous knowledge is now recognized at the international level under the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.<sup>48</sup> Indigenous peoples from all over the world, who have suffered similar colonial experiences, fought for decades to ensure specific protections for their traditional knowledge(s) and education systems.<sup>49</sup> The corresponding articles in UNDRIP are considered by the United Nations to be the “minimum standards for the survival, dignity, well-being and rights of the world’s indigenous peoples”.<sup>50</sup>

The relevant articles are as follows:

## Article 11:

*Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*<sup>51</sup>

## Article 12:

*Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.*<sup>52</sup>

## Article 13:

*Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*<sup>53</sup>

## Article 31:

*Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*<sup>54</sup>

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48 *UNDRIP*, *supra* note 24.

49 Office of the High Commissioner, United Nations Human Rights, “Declaration on the rights of indigenous peoples” (Geneva: United Nations, undated), online: <<http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>>.

50 *Ibid.*

51 *UNDRIP*, *supra* note 25 at Article 11(1).

52 *Ibid.* at Article 12(1).

53 Article 13(1).

54 Article 31(1).



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The treaty vision of education and prosperity was born from this Indigenous context of lifelong learning and education, which was tied not only to sustainable economies, but also to cultural preservation and nation-building. The treaty vision for education should be viewed within this context.

**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.**

## (b) Treaty Vision of Education and Prosperity

At its most basic level, treaties were understood by Indigenous peoples to be agreements to ensure peaceful relations by respecting each Nation's autonomy; by confirming mutual obligations; and by ensuring both parties would share in the land and prosperity.<sup>55</sup> Each treaty was unique and therefore the benefits and obligations varied from Nation to Nation and not all Indigenous Nations in Canada signed treaties.<sup>56</sup> In Ontario, some of the treaties include: the two-row wampum, friendship wampum, 1850 Robinson-Huron treaty, 1850 Robinson-Superior treaty, Williams treaties, the numbered treaties (3, 5 & 9) and Upper Canada pre-confederation treaties.<sup>57</sup> The *Royal Proclamation of 1763* is also considered by some Indigenous scholars as part of the chain of treaty agreements with Indigenous Nations in Canada.<sup>58</sup> These agreements came to be referred to as the Silver Covenant Chain:

*...confirming that the relationship between First Nations and Europeans should be linked by friendship, peace and respect. It was understood that the chain should be polished from time to time to keep from tarnishing, meaning that the relationship should be renewed or nurtured.*<sup>59</sup>

A fundamental part of this treaty relationship is the recognition of our status as Nations, and as a result, treaty negotiations were based in the recognition of our rights to the lands, waters and resources in our territories. Far from being a surrender of our sovereignty and independence, the treaty negotiations show that Indigenous Nations did not consider themselves to be conquered, but instead were making agreements based on their status as self-determining, free peoples (Nations):

55 M. Battiste, ed., *Living Treaties: Narrating Mi'kmaw Treaty Relations* (Cape Breton: Cape Breton University Press, 2016) [*Living Treaties*] at 1-9.

56 M. Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto: University of Toronto Press, 2014) [*On Being Here to Stay*].

57 Treaty Commission of Ontario, "Background Paper and Summary of the Experts Forum July 28-30, 2009 Kettle and Stony Point First Nation" (Ottawa: Treaty Commission of Ontario, 2009), online: <<http://www.indigenousbar.ca/pdf/preconf%20workshop.roger%20jones%20&%20kathleen%20lickers.background%20paper.pdf>>. Richard Powless, "The New Agenda: Building Upon the History of First Nation Education in Ontario" [*New Agenda*] in *Manifesto*, supra note 20 at 1.

58 John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government" in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and respect for Difference* (Vancouver: UBC Press, 1997) 155 [*Wampum at Niagara*].

59 *New Agenda*, supra note 57 at 4.



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*Englishman, although you have conquered the French you have not yet conquered us! We are not your slaves. These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance; and we will part with them to none. Your nation supposes that we, like the white people, cannot live without bread, and pork and beef! But, you ought to know, that He, the Great Spirit and Master of Life, has provided food for us, in these spacious lakes, and on these woody mountains.<sup>60</sup>*

The mutual understanding at the time was that our Nations were both here to stay and the treaties were a way of negotiating that fact. The spirit and intent of the treaties is as important as the written text of the document. The treaties represent a relationship that was and is intended to survive forever – a solemn commitment to the Nation to Nation relationship which represents more than merely honouring specific obligations.<sup>61</sup> The spirit and intent of treaties are based on mutual respect, benefit and protection.<sup>62</sup> There was no understanding in the minds of Indigenous treaty negotiators of a surrender of sovereignty or nationhood. While the treaties vary from region to region, the spirit and intent of treaties can never be determined solely by what ended up being written in English by English drafters - the spirit and intent includes the understandings and intention of both of the parties.<sup>63</sup>

That is why it is so important to consider treaty making in Ontario from a holistic context. Treaty promises to provide education were and are considered within the larger context of nationhood and mutual prosperity. Treaty negotiators on both sides had an understanding that education included formal or higher education and that this form of education was necessary for the future economic well-being of Indigenous Nations.

*First Nation representatives who negotiated the numbered treaties had an understanding of formal education and expected their members and future generations to benefit from such services. Formal education would enable First Nation communities to supplement traditional educational practices with western teaching so they could “live and prosper and provide”.<sup>64</sup>*

From the earliest of treaty agreements like the *Belt of 1764*, the Crown promised to always provide assistance:

*If you should ever require my assistance, send this and my hand will be immediately stretched forth to assist you.<sup>65</sup>*

This was a general promise of assistance which could easily include assistance for higher education for First Nations – especially since education is so linked to economic well-being.

Specifically, with regard to the negotiation of Treaty #3 in northern Ontario, the goal of negotiating the treaty was very much centered on future material well-being in a changing economy that was well within the minds of all parties at the time:

60 *Wampum at Niagara, supra* note 58 at 170.

61 *On Being Here to Stay, supra* note 56 at 134-140.

62 P. Palmater, “My Tribe, My Heirs and Their Heirs Forever: Living Mi’kmaq Treaties” in *Living Treaties, supra* note 55 at 34.

63 *RCAP, supra* note 3, vol. 1, chap. 5, part 3, at 112-129.

64 Sheila Carr-Stewart, “A Treaty Right to Education” (2001) 26:2 *Canadian Journal of Education* 125 at 126 [*Treaty Right to Education*].

65 *Wampum at Niagara, supra* note 58.



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*Both goals envisioned a “better” future for Indian people in a world in which the white man was an increasingly significant factor. One goal emphasized the physical and cultural survival of the Indian people; the other goal emphasized improved material well-being.<sup>66</sup>*

In Treaty #3, a specific promise was made in relation to education:

*And further, Her Majesty the Queen agrees to maintain schools for instruction in such reserves hereby made as to her Government of her Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.<sup>67</sup>*

In trying to convince the Indigenous peoples to negotiate this treaty, Alexander Morris, negotiating on behalf of Her Majesty the Queen and the Government of Canada explained:

*I will also establish schools whenever any band asks for them, so that your children may have the learnings of the White man.<sup>68</sup>*

Thus, the kind of education contemplated under the treaty would be a standard at least equivalent to that of the “white man”.<sup>69</sup> European universities and institutes of higher learning started at least as early as 1096 and were well established by the time treaties were being negotiated in what came to be known as Canada.<sup>70</sup> There is no doubt that higher education would have been contemplated by both parties.

Similarly, Treaty 9 specified that funding and infrastructure was included as part of the education commitment:

*Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty’s government of Canada.<sup>71</sup>*

When these treaties have been studied in the fuller context of the larger treaty negotiating process, together with the negotiation minutes, it is clear that the treaties not only envisioned First Nation control of education (when and where) but also that the costs and infrastructure would be borne by the settler governments.<sup>72</sup> The type of education was meant to be at least at the same standard as for settlers and for the purposes of ensuring future

66 W. Daugherty, “Treaty Research Report: Treaty 3 (1873)” (Ottawa: INAC, 1986), online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/tre3\\_1100100028672\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/tre3_1100100028672_eng.pdf)> [*Treaty 3 Report*] at 29.

67 Treaty 3, 1873 taken from Treaty Relations Commission of Manitoba, “Treaty 3 Text and Adhesions”, online: <<http://www.trcm.ca/wp-content/uploads/PDFs/Treaties/Treaty%203%20Text%20and%20Adhesions.pdf>>. See also: *Manifesto*, *supra* note 20 at 6. *Treaty 3 Report*, *supra* note 66 at 30.

68 *Treaty 3 Report*, *supra* note 66 at 30.

69 *Treaty Right to Education*, *supra* note 64 at 130.

70 L. Tucker, “10 of the Oldest Universities in the World” (16 September 2016), online: <<http://www.topuniversities.com/blog/10-oldest-universities-world>>. University of Oxford started in 1096, University of Paris started in 1160 and the University of Cambridge in 1209.

71 INAC, “Treaty Texts: Treaty 9” (Ottawa: INAC, 2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100028863/1100100028864>> and as cited in *Manifesto*, *supra* note 19 at 6.

72 *Treaty Right to Education*, *supra* note 64 at 128.



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prosperity.<sup>73</sup> As one treaty expert explained: “The Crown’s commitment to provide formal education (schools and instruction) built upon community educational practices of life-long education and added western formal instruction to traditional educational practices.”<sup>74</sup>

The spirit and intent of treaties were based on the concept of mutual prosperity and therefore an Indigenous understanding of treaty education provisions would naturally include higher education. The Indigenous perspective, which is supported by the oral history of our elders, sees the treaty right to education as related to both future/modern economies and nation-building – something in the minds of both parties at the time. Treaty negotiation minutes clearly show that education was tied to economic prosperity to “live in comfort” and to “live and prosper and provide”.<sup>75</sup> While the Crown may not have lived up to its treaty obligations since their signing, this does not diminish the actual spirit and intent of the treaties. The treaties included a commitment to education that was tied to prosperity and is well substantiated by both oral histories and treaty minutes. What was originally intended as a tool for prosperity ended up being used by the Crown as a tool for oppression – forgetting the spirit and intent of the treaties altogether.

**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.**

## (c) Education as Oppression

What started out as a nation to nation relationship quickly deteriorated after the treaties were negotiated and more settlers arrived to cement their occupation of Indigenous lands.<sup>76</sup> The Crown took a very different approach to “Indian policy” once the treaty process had ended. Colonial “Indian policy” was focused on (1) acquiring Indigenous lands and resources and (2) reducing the Crown’s financial obligations to Indigenous peoples from treaties and other agreements.<sup>77</sup> Their primary means of implementing this policy was focused on either the elimination or assimilation of Indigenous peoples.<sup>78</sup> Unfortunately, while the treaty right to education was supposed to ensure prosperity for Indigenous peoples, it ended up being used by the Crown as a genocidal tool to both eliminate and assimilate Indians. The many deaths that resulted from the neglect, abuse, torture and medical experimentations in Indian residential schools represents one of the worst breaches of treaty and human rights in Canada’s history.<sup>79</sup>

Canadian officials have always tried to downplay the devastating impacts of their oppressive education policies. In 2011, former Indian Affairs Minister John Duncan claimed that residential schools were not an act of

73 *Ibid.* at 129.

74 *Ibid.* at 130.

75 *Ibid.* at 129.

76 *RCAP, supra* note 3, vol. 1, part 1, at chap. 3-6.

77 P. Palmater, “Genocide, Indian Policy and the Legislated Elimination of Indians (2014) 3:3 *Aboriginal Policy Studies* 27.

78 P. Palmater, “Death by Poverty: The Lethal Impacts of Colonialism” in W. Anthony, L. Samuelson, eds. *Power and Resistance* (Winnipeg: Fernwood Publishing, 2017) 6<sup>th</sup> ed. (forthcoming) [*Lethal Impacts*].

79 *TRC Report, supra* note 15.



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genocide, but was a well-intended “education policy gone wrong”.<sup>80</sup> The TRC, Chaired by (then) Justice Murray Sinclair, released its report in 2015, which examined Canada’s residential school system in great detail and came to a much different conclusion:

*Physical genocide is the mass killing of the members of a targeted group, and biological genocide is the destruction of the group’s reproductive capacity. Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.*

*In its dealing with Aboriginal people, Canada did all these things.*<sup>81</sup>

In fact, the primary purpose of residential schools was not even related to education, but instead to separate Indigenous children from their parents, communities and Nations so as to sever their connections to their cultures, languages and identities.<sup>82</sup> Residential schools were as much about destroying Indigenous Nations as it was about assimilating Indigenous peoples. Canada’s very foundation as a Nation is based on the dispossession of Indigenous peoples from our lands, cultures and identities. The spirit and intent of treaties and the prosperous vision of education held within them was far from the mind of Canada’s first Prime Minister, Sir John A. MacDonald, who not only spoke of Indigenous peoples with great contempt, but promoted education as a tool to erase our culture and identity:

*When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.*<sup>83</sup>

However, as central as residential schools were to eroding Indigenous languages, cultures and identities, modern education has also oppressed First Nations in public schools, universities and colleges – even, as some would argue, without explicit intent.<sup>84</sup> While the federal government was the controlling mind behind residential schools, the provincial government has been the controlling mind behind public k-12 schools, universities and

80 APTN National News, “Saganash calls on Duncan to apologize over residential schools comment” (Ottawa: APTN National News, 27 October 2011), online: <<http://aptn.ca/news/2011/10/27/residential-schools-saganashduncan-apologize/>>.

81 TRC Report, *supra* note 15 at “Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada” [TRC Honouring Truth] at 1.

82 *Ibid.* at 2.

83 *Ibid.* Quoting Sir John A. MacDonald addressing the House of Commons in 1883 defending residential schools.

84 M. Aquash, “First Nations in Canada: Decolonization and Self-Determination” (2013) 19:2 In Education (no page #), online: <<http://ineducation.ca/ineducation/article/view/142/617>>.



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colleges in Ontario. In k-12 schools, the primary languages of instruction are either French or English and the educational content reflects Canadian ideas, values, philosophies and cultures. With few exceptions, most First Nation children do not see themselves or their Nations reflected in k-12 curriculum in any substantive way. This pattern is replicated at the post-secondary level where most courses, programs and research priorities do not reflect Indigenous cultures, languages, knowledge(s) or priorities. Not only are Indigenous peoples not represented in higher education curriculum, Indigenous peoples are underrepresented in faculty.<sup>85</sup>

Indigenous representation in university and college instructors, researchers and senior administration is a mere 0.9% and well below their percentage of the population at 4%.<sup>86</sup> They represent 600 university professors of over 64,000 in Canada.<sup>87</sup> The numbers are even less at the senior administration level (deans, Vice-Presidents and Presidents). Outside of Native Studies programs, the majority of Indigenous faculty are concentrated in social work, education and law.<sup>88</sup> Some Indigenous faculty report overt racism and chronic under-representation of faculty at these provincial institutions as one of the impediments to ensuring Indigenous student success.<sup>89</sup> Ongoing oppression in First Nation higher education impacts both the instructor and student:

*We, as First Nations people, have gotten used to major universities and colleges setting up programs to investigate and explore (or poke and prod, depending on one's point of view) our culture and heritage. But to watch these programs hire non-First Nations people to be the main researchers and teachers of this knowledge, while utilizing Aboriginal knowledge and experience in a peripheral way, is a troubling and hurtful experience to the First Nations community.<sup>90</sup>*

Oppression and exclusion in higher education is not only institutional (systemic), but also social (overt). In addition to not having enough First Nation instructors for example, many First Nation students report experiencing racism from other students as well as university and college instructors, staff and administration which has resulted in a great number of students dropping out of university.<sup>91</sup> Similarly, without culturally relevant courses and Indigenous instructors, Indigenous languages will continue to be at significant risk of extinction. We have lost at least 10 Indigenous languages already and only 3/50 remain reasonably safe from imminent extinction.<sup>92</sup> Neither the federal or provincial governments, or post-secondary institutions have made Indigenous language preservation a priority.

85 H. Eisenkraft, "Racism in the Academy" (University Affairs, 12 October 2010), online: <<http://www.universityaffairs.ca/features/feature-article/racism-in-the-academy/>>.

86 F. Henry, "Indigenous Faculty at Canadian Universities: Their Stories" (2012) 44:2 *Canadian Ethnic Studies* 101.

87 *Ibid.* at 104.

88 *Ibid.*

89 Taskforce on Anti-Racism at Ryerson University, "Report of the Taskforce on Anti-Racism at Ryerson University" (Toronto: Ryerson University, 2010), online: <[http://www.ryerson.ca/antiracismtaskforce/docs/RU\\_Taskforce\\_report.pdf](http://www.ryerson.ca/antiracismtaskforce/docs/RU_Taskforce_report.pdf)> at 18-20.

90 W. Lindsay, "The Key and the Coveted: An Expose on the Lack of First Nations Representation in First Nations Studies Programs at the College and University Level" (2003) XXIII 1 *Canadian Journal of Native Studies* 184 at 186.

91 V. Timmons, et al., "Retention of Aboriginal Students in Post-Secondary Institutions in Atlantic Canada: An Analysis of the Supports Available to Aboriginal Students" (2009), online: <[https://www.tru.ca/\\_shared/assets/Timmons\\_et\\_al\\_2009\\_Retention\\_of\\_Ab\\_PSE\\_Supports\\_Available23652.pdf](https://www.tru.ca/_shared/assets/Timmons_et_al_2009_Retention_of_Ab_PSE_Supports_Available23652.pdf)>.

92 M.J. Norris, "Canada's Aboriginal Languages" (Winter 1998) *Canadian Social Trends* 8, online: <[file:///C:/Users/Pam/Downloads/Canada\\_s\\_Aboriginal\\_Languages.pdf](file:///C:/Users/Pam/Downloads/Canada_s_Aboriginal_Languages.pdf)>.



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In Ontario, First Nation-controlled institutes (collectively known as the Aboriginal Institutes Consortium, AIC) have been delivering post-secondary education programs to First Nation students for over thirty years.<sup>93</sup> They have often been looked to as an alternative to provincial institutes which are much slower to address First Nation representation at the faculty and student level or to address culturally-relevant course and program content. They provide a “culturally-safe” space for First Nation students which helps increase graduation rates.<sup>94</sup> However, First Nation post-secondary institutes in Ontario have not been fully supported by federal and provincial governments either in terms of funding requirements or accreditation.<sup>95</sup> Despite the success of these institutes, First Nation control of post-secondary education in Ontario remains a struggle and failure to expand their programs may even impact their viability going forward.<sup>96</sup> Recent funding cuts to some of the institutes has raised serious issues around the future of First Nation controlled and culturally-relevant post-secondary education in Ontario.<sup>97</sup>

Given the importance of education in the reconciliation process, government inaction to address the assimilatory impacts of current higher education systems represents but one of many modern government failures to respect our Nation to Nation relationship and the spirit and intent of our treaties.

**The Province of Ontario must make 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 staff to be hired; and**
- b) **Jointly agree upon additional First Nation courses, programs, and research supports.**

### (3) Legacy of Broken Promises

*Many of our students have been educated in such a way as to render them useless to our communities on a practical level.*<sup>98</sup>

To say that Canada’s education legacy is one of many broken promises would be an understatement. Not only did Canada’s Indian policy include the physical, biological and cultural genocide of Indigenous peoples, but its specific education policy resulted in the deaths of thousands of Indigenous children from Nations all over Turtle Island.<sup>99</sup> In fact, Indigenous children had a better chance of dying in residential school (1:25) than soldiers had of dying in battle in WWII (1:26).<sup>100</sup> But Canada’s education legacy extends beyond the devastating inter-

93 Aboriginal Institutes Consortium, “A Roadmap to Recognition for Aboriginal Institutes in Ontario: Position Paper” (Six Nations: Aboriginal Institutes Consortium, 10 October 2014) [*Roadmap*].

94 *Ibid* at 2.

95 *Ibid*.

96 *Ibid*.

97 M. Ernskin, “Ottawa cuts its portion of Kenjgewin Teg funds by 75%” (Manitoulin: Manitoulin Expositor, 24 August 2016), online: <<http://www.manitoulin.ca/2016/08/24/ottawa-cuts-portion-kenjgewin-teg-funds-75/>> [*Teg Funds*].

98 COO Res 8/78, *supra* note 1.

99 TRC *Honouring Truth*, *supra* note 81 at 1.

100 D. Schwartz, “Truth and Reconciliation Commission: By The Numbers” (Ottawa: CBC News, 2 June 2015), online: <<http://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185>>.



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generational impact of residential schools into higher education. Canada's failures in regards to Indigenous education are not merely historical matters – they are ongoing today in different forms. Even the United Nations has expressed grave concern for what it calls a “crisis” of poverty resulting from Canada's many failures to abide by basic human rights and specific treaty commitments.<sup>101</sup>

It is important to note that both federal and provincial governments are culpable in their failure to address post-secondary education for First Nations, especially knowing that a lack of education leads to such dismal conditions of poverty. Their joint failure to fulfill their treaty and other legal obligations to First Nations continues into present day despite the many decades of advocacy by the Chiefs of Ontario, regional First Nation organizations, tribal councils, and individual First Nations in Ontario. Our message has remained consistent around the urgent need to ensure First Nations have access to post-secondary education and related supports, but neither the federal or provincial government has stepped up to make this happen. As a result, there is a nation-wide waiting list of over 15,000 First Nation students waiting to attend university and the situation is equally bleak in Ontario's 133 First Nations, as some individual First Nations have over 50 students waiting for funding.<sup>102</sup>

The section which follows provides a brief outline of government failures in post-secondary education; the crippling socio-economic conditions which have resulted; and the Chiefs of Ontario's persistence in their advocacy efforts to bring about substantive change.

## (a) Federal and Provincial Failures

The list of federal and provincial failures in relation to First Nation education is too extensive to be covered in detail in the limited space in this report. That said, it is important to highlight some of the failures which have most impacted the lives of First Nations in Ontario. While the federal government has primary jurisdiction in relation to First Nations vis-à-vis the provinces, it is increasingly recognized that the province of Ontario also shares in some of the responsibility, as a representative of the Crown. To this end, both governments share responsibility for the current crisis in First Nations and for the failure to fully implement the treaty and other rights to post-secondary education. Their decades-long debate over jurisdiction and who pays for First Nation rights has resulted in lengthy litigation with First Nations falling through the cracks on healthcare, foster care, housing, water and education.

Under section 91(24) of the *Constitution Act, 1867*, the federal government has jurisdictional responsibility for “Indians and lands reserved for the Indians.”<sup>103</sup> As an exercise of this jurisdiction, the federal government enacted the *Indian Act 1876*, which was a consolidation of various pieces of pre-confederation legislation addressing Indian issues ranging from membership and community elections, to land surrenders and local governance.<sup>104</sup> At

101 James Anaya, “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya” (4 July 2014) A/HRC/27/52/ADD.2 [*Anaya Report*] at 6.

102 Chiefs of Ontario, “New Summary Report” (16 July 2016).

103 *Constitution Act, 1867* (UK), 30 & 31 Victoria, c.3 [*Constitution Act 1867*] at s.91(24).

104 *An Act to amend and consolidate the laws respecting Indians*, assented to April 12, 1876, c.18 [*Indian Act 1876*].



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different points in time, the *Indian Act* banned traditional ceremonies, punished Indigenous women for inter-marriages, and even denied Indigenous peoples their communal rights if they sought higher education.

Ironically, education was a treaty right, but obtaining a higher education could lead to loss of Indian status and treaty rights. Section 86(1) of the *Indian Act 1876*, specifically punished Indigenous peoples for becoming educated by stripping away their identity and membership in their First Nation.

*Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor (sic) or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall ipso facto become and be enfranchised.*<sup>105</sup>

Thus the federal government had established a strong link between western education and the loss of one's Indian identity (and associated rights).<sup>106</sup> These laws, together with the residential school policy helped to reinforce negative associations between higher education and Indigenous identity.<sup>107</sup> Their use of residential schools to try to erase our languages, cultures and identities has had inter-generational impacts, with some very negative associations between education and Indigenous identity.

The federal government's Indian policy has always been to assimilate Indians into the broader society and transfer jurisdiction to the provinces. The 1969 *White Paper on Indian Policy* advocated eliminating the *Indian Act*, Indian Affairs, Indian status, and reserves.<sup>108</sup> It also intended to divide up reserves into individual parcels of land and get rid of treaties. Indian rights and titles would no longer be an issue. First Nations reacted swiftly with the *Red Paper* stating that the only way to maintain our cultures was to remain as Indians and that First Nations should be in control of our own governments, including education.<sup>109</sup>

Shortly thereafter, the National Indian Brotherhood (now Assembly of First Nations) issued a policy document called *Indian Control of Indian Education* reminding Canada that it had a treaty obligation to fund education and that language and culture, under the control of First Nations parents, families and communities was the vision for education.<sup>110</sup> In 1973, Minister of Indian Affairs Jean Chretien gave official recognition to the policy – yet never lived up to full First Nation control, the incorporation of Indigenous languages or treaty-based funding.<sup>111</sup>

105 *Ibid.* at s. 86(1).

106 S. Carr-Stewart, G. Blazer, M. Cottrell, "First Nations Post-Secondary Education in Western Canada: Obligations, Barriers, and Opportunities" (St. John's, Nfld: The Morning Watch: Educational and Social Analysis, Winter 2013), online: <<http://www.mun.ca/educ/faculty/mwatch/vol40/winter2013/firstNations.pdf>> [Obligations & Barriers] at 28.

107 *TRC Report*, *supra* note 15.

108 Government of Canada, "Statement of the Government of Canada on Indian Policy" (Ottawa: Government of Canada, 1969), online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cp1969\\_1100100010190\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cp1969_1100100010190_eng.pdf)> [1969 *White Paper*].

109 The Indian Association of Alberta, *Citizens Plus: the Red Paper* (Edmonton: Indian Association of Alberta, 1970) [*Red Paper*].

110 Assembly of First Nations, *First Nations Control of First Nations Education: It's Our Vision, It's Our Time* (Ottawa: Assembly of First Nations, July 2010), online: <[http://www.afn.ca/uploads/files/education/3.\\_2010\\_july\\_afn\\_first\\_nations\\_control\\_of\\_first\\_nations\\_education\\_final\\_eng.pdf](http://www.afn.ca/uploads/files/education/3._2010_july_afn_first_nations_control_of_first_nations_education_final_eng.pdf)> [FNCFNE] at 3.

111 *Ibid.*



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Federal failures to live up to our treaties or to work with us in good faith did not stop with the *1969 White Paper*, even though it was officially withdrawn. In 1986, a secret Cabinet document was leaked which, like the *1969 White Paper*, advocated the “termination of Indigenous rights through various policy measures including off-loading federal responsibilities for ‘status Indians’ onto the provinces”.<sup>112</sup> Despite recognizing what they called “the plight of Canada’s native peoples” which they admitted had been studied in depth, they wanted to reduce even further, the funding going towards First Nations.<sup>113</sup> This secret Cabinet document came to be known as the *Buffalo Jump of the 1980’s* and was supported by all major government departments including Department of Justice (DOJ), Department of Fisheries and Oceans (DFO), Health Canada, Transport Canada, Canada Mortgage and Housing Corporation (CMHC), Indian and Northern Affairs Canada (INAC), Employment and Immigration, Public Service Commission (PSC) and the Royal Canadian Mounted Police (RCMP).<sup>114</sup> The Buffalo Jump policy was yet another betrayal of First Nations by the federal government.

After that there were several unilateral attempts by the federal government to make sweeping amendments to the *Indian Act*, all of which failed due to strong opposition from First Nations - most notably the proposed *First Nations Governance Act*.<sup>115</sup> None of these federal initiatives dealt with the treaty right to education or addressed the financial needs for post-secondary education. At the same time, the provinces sat back and let it play out between the federal government and First Nations, fairly secure in their position that all things First Nations were federal jurisdiction. Meanwhile, provinces were incarcerating Indigenous peoples in disproportionate numbers; were apprehending children in numbers higher than during residential schools; and thousands of Indigenous women went murdered and missing while provincial law enforcement did little to stop it.<sup>116</sup>

Although First Nations had some success in getting Aboriginal and treaty rights protected in section 35 of the *Constitution Act, 1982*, the failed constitutional talks left First Nations with an empty box of section 35 rights to be defined and limited by the courts.<sup>117</sup> At the same time, there were many reports and commissions by federal and provincial governments that sat on shelves gathering dust. The *Marshall Inquiry*<sup>118</sup>, *Manitoba Justice Inquiry*<sup>119</sup> and *Royal Commission on Aboriginal Peoples (RCAP)*<sup>120</sup> are just a few of the examples of studies which highlighted the failures of federal and provincial governments vis-a-vis First Nations, but did not result in any

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112 R. Diabo, “Justin Trudeau continuing proud Liberal tradition of betraying Indigenous peoples” (Toronto: Rabble, 28 October 2016), online: <<http://rabble.ca/blogs/bloggers/views-expressed/2016/10/justin-trudeau-continuing-proud-liberal-tradition-betraying-i>> [*Liberal Tradition*].

113 Deputy Prime Minister, “Memorandum to Cabinet: Report of the Ministerial Task Force on Native Programs” (12 April 1985) [*Buffalo Jump*] at 6.

114 *Ibid.* at 7.

115 *Liberal Tradition*, *supra* note 112.

116 *TRC report*, *supra* note 15.

117 *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982*, c.11 [*Constitution Act, 1982*] at s. 35(1). “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

118 Royal Commission on the Donald Marshall, Jr., Prosecution, “Royal Commission on the Donald Marshall, Jr., Prosecution: Digest of Findings and Recommendations” (Halifax: Royal Commission on the Donald Marshall, Jr., Prosecution, 1989), online: <[https://www.novascotia.ca/just/marshall\\_inquiry/\\_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution\\_findings.pdf](https://www.novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf)> [*Marshall Inquiry*].

119 Aboriginal Justice Inquiry of Manitoba, “Report of the Aboriginal Justice Inquiry of Manitoba” (Winnipeg: Aboriginal Justice Inquiry of Manitoba, 1999), online: <<http://www.ajic.mb.ca/volume.html>> [*Manitoba Justice Inquiry*].

120 *RCAP*, *supra* note 3.



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concrete actions or substantive changes. First Nations were forced to bring their claims to the courts in hopes of forcing governments to the table.<sup>121</sup> Although many of the Supreme Court of Canada (SCC) cases were sent back to trial with a direction to negotiate, neither the federal nor provincial governments seemed eager to do so. As Canada got wealthier, First Nations socio-economic conditions continued to deteriorate. While some federal entities tried to raise the alarm bells, neither federal or provincial governments would acknowledge either the treaty right to post-secondary education or their responsibility for the resulting socio-economic crises.

The Office of the Correctional Investigator tried to get the federal government to act on the over-incarceration rate of Indigenous peoples for years, noting the widening gap and calling the situation “grave”, a clear example of “discrimination”, and inequitable”.<sup>122</sup> The Auditor General for Canada called the impoverished social conditions in First Nations, together with the federal government’s failure to act on her recommendations that most impact the well-being of First Nations, “unacceptable”, “discriminatory”, a continuing crisis”, “an embarrassment”, and “inequitable”.<sup>123</sup> Noting that it would take at least 28 years to close the education gap, she urged immediate action on First Nation education.<sup>124</sup>

Every major report and study conducted on First Nation education has come to the same conclusions. First Nations must be in control of their own culturally-relevant education, and the government must live up to its treaty obligations to fund lifelong education. NIB’s *Indian Control of Indian Education* in 1972 emphasized the treaty obligation.<sup>125</sup> NIB’s *Tradition and Education* report in 1988 emphasized First Nation sovereignty over education and federal treaty obligations to pay for education.<sup>126</sup> The *MacPherson Report* of 1991 also supported First Nation control over education and adequate federal funding.<sup>127</sup>

In 2002, a national working group report entitled *Our Children*, repeated the same core recommendations around First Nation control, adequate funding and the preservation of culture and language. In 2009, the AFN (formerly NIB) issued an updated statement on *First Nation Control over First Nation Education* reaffirming their previous position. The Chiefs of Ontario also issued their own positions – which mirrored those of the NIB and other reports before them. The *Manifesto* in 2004, the 2012 report entitled *Our Children, Our Future, Our Vision*, and this present report also share the same positions and recommendations. Sadly, the federal and provincial governments have failed to step up and make any substantive contributions or improvements.<sup>128</sup>

The most obvious failure is the breach of treaty promises in relation to education and while many treaties in Canada were signed between the British Crown and Indigenous Nations, some treaties were signed with the

121 *On Being Here to Stay*, *supra* note 56. J. Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

122 *Our Children, Our Future*, *supra* note 15 at 25.

123 *Ibid.* at 26-27.

124 *Ibid.* at 27.

125 *Indian Control*, *supra* note 15.

126 National Indian Brotherhood, “Tradition and Education: Towards a Vision of Our Future: A Declaration of First Nations Jurisdiction over Education” (Ottawa: NIB, 1988) [*Tradition and Education*].

127 J. MacPherson, “MacPherson report on Tradition and education, towards a vision of our future” (Ottawa: INAC, 1991) [*MacPherson Report*].

128 *Our Children, Our Future*, *supra* note 15 at 20-28.



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federal and provincial governments – including some of the treaties in Ontario.<sup>129</sup> The failure of both levels of government to work in partnership with First Nations to implement the treaty right to education has led to crisis-level socio-economic conditions that persist in many First Nations today.

**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.**

## **(b) INAC's Post-Secondary Education Program**

INAC views the provision of post-secondary education (PSE) funding to First Nations people as a matter of social policy as opposed to legislative or legal requirement.<sup>130</sup> INAC's PSE programming is primarily funded through two authorities: (1) Grants to Indians and Inuit to support their postsecondary educational advancement, and (2) Payments to support Indians, Inuit and Innu for the purpose of supplying public services in education – Contributions to support the post-secondary educational advancement of registered Indian and Inuit students.<sup>131</sup> The INAC PSE program has three components:

The Post-Secondary Student Support Program (PSSSP) – is the primary component of the Program. PSSSP provides financial assistance to First Nation and eligible Inuit students enrolled in eligible post-secondary programs. The program aims to improve the employability of First Nation and Inuit students by providing them with funding to access education and skills development opportunities at the post-secondary level.

The University and College Entrance Preparation (UCEP) – provides financial support to First Nation and Inuit students who are enrolled in UCEP programs to enable them to attain the academic level required for entrance to degree and diploma credit programs.

The Post-Secondary Partnerships Program (PSPP) provides funding to eligible Canadian post-secondary institutions to design and deliver university- and college-level courses tailored for First Nations and eligible Inuit students. These courses help students gain the skills they need to enter and succeed in the labour market.<sup>132</sup>

The Postsecondary Student Support Program was created in 1977 as a universal funding mechanism for postsecondary support for First Nations learners. Funds are flowed from INAC headquarters to each region as a component of the annual core budget. The combined impact of a federal policy change in 1989 that modified the funding to a closed envelope, and the 2% funding cap in 1996, has led to a decrease in the number of students

129 *Manifesto, supra* note 20 at 6.

130 *Our Children, Our Future, supra* note 15 at 41-43. This section of the report is largely reproduced from our report on k-12 education in the "Post-Secondary Education" section.

131 Indian and Northern Affairs Canada, "Formative Evaluation of the Post-Secondary Education Program" (Ottawa: INAC, 2010) at iv.

132 Government of Canada, "Post-Secondary Education", online: <https://www.aadnc-aandc.gc.ca/eng/1100100033679/1100100033680>.



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funded, as well as the creation of long waiting lists of thousands of First Nation students unable to secure funding.<sup>133</sup>

The 2007 release of *No Higher Priority: Aboriginal Post-secondary Education in Canada* by the Standing Committee on Aboriginal Affairs and Northern Development recommended that the 2% cap be abolished and “that that the Department’s spending increases for PSE programming be based on actual costs associated with program components and not be subject to discretionary caps”.<sup>134</sup>

INAC’s response was that: “the responsibility for financing post-secondary education should be shared by learners and their families, according to their financial circumstances. It agrees that levels of support provided through [INAC] PSE programs should take into account the real needs of learners, but this does not mean trying to meet all of the costs they incur in pursuing post-secondary education. Instead, the Government will take a closer look at the overall efficiency of programming and ways to improve upon it.”<sup>135</sup>

An internal audit of PSE revealed significant management and administrative problems in INAC’s handling of the program.<sup>136</sup> INAC followed up with an internal review and turned their focus on alternative delivery mechanisms for the program, rather than focusing on solidifying reporting mechanisms to improve analysis of data and trends to bolster student achievement and continuing to prioritize program development for post-secondary education with Indigenous knowledge foundations.

As a result of INAC’s failure to address the chronic underfunding and its own mismanagement of the program, there are 18.3% less First Nations students receiving federal funding for higher education since 1997.<sup>137</sup> This is despite the fact that countless studies have shown the direct link between lack of education and poverty, unemployment, ill health, homelessness, and even murdered and missing Indigenous women and girls.<sup>138</sup>

Currently there are nine First Nation Institutes of Higher Learning functioning in Ontario. Collectively they form the Aboriginal Institutes Consortium (AIC). These include the Anishinabek Education Institute, the First Nations Technical Institute, the Iohahiiio Akwesasne Adult Education and Training Centre, the Kenjgewin Teg Educational Institute, the Ogwehoweh Skills and Trades Training Centre, the Oshki-Pimache-O-Win Education and Training Institute, the Seven Generations Education Institute, the Shingwauk Kinoomaage Gamig, and the

133 First Nation Education Council, “Funding Formula for First Nations Schools: The Instrument of a detrimental policy” (2009), online: <[http://www.cepn-fnec.com/PDF/etudes\\_documents/fiches\\_complete\\_eng.pdf](http://www.cepn-fnec.com/PDF/etudes_documents/fiches_complete_eng.pdf)>.

134 *No Higher Priority*, *supra* note 13 at xi.

135 Government of Canada, “Government Response to the Sixth Report of the Standing Committee on Aboriginal Affairs and Northern Development: No Higher Priority: Aboriginal Post-Secondary Education in Canada”, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3030369&Language=E&Mode=1&Parl=39&Ses=1>>.

136 *Audit of PSEP*, *supra* note 132 at 6.

137 *Cap leads to steep drop*, *supra* note 13.

138 Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Concluding observations of the Human Rights Committee*, CCPR/C/CAN/CO/5 (20 April 2006) at para 23. Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination*, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015), online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>> at paras. 13-20.



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Six Nations Polytechnic Institute. These institutes receive funding support for the development and delivery of First Nation Post-Secondary programs from two primary sources:

- (1) Federal - Indian Studies Support Program, Indian and Northern Affairs Canada at approximately \$3.9 million.
- (2) Provincial - Aboriginal Post-Secondary funding from the Ministry of Training, Colleges and Universities (now the Ministry of Advanced Education and Skills Development – MAESD) at \$3.2 million.<sup>139</sup>

However, these funds are insufficient to meet the current learning needs and capacity requirements of First Nations or that of Canada which is facing a critical labour shortage. Consequently, these Ontario First Nation Institutes are forced to find funds from other federal and provincial departments and ministries, as well as industry, for the development and delivery of required programs. A 75% federal funding cut was announced in 2016 to Kenjgewin Teg Educational Institute literally weeks before the new academic year began and several other AIC institutes were notified of similar cuts.<sup>140</sup> The funding issue for higher education has very quickly become an urgent one.

Funding authorities for the PSEP are now being approved on a year to year basis through the federal transfer payment policy. The instability of the funding hampers long-term planning at the community level and the inadequacy of the funding does not meet the current needs of First Nations to build capacity and ensure future prosperity. While First Nations also want to see improvement in program management and administration, this is directly dependent on adequate, stable, long-term funding. First Nations hold extensive expertise in the area of education and often retain data that supersedes current INAC requirements and are more than capable of addressing management issues once adequate funding is provided to do the necessary program reviews, evaluations and needs assessments from a First Nation perspective.

The vast majority of First Nation students aspire to obtaining a college or university education and completing their trades, diplomas, professional designations and/or undergraduate degrees and graduate degrees.<sup>141</sup> Yet many First Nation youth don't have access to resources to be able pay for their own education. Therefore, the majority have no savings to contribute.<sup>142</sup> The same is true of First Nation adults who want to attend a post-secondary institution.<sup>143</sup> Most don't know how they will find the funding to obtain an education.<sup>144</sup> We know that in Ontario, First Nations struggle to manage the underfunded PSE programs. In Ontario, 96% of First Nations who manage their own PSE funding, do not receive enough funding to meet the needs of their applications every

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139 R. Mosquito, "Briefing Note to Chiefs in Ontario re Accreditation of Aboriginal Institutes" (Thunder Bay, Aboriginal Institutes Consortium, 2010).

140 *Teg Funds*, *supra* note 97.

141 First Nations Information Governance Centre, "The First Nations Regional Early Childhood, Education and Employment Survey (FNREEES): Highlights pertaining to youth" (Ottawa: FNIGC, date unknown) at 56.

142 *Ibid.* at 61.

143 First Nations Information Governance Centre, "The First Nations Regional Early Childhood, Education and Employment Survey (FNREEES): Highlights pertaining to adults" (Ottawa: FNIGC, date unknown) at 22.

144 *Ibid.* at 25.



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year.<sup>145</sup> This means that every year students are deferred or on waiting lists.<sup>146</sup> What's worse is there is no end in sight as First Nations expect to defer more students in the future.<sup>147</sup> Even those First Nations that are funded do not receive adequate funding to properly support students.<sup>148</sup>

The impact of insufficient or no funding for students is devastating not just to the student, but his/her family, community and Nation.<sup>149</sup> One Ontario First Nation explained it this way:

*We currently only have enough funding for continuing students and recent high school graduates We seldom have extra funding to assist students on the wait list... These individuals remain on the wait list for lengthy periods of time, and often give up on their post-secondary goals. This diminishes our overall community well-being as we have higher unemployment rates, higher poverty rates, addictions, lower self-esteem, etc.<sup>150</sup>*

The failure of INAC to fund PSE creates inter-generational social problems and a lack of hope for the future:

*If we cannot provide funding for our community members to attend post secondary education they tend to get frustrated and angry. They also lose their confidence. Many times students will not reapply for funding once their app [sic] is refused. I think they do not want to be disappointed again so they give up. Once members give up on themselves or lose hope the community eventually gets negatively impacted in some way.<sup>151</sup>*

We simply can't continue down this same path and expect different results. It is long past time that the federal government and province of Ontario sat at the table with First Nations in Ontario and addressed this crisis in post-secondary education. The well-being of First Nations depends on it.

**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.**

## **(c) Devastating Socio-Economic Outcomes<sup>152</sup>**

Government failures to implement the treaty right to education or address long-standing issues in post-secondary education have led to devastating socio-economic outcomes for First Nations in Ontario and across Canada.<sup>153</sup> Sadly, this is not a new crisis – nor is it a hidden one.<sup>154</sup> Federal and provincial governments have long

145 *New Summary Report, supra* note 102 at 1.

146 *Ibid.* at 4.

147 *Ibid.* at 7.

148 *Ibid.* at 10.

149 *Ibid.*

150 *Ibid.* at 12.

151 *Ibid.*

152 The research from this section updates and expands upon the research conducted for *Our Children, Our Future supra* note 14 that primarily looked at k-12 education. The format of this section and updated statistical research originates, in part, from my research conducted for the United Nations review of Canada held in Geneva in late 2016 and is summarized in *FAFIA Report, supra* note 27. It also builds upon preview research conducted for *Death by Poverty, supra* note 10 and my book P. Palmater, *Indigenous Nationhood: Empowering Grassroots Citizens* (Winnipeg: Fernwood, 2015) [*Indigenous Nationhood*].

153 *Lethal Impacts, supra* note 78.

154 *Indigenous Nationhood, supra* note 152.



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known about the multiple over-lapping crises and surveys suggest that many Canadians are also well aware of the abuses suffered by First Nations and/or their current impoverished socio-economic conditions.<sup>155</sup> The most troubling part is that both federal and provincial governments, in this case Ontario, have long been aware of the root causes of these social conditions and what is needed to address them – but have continually failed to act. It is this failure to act on post-secondary education that has allowed conditions to deteriorate.<sup>156</sup> This should be of particular concern for the province of Ontario given that 20% of all Indigenous people and 22% of all First Nations are located in Ontario.<sup>157</sup>

What follows is a snapshot of some of the major socio-economic crises in First Nations in Ontario.

## Water and Sanitation Crisis:

In 2011, INAC commissioned an engineering report which found that 73% of all water systems and 64% of all wastewater systems on reserves are at medium to high risk.<sup>158</sup> At any given time, there are more than 100+ First Nations that do not have access to clean drinking water. At the writing of this report, there were 138 boil water advisories in First Nations in Canada, not including First Nations in British Columbia.<sup>159</sup> This is a significant omission as there are 198 First Nations in BC, comprising 1/3 of all First Nations.<sup>160</sup> In Ontario, nearly half of the 133 First Nations are under boil water advisory and at least 10 First Nations have gone without clean water for more than 10 years.<sup>161</sup> Neskantaga First Nation has been without clean water for over 20 years – something that would never be allowed to happen in a Canadian city.<sup>162</sup>

## Housing Crisis:

It has been estimated that over 107,000 new homes are needed for First Nations in Canada to address the current need and that this number will increase to 130,000 units by 2031.<sup>163</sup> The federal government conducted an

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155 EnviroNics, “Canadian Public Opinion on Aboriginal Peoples” (Toronto: EnviroNics, 2016), online: <<http://www.enviroNicsinstitute.org/uploads/institute-projects/canadian%20public%20opinion%20on%20aboriginal%20peoples%202016%20-%20final%20report.pdf>> at 11-12. Approximately 64% of Canadians say they have increased awareness of Aboriginal issues; 33% of Canadians are aware of historical abuses; and 22% are aware of impoverished social conditions.

156 *FAFIA Report*, *supra* note 27.

157 Statistics Canada, “Aboriginal Peoples: Fact Sheet for Canada” (Ottawa: Statistics Canada, 2015), online: <<http://www.statcan.gc.ca/pub/89-656-x/89-656-x2015001-eng.pdf>> [*Aboriginal Peoples*].

158 Neegan Burnside Ltd., “National Assessment of First Nations Water and Wastewater Systems: National Roll-Up Report: Final” (Ottawa: INAC, 2011), online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr\\_wtr\\_nawws\\_rurnat\\_rurnat\\_1313761126676\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr_wtr_nawws_rurnat_rurnat_1313761126676_eng.pdf)>.

159 Health Canada, “Drinking Water Advisories in First Nations Communities” (Ottawa: Health Canada, 2016), online: <<http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-dwa-eau-aqep-eng.php#more>>.

160 Indigenous and Northern Affairs Canada, “About British Columbia First Nations” (Ottawa: INAC, 2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100021009/1314809450456>>.

161 CBC News, “10 First Nations with more than 10 years of bad water” (Thunder Bay: CBC News, 8 September 2014), online: <<http://www.cbc.ca/news/canada/thunder-bay/10-first-nations-with-more-than-10-years-of-bad-water-1.2755728>>.

162 *Ibid.*

163 Assembly of First Nations, “National First Nations Housing Strategy” (Ottawa: AFN, undated), online: <[http://www.afn.ca/uploads/files/housing/afn\\_national\\_housing\\_strategy.pdf](http://www.afn.ca/uploads/files/housing/afn_national_housing_strategy.pdf)>. See also: Assembly of First Nations, “Fact Sheet: First Nations Housing on



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evaluation of First Nation housing on reserve which concluded that the housing shortage on reserve is severe and getting worse.<sup>164</sup> At least 41.5% of homes are in need of major repair compared with only 7% of non-First Nation homes.<sup>165</sup> Approximately 28% of First Nations homes are over-crowded, which is 6 times the national average.<sup>166</sup> Other problems, like mold, have been reported in over 50% of First Nation homes.<sup>167</sup> Half of First Nations in Ontario also reported mold and mildew in their homes.<sup>168</sup>

## Health Crisis:

The life expectancy for Indigenous peoples is currently 8 years less than non-Indigenous Canadians<sup>169</sup> and is projected to decrease to 15 years less by 2017.<sup>170</sup> Indigenous peoples suffer from higher rates of chronic and infectious diseases, serious injuries, substance abuse and mental health issues.<sup>171</sup> In Ontario, more than 21% of First Nation adults reported having diabetes and similar numbers reported having arthritis and high blood pressure.<sup>172</sup> While the rates of heart disease and stroke have declined in Canada, they continue to increase for Indigenous peoples with Indigenous women having the highest rates.<sup>173</sup> First Nations continue to suffer from high infant and young child mortality rates, malnutrition, stunted growth, and obesity.<sup>174</sup>

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Reserve” (Ottawa: AFN, 2013), online: <http://www.afn.ca/uploads/files/housing/factsheet-housing.pdf> [AFN Fact Sheet].

164 INAC, “Evaluation of INAC’s On-Reserve Housing Support” (Ottawa: INAC, 29 September 2010), online: <[http://www.afn.ca/uploads/files/policy\\_forum/ncr-%233242612-v4-on\\_reserve\\_housing\\_report\\_sept\\_24\\_2010.pdf](http://www.afn.ca/uploads/files/policy_forum/ncr-%233242612-v4-on_reserve_housing_report_sept_24_2010.pdf)>. See also: K. Statsna, “First Nations housing in dire need of overhaul” (Ottawa: CBC News, 12 April 2014), online: <<http://www.cbc.ca/news/canada/first-nations-housing-in-dire-need-of-overhaul-1.981227>> [First Nations Housing].

165 *Ibid.*

166 *Aboriginal Peoples*, *supra* note 157 at 4. *First Nations Housing*, *supra* note 164.

167 *AFN Fact Sheet*, *supra* note 163, citing information from: The First Nations Information Governance Centre, “First Nations Regional Health Survey (RHS) Phase 2 (2008/10) National Report on Adults, Youth and Children Living in First Nations Communities” (Ottawa: The First Nations Information Governance Centre, June 2012), online: <[http://fnigc.ca/sites/default/files/First\\_Nations\\_Regional\\_Health\\_Survey\\_2008-10\\_National\\_Report.pdf](http://fnigc.ca/sites/default/files/First_Nations_Regional_Health_Survey_2008-10_National_Report.pdf)> [FN RHS].

168 Chiefs of Ontario, “First Nations Regional Health Survey (RHS) Phase 2 (2008/10) Ontario Region Final Report” (Toronto: Chiefs of Ontario, 2012), online: <[http://fnigc.ca/sites/default/files/docs/first\\_nations\\_regional\\_health\\_survey\\_rhs\\_phase\\_2\\_08-10\\_ontario\\_region\\_final\\_report\\_12nov01v8.pdf](http://fnigc.ca/sites/default/files/docs/first_nations_regional_health_survey_rhs_phase_2_08-10_ontario_region_final_report_12nov01v8.pdf)> [ON RHS].

169 Auditor General for Canada, “Reports of the Auditor General: Report 4: Access to Health Services for Remote First Nations Communities” (April 2015) at 2, online: <[http://www.oagbvg.gc.ca/internet/docs/parl\\_oag\\_201504\\_04\\_e.pdf](http://www.oagbvg.gc.ca/internet/docs/parl_oag_201504_04_e.pdf)>.

170 Statistics Canada, “Life expectancy” (2015), online: <<http://www.statcan.gc.ca/pub/89-645-x/2010001/lifeexpectancy-esperance-vie-eng.htm>>.

171 *Ibid.* Heart and Stroke Foundation, “Aboriginal Peoples, Heart Disease and Stroke: Position Statement” (2010) at 1, online: <<http://www.heartandstroke.com/atf/cf/%7B99452D8B-E7F1-4BD6-A57DB136CE6C95BF%7D/Aboriginal-Eng-FINAL.pdf>> [Heart and Stroke].

172 *ON RHS*, *supra* note 168 at iv.

173 *Heart and Stroke*, *supra* note 171 at 3. See also: Heart and Stroke Foundation of Canada, “Women, Heart Disease and Stroke in Canada: Issues and Options” (1997) at 1, online: <<http://data.library.utoronto.ca/datapub/codebooks/utm/canheart/CHH/womanhrt.pdf>>.

174 National Collaborating Centre for Aboriginal Health, “An Overview of Aboriginal Health in Canada” (Prince George, BC: NCCAHA, 2013), online: <[http://www.nccah-ccnsa.ca/Publications/Lists/Publications/Attachments/101/abororiginal\\_health\\_web.pdf](http://www.nccah-ccnsa.ca/Publications/Lists/Publications/Attachments/101/abororiginal_health_web.pdf)> at 4.



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## Education Crisis:

We know from our previous report, *Our Children, Our Future, Our Vision* that there is a crisis in First Nation k-12 education which directly impacts First Nation post-secondary attainment rates.<sup>175</sup> The gap between First Nations and Canadians is widening and would take at least 28 years to close.<sup>176</sup> Education (or lack thereof) directly impacts the income levels and economic well-being of First Nations and would take 63 years to close the gap if governments acted now.<sup>177</sup> There are well over 10,000 First Nations students on the waiting list for post-secondary education and funding restrictions have resulted in a 18.3% drop since 1997 in those able to obtain funding for post-secondary.<sup>178</sup> Add to this the very drastic funding cuts received by some of the AIC institutes in Ontario and the statistics on post-secondary education could get much worse.<sup>179</sup>

## Suicide Crisis:

First Nation suicide rates in Ontario are some of the highest in the world. Pikangikum First Nation has held the highest suicide rate – 20 times the national average (250:100,000) – making it the highest suicide rate in the world for over 20 years.<sup>180</sup> Nearly 38% of Indigenous youth deaths are from suicide.<sup>181</sup> Far from being an issue isolated to one or two communities, First Nation suicides are on the rise in the province of Ontario.<sup>182</sup> In 2013, there were 31 Indigenous suicides in Ontario, up from 11 in 1991 – an increase of almost 300% over 20 years.<sup>183</sup> Unless action is taken quickly, the situation could become much worse.

## Poverty Crisis:

The poverty crisis in First Nations hits Indigenous women and children particularly hard. There are 60% of First Nations children living in poverty on reserve in Canada.<sup>184</sup> The worst part about these crisis levels is that for First Nations living on reserve, their poverty levels are increasing.<sup>185</sup> While the province of Manitoba was the worst

175 *Our Children, Our Future, supra* note 15.

176 D. Drummond & E. Rosenbluth, “The Debate on First Nations Education Funding: Mind the Gap” Ontario: Queen’s University, (2013) Working Paper 49 Policy Studies [*Mind the Gap*] at 2.

177 *Income Gap, supra* note 14 at 3.

178 *Cap leads to steep drop, supra* note 13.

179 *Teg Funds, supra* note 97.

180 M. Patriquin, “Canada: Home to Pikangikum: Suicide Capital of the World” (Toronto: MacLean’s, 30 March 2012), online: <<http://www.macleans.ca/news/canada/canada-home-to-the-suicide-capital-of-the-world/>>.

181 National Aboriginal Health Organization, “Backgrounder: Suicide Among Aboriginal People in Canada” (2008), online: <[http://www.naho.ca/media-releases/04\\_04\\_2008BG.pdf](http://www.naho.ca/media-releases/04_04_2008BG.pdf)>.

182 L. Eggertson, “Aboriginal youth suicide rises in northern Ontario” (2015) 187:11 Canadian Medical Association Journal at 1, online: <<http://www.cmaj.ca/content/187/11/E335.full.pdf+html>>.

183 *Ibid.* at 335.

184 D. MacDonald, D. Wilson, “Shameful Neglect: Indigenous Child Poverty in Canada” (Ottawa: Canadian Centre for Policy Alternatives, 2016), online: <[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous\\_Child%20\\_Poverty.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous_Child%20_Poverty.pdf)> at 5.

185 *Ibid.* at 11.



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at 75%, the province of Ontario saw First Nation child poverty rates on reserve at nearly 50% and off-reserve at nearly 30% compared to the 13% national child poverty rate for non-Indigenous, non-racialized Canadians.<sup>186</sup> Indigenous women are disproportionately more likely to be single mothers and live in poverty.<sup>187</sup> Poverty impacts all First Nations people who are 64% of all food bank users and are over-represented in homeless populations in nearly every urban city in Canada.<sup>188</sup> Indigenous peoples are 10 times more likely to use emergency shelters – representing 1/3 of shelter uses – despite only being 4% of the population.<sup>189</sup>

## Prison Crisis:

One of the most alarming First Nation crises in Canada is our over-incarceration in federal and provincial prisons and institutions. Despite both the Supreme Court of Canada and the federal Office of the Correctional Investigator calling attention to this crisis, incarceration rates for Indigenous men, women and children continue to increase. Thirty years ago, 10% of the prison population was Indigenous – today the percentage has risen to more than 25%.<sup>190</sup> In some of the western provinces, that number can be as high as 48%.<sup>191</sup> The numbers are even higher for Indigenous women who make up 36% of prison populations.<sup>192</sup> In the last decade, the imprisonment rate for Indigenous women has increased 90%.<sup>193</sup> The rates are higher for Indigenous youth who make 41% of all admissions to detention centres and Indigenous girls at 53%.<sup>194</sup> Ontario is one of the provinces with the highest over-incarceration rates of Indigenous peoples in the country, with rates close to that of Manitoba and Saskatchewan.<sup>195</sup>

## Child Welfare Crisis:

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186 *Ibid.* at 15-17.

187 Aboriginal Affairs and Northern Development Canada, “Aboriginal Women in Canada: A Statistical Profile from the 2006 Census” (2012) at ii-iv, online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/textetext/ai\\_rs\\_pubs\\_ex\\_abwch\\_pdf\\_1333374752380\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/textetext/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf)>.

188 Canada Without Poverty, “Poverty: Just the Facts” (Ottawa: CWP, undated), online: <<http://www.cwp-csp.ca/poverty/just-the-facts/>>.

189 A. Himelfarb, R. Romanow, Canadian Alliance of End Homelessness, “We can end homelessness in Canada” (Toronto: The Globe and Mail, 16 January 2017), online: <<http://www.theglobeandmail.com/opinion/we-can-end-homelessness-in-canada/article33632029/>>.

190 CBC News, “Prison watchdog says more than a quarter of federal inmates are aboriginal people” (Ottawa: CBC News, 14 January 2016), online: <<http://www.cbc.ca/news/indigenous/aboriginal-inmates-1.3403647>>. See also: Office of the Correctional Investigator, “Backgrounder: Aboriginal Offenders: A Critical Situation” (Ottawa: OCI, 2016), online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>>.

191 *Ibid.*

192 *Ibid.*

193 Public Safety Canada, “Marginalized: The Aboriginal women’s experience in Federal Corrections”, Public Safety Canada Aboriginal Corrections Policy Unit (2012), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/mrgnlzd-eng.pdf>> [*Marginalized*].

194 Statistics Canada, “Youth correctional statistics in Canada, 2013/14” (2015), online: <<http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14164-eng.htm>>.

195 J. Rudin, “Aboriginal Peoples and the Criminal Justice System” (undated), online: <[https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/pdf/Rudin.pdf](https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf)> at 15.



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The child welfare crisis did not end with residential schools. Today a disproportionate number of our children are being taken from our families and communities and put into foster care – rates far higher than during the residential school era. The very same devastating pattern of child theft and family disruption caused by residential schools was replicated in the “60’s scoop” era of child theft and forced adoptions, which is being replicated on a much larger scale today in the child welfare system of forced foster care. Today, nearly half (48%) of all children in foster in Canada are Indigenous.<sup>196</sup> In provinces like Manitoba, the rate is more than 85%.<sup>197</sup> Alarming, child apprehension rates are increasing.<sup>198</sup> First Nation children in care are vulnerable to abuse and neglect not unlike that received in residential schools and the most recent report from BC shows that they are also targets for sexual abuse – 60% of sexual abuse victims in foster care were Indigenous girls.<sup>199</sup>

*These conditions are brought on by years of colonization, theft of lands and resources, discriminatory state legislation, chronic under-funding of critical social programs like water, food, housing, health and education and the theft of children into foster care. These conditions are also exacerbated by the devastating impact of the extractive industry, which is allowed to operate without Indigenous consent.<sup>200</sup>*

In addition to the above, First Nations in Ontario are also experiencing crises in other areas like culture and language loss; destruction of traditional territories, theft and pollution of waters and resources by extractive industries; the criminalization of Indigenous traditional activities like inter-tribal trade and the manufacture of tobacco; and violence against Indigenous men, women and children, including the high rates of murdered and disappeared Indigenous women and girls.<sup>201</sup> The failure to live up to treaty and other legal obligations in relation to First Nation post-secondary education acts as a root cause and/or contributing factor to many of the above-noted crises. It is for these reasons that the Chiefs of Ontario and others have advocated so strenuously to address post-secondary education for First Nations.

**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.**

196 Statistics Canada, “Living Arrangements of Aboriginal children aged 14 and under” (2016) at 1, online: <<http://www.statcan.gc.ca/pub/75-006-x/2016001/article/14547-eng.pdf>>.

197 *Ibid.*

198 D. Mandell, et al., “Partnerships for Children and Families Project” (Wilfred Laurier University, 2003) at 3, online: <[https://legacy.wlu.ca/documents/7179/Aboriginal\\_child\\_welfare.pdf](https://legacy.wlu.ca/documents/7179/Aboriginal_child_welfare.pdf)>; Pamela Gough, et al, “Pathways to the overrepresentation of Aboriginal children in care” Centre of Excellence for Child Welfare, (2005) No.32E at 1, online: <<http://cwrrp.ca/sites/default/files/publications/en/AboriginalChildren23E.pdf>>.

199 J. Johnston, “Hundreds of BC foster children victims of sexualized violence” (BC: CBC News, 4 October 2016), online: <<http://www.cbc.ca/news/canada/british-columbia/sexualized-violence-against-youth-turpel-lafond-1.3790889>>.

200 West Coast Leaf, “Release: Canada Held to Account for its Disappointing Women’s Rights Record by the United Nations Committee on the Elimination of Discrimination Against Women” (Vancouver: West Coast Leaf, 2016), online: <<http://www.westcoastleaf.org/2016/10/25/release/>>.

201 Royal Canadian Mounted Police, “Missing and Murdered Aboriginal Women: A National Operational Review” (Ottawa: RCMP, 2014), online: <<http://www.rcmp-grc.gc.ca/wam/media/460/original/0cbd8968a049aa0b44d343e76b4a9478.pdf>> [RCMP MMIW].



## (d) Persistent First Nation Advocacy

The Chiefs of Ontario, representing 133 First Nations in Ontario, has made advocating for improved First Nation education a priority since their creation in the 1970's. One of their very first orders of business was to address the chronic underfunding of post-secondary education for First Nation students. In the last 40 years, there have been over 36 resolutions dealing specifically with education and the dire need for improvement. Resolution #8 passed in 1978 is illustrative of the ongoing battle to ensure First Nations have access to higher education:

*WHEREAS there is limited or no funding available for status Indians to obtain education at the post secondary level*

*WHEREAS our children are our best resource and it is of the utmost important to us that they receive education*

*WHEREAS many of our students have been educated in such a way as to render them useless to our communities on a practical level*

*WHEREAS Indian communities are in need of both economic and political leadership*

*BE IT RESOLVED THAT the levels of funds available for the elementary, secondary and post-secondary education of all status Indians on or off reserves be increased to supply the education which we deem appropriate for them to participate effectively within communities,*

*BE IT FURTHER RESOLVED THAT the government recognize, accept and provide the necessary funds also, for post-secondary education of all status Indians on or off Reserves.<sup>202</sup>*

Twenty years later in 1998, the Chiefs on Ontario, still facing the same under-funding of post-secondary education making it impossible for many of the students to access higher education, passed another telling resolution, which stated (in part):

*WHEREAS post secondary education is an Aboriginal and Treaty right of critical importance to the future welfare of First Nations; and*

*WHEREAS the Royal Commission on Aboriginal Peoples (R.C.A.P.) recommended a full implementation of the right to post secondary education, in particular by means of a long-term investment by Canada and the provinces; and*

*WHEREAS the right to post secondary education is being undermined by the fiscal capping policy of Canada and the insensitive administration of many Canadian Post Secondary Institutions...*

*THEREFORE BE IT RESOLVED THAT the Chiefs in Assembly acknowledge the R.C.A.P. recommendations on post secondary education as a guideline for future relations with all post secondary institutions and the Canadian governments.<sup>203</sup>*

202 COO Res 8/78, *supra* note 1.

203 Chiefs of Ontario, "Resolution 98/05 Post Secondary Education" (Toronto: Chiefs of Ontario, 15-17 December 1998).



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Incredibly, another twenty years later, and despite election promises to the contrary, the Chiefs of Ontario were once again forced to pass another resolution demanding that the funding cap be lifted and increase funds for post-secondary education. Resolution 19/16 states in part:

*WHEREAS: 1. Treaties and agreements stemming from the 19<sup>th</sup> and 20<sup>th</sup> centuries inform the provision of a formal education, fully competitive in today's social and economic markets, as an entitlement flowing from political relationships and legislation...*

*3. While the federal government continues to provide insufficient federal funding to First Nations through the Post-Secondary Student Support Program (PSSSP) the First Nations continue to accumulate yearly waiting lists of unfunded students;*

*THEREFORE BE IT RESOLVED that we, the Chiefs in Assembly;*

*1. Instruct the federal government to adhere to the commitment in their election platform and as enshrined and protected within our Aboriginal and treaty rights and immediately increase funding for post-secondary education to:*

*(a) Address the backlog of eligible students awaiting funding;*

*(b) Address the historical increases in inflation rates and tuition rates that have not been reflected in program funding increases; and*

*(c) Address the increase in population rates experienced by First Nations.<sup>204</sup>*

In addition to resolutions, the Chiefs of Ontario have tried through many letters to get the federal government to act on post-secondary education.

On February 10, 2005, Deputy Grand Chief Nelson Toulouse writes to then Deputy Minister of Finance Ian Bennett calling on the federal government to stop taxing First Nation students on their student support funding for university.<sup>205</sup>

September 7, 2011, Regional Chief Angus Toulouse writes to all Members of Parliament asking them to work in collaboration with First Nations to “aggressively and proactively remove the post secondary education gap” and remove the 2% funding cap.<sup>206</sup>

On July 13, 2012, Regional Chief Stan Beardy writes to then Minister of Aboriginal Affairs John Duncan calling on the federal government to provide adequate funding for First Nation post-secondary education.<sup>207</sup>

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204 Chiefs of Ontario, “Resolution 19/16 Federal Post-Secondary Student Support Program” (Thunder Bay: Chiefs of Ontario, 28-20 June 2016).

205 Correspondence from Deputy Regional Chief Nelson Toulouse to Deputy Minister of Finance Ian Bennett dated February 10, 2005.

206 Correspondence from Chiefs of Ontario Regional Chief Angus Toulouse to all Members of Parliament dated September 7, 2011.

207 Correspondence from Chiefs of Ontario Regional Chief Stan Beardy to Aboriginal Affairs Minister John Duncan dated July



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While many of the letters focused on post-secondary funding for students, letters were also sent to address the ongoing issue of stable, secure funding for the First Nation-run post-secondary institutes part of the Aboriginal Institutes Consortium (AIC).

April 18, 2013, the Chiefs of Ontario again wrote to (then) Aboriginal Affairs Minister Bernard Valcourt, urgently requesting that the federal government defer implementing funding guidelines that would result in drastic cuts to AIC institutions.<sup>208</sup>

Unfortunately, when responses were received, they often contained no real commitments or even an acknowledgement of the specific issues raised.

Chiefs of Ontario have also tried using petitions and rallies to gain public attention for the crisis in k-12 and post-secondary education. On September 23, 2010, the Chiefs of Ontario held a rally on Parliament to send a strong message that they will no longer tolerate chronic underfunding of education for First Nations students.<sup>209</sup> One year later, over 230 First Nations, including the Chiefs of Ontario, as well the First Nations in Saskatchewan and Quebec, pull out of the Assembly of First Nations and INAC's National Education Panel process (which was focused on legislation instead of treaty rights and needs-based funding) and submitted their own reports on education.<sup>210</sup> The same year saw numerous rallies protesting Ottawa's inactions on education, including the one on October 6, 2011, in Ottawa organized by Kitigan Zibi Anishinabeg to increase funding for First Nations schools and post-secondary education.<sup>211</sup>

It wasn't just First Nation Chiefs that were rallying around the treaty right to education. The historic Idle No More movement in 2012-13 saw thousands of grassroots Indigenous peoples use protests, rallies and teach-ins to bring attention to the government failure to implement the treaty right to education which has contributed to the socio-economic crisis. Those First Nations and individuals affiliated with the movement spoke out strenuously against federal legislation attempting to minimize the treaty right to education and the failure to fund post-secondary education.<sup>212</sup> First Nations have never wavered in our position that we are sovereign over our lands and peoples, and that this original sovereignty has always included jurisdiction over our own education systems

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13, 2012.

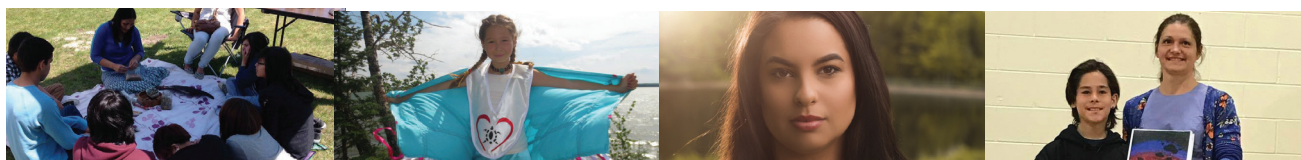
208 Correspondence from Chiefs of Ontario Regional Chief Stan Beardy to Aboriginal Affairs Minister Bernard Valcourt dated April 18 2013.

209 Chiefs of Ontario, "First Nations Rally on Education: Parliament Hill" (Ottawa: Chiefs of Ontario, 23 September 2010) [PowerPoint presentation].

210 *Our Children, Our Future*, *supra* note 15.

211 Kitigan Zibi Anishinabeg, "Keeping the Fire of Education Alive" (Ottawa: Kitigan Zibi Anishinabeg, 6 October 2011) [informational flyer].

212 Idle No More, "Indigenous Education for and by Indigenous Peoples" (May 29, 2014) online: <[http://www.idlenomore.ca/indigenous\\_education\\_for\\_and\\_by\\_indigenous\\_peoples](http://www.idlenomore.ca/indigenous_education_for_and_by_indigenous_peoples)>. T. McMahon, "Why Fixing First Nations Education Remains So Far Out of Reach" (Ottawa: MacLean's Magazine, 22 August 2014), online: <<http://www.macleans.ca/news/canada/why-fixing-first-nations-education-remains-so-far-out-of-reach/>>. Canadian Press, "Idle No More's first anniversary marked by native education protest" (Ottawa: The Globe and Mail, 10 December 2013), online: <<http://www.theglobeandmail.com/news/politics/idle-no-mores-one-year-anniversary-marked-by-first-nations-education-protest/article15856234/>>. J. Staniforth, "Mohawks Denounce First Nations Education Act as Idle No More holds Montreal teach in" (James Bay, The Nation, 10 February 2014), online: <<http://www.nationnews.ca/mohawks-denounce-first-nations-education-act-as-idle-no-more-holds-montreal-teach-in/>>.



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and content.<sup>213</sup> It is this defence of our sovereignty and jurisdiction that has inspired consistent action to defend those rights – even in the face of significant political pressure.

Continued inaction on First Nation education led 28 First Nations in Manitoba and Ontario who are beneficiaries of Treaty 3 to launch a lawsuit against the federal government for failing to uphold the treaty obligations.<sup>214</sup> Their case raised the point that while Treaty 3 contained a promise for a school on every reserve, many of the 15,000 students are bussed to schools off-reserve. For those that do have schools on reserve, the funding is half that provided to provincial schools.<sup>215</sup>

After decades of advocacy at all levels and of all kinds, there has been little improvement in post-secondary education funding for First Nations despite the fact that First Nations have inherent, domestic and international rights to post-secondary education. As a result, the crisis continues and the education gap between First Nations and Canadians continues to increase.<sup>216</sup>

The Chiefs of Ontario were not alone in their advocacy. Many individual First Nations, tribal councils regional/provincial organizations and the Assembly of First Nations (AFN) have also spent decades advocating on post-secondary education.

As early as 1970, the National Indian Brotherhood (AFN) tried to address the failures of INAC to realize “Indian education” in their national advocacy.<sup>217</sup> In 1972, *Indian Control of Indian Education* became a national position that was subsequently adopted by INAC, but never fully implemented.<sup>218</sup> In 1978, a resolution was passed expressing grave concern over INAC’s arbitrary program guidelines and limitations<sup>219</sup>, which was still an issue in 1987 when the AFN passed another resolution criticizing INAC’s PSE policies and fiscal limitations on the treaty right to education.<sup>220</sup> Fast forward a decade and in 2008, AFN was still passing resolutions demanding that the 2% cap be lifted and demand that the treaty right to education be respected.<sup>221</sup> Despite multiple changes in government and numerous election promises, the AFN found itself, yet again in 2016, demanding that the promised funding increases to PSE be implemented.<sup>222</sup>

213 D. Longboat, E. Johnston, “Sovereignty, Jurisdiction and Guiding Principles in Aboriginal Education in Canada” (1986) *Canadian Journal of Native Studies*, VI:1 173, online: <[http://www.afn.ca/uploads/files/education/15\\_1986\\_ericjohnson\\_diannelongboat\\_sovereignty\\_jursidiction\\_and\\_guiding\\_principles\\_in\\_aboriginal\\_education.doc\\_pdf.pdf](http://www.afn.ca/uploads/files/education/15_1986_ericjohnson_diannelongboat_sovereignty_jursidiction_and_guiding_principles_in_aboriginal_education.doc_pdf.pdf)>.

214 Canadian Press, “First Nations sue Ottawa over right to education” (Ottawa: CBC News, 23 November 2011), online: <<http://www.cbc.ca/news/canada/manitoba/first-nations-sue-ottawa-over-right-to-education-1.996110>>.

215 Ibid.

216 Ontario Native Education Counselling Association, “Fact Sheet” (Naughton, ON: ONECA, undated), online: <[http://www.oneca.com/news\\_temp/education\\_campaign/fact\\_sheet.pdf](http://www.oneca.com/news_temp/education_campaign/fact_sheet.pdf)>. D. Giroux, “Closing the Gap in First Nations Education” (Ottawa: Policy Options, 1 August 2012), online: <<http://policyoptions.irpp.org/magazines/policy-challenges-for-2020/closing-the-gap-in-first-nations-education/>>. C. Gordon, J. White, “Indigenous Educational Attainment in Canada” (2014) 5:3 *The International Indigenous Policy Journal*, online: <<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1195&context=iipj>>.

217 National Indian Brotherhood, “Resolution 7/70” (British Columbia: NIB, 21 August 1970).

218 National Indian Brotherhood, “Resolution 19/72” (Alberta: NIB, 8 August 1972).

219 National Indian Brotherhood, “Resolution 17/78” (New Brunswick: NIB, 29 August 1978).

220 Assembly of First Nations, “Resolution 18/87 Post-Secondary Education” (Ontario: AFN, 26 July 1987).

221 Assembly of First Nations, “Resolution 07/08 Education Funding Renewal” (Quebec: AFN, 16 July 2008).

222 Assembly of First Nations, “Resolution 36/2016 Inherent and Treaty Right to Post-Secondary Education” (Ontario: AFN, 13 July 2016).



Today, we have 18.3% less First Nations students accessing federal PSE support and unfulfilled federal promises to lift the 2% cap on funding and flow the extra \$200 million promised. The situation has become urgent if we are to ensure the health and well-being of our future generations.

**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.**

## (4) The Right to Post-Secondary Education

*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.<sup>223</sup>*

Too often the question of First Nation rights to education is limited to the debate between the federal government and so-called policy experts as to whether or not a treaty right exists to support fully funded education. There is no question that First Nations in Ontario and the rest of Canada have various legal rights to fully supported education, which includes but is not limited to early learning, k-12 education, post-secondary education; and higher learning at all ages. However, these education rights did not start with, nor are they limited to, the treaties signed with the British Crown, federal or provincial governments. While constitutionally-protected rights should be recognized and implemented – it is important to remember they do not represent the full scope of our rights.

Similarly, various human rights laws and mechanisms recognize our rights to education but they are not the source of these rights. Domestic and international laws recognize human rights related to specifically to culture and identity, education and Indigenous-specific rights which all support a First Nation right to fully supported post-secondary education. While they all help substantiate our right to post-secondary education, we shouldn't be forced into the position of having to defend the basic human rights within our own lands.

Going beyond the question of legal rights, we know that recognizing and implementing our Indigenous rights to education, including post-secondary education, is the “right” thing to do in a country as wealthy Canada – especially since all the wealth and prosperity that Canadians enjoy stem directly from the dispossession of our lands, waters, resources and economies. Given the devastating inter-generational impacts of Canada's residential schools, there also exists a moral obligation to support Indigenous post-secondary education as a means of making amends. The section which follows will review some of the rights that have been advanced in supporting our First Nation rights to post-secondary education.

### (a) Aboriginal Rights

First Nations in Ontario, like First Nations in the rest of Canada, have constitutionally-protected rights to fully-supported education, which includes a right to post-secondary education. This right is protected specifically under section 35 of the *Constitution Act, 1982* which provides:

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223 National Indian Brotherhood, “Resolution 17/78” (New Brunswick: NIB, 29 August 1978).



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35.(1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*<sup>224</sup>

These education rights are not mere policy or political in nature, nor do they originate in Canada's multi-culturalism policies which focus on "interest groups", "stakeholders" or "minorities" looking for cultural accommodation within the federal/provincial education systems.<sup>225</sup> Although the multi-culturalism policy claims that all peoples from all backgrounds can maintain their cultures and identities, it also reinforces that the goal is to integrate them into Canadian society.<sup>226</sup> Given that reference is made to Aboriginal rights within this policy and the *Canadian Multiculturalism Act*, the concern is that integration is still the goal – despite apologies from Canada for trying to force assimilation.<sup>227</sup>

INAC's stated mandate is consistent with the *Canadian Multiculturalism Act* which has, as one of its goals, to ensure that First Nations "participate more fully in Canada's political, social and economic development — to the benefit of all Canadians."<sup>228</sup> If integrative multi-culturalism is the policy basis for Canadian laws, programs and policies – including INAC – then some might argue that the current suite of educational loans, grants and bursaries available to people of all backgrounds would be sufficient to dispense with Canada's stated multi-cultural objectives in this regard.

However, the Supreme Court of Canada has already clarified that Indigenous peoples are not one of the many cultural or minority groups that happen to live in Canada, but instead have unique rights as compared to other groups, because of the fact of our prior occupation and governance of these lands before Canada was ever created. Chief Justice Lamer explained;

*In my view, the doctrine of Aboriginal rights exists, and is recognized and affirmed by s.35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they have done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional status.*<sup>229</sup>

That said, it is important to understand the constitutional rights of First Nations in this light. Simply extending loans and bursaries available to all Canadians to First Nations, is not reflective of the constitutional priority and protection afforded First Nation rights to education.

There are many ways in which a general right to First Nation education and post-secondary education can be argued – which is a complex legal exercise beyond the scope of this report. In summary, an Aboriginal right

224 *Constitution Act, 1982, supra* note 117 at s.35.

225 Government of Canada, "Canadian Multiculturalism: An Inclusive Citizenship" (Ottawa: Government of Canada, 2016), online: <<http://www.cic.gc.ca/english/multiculturalism/citizenship.asp>>. *Canadian Multiculturalism Act* R.S.C., 1985, c.24 (4<sup>th</sup> supp.)

226 *Ibid.*

227 Prime Minister Stephen Harper, "Statement of apology to former students of Indian Residential Schools" (Ottawa: Government of Canada, 11 June 2008), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>>.

228 Indigenous and Northern Affairs Canada, "About Indigenous and Northern Affairs Canada" (Ottawa: INAC, 2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100010023/1100100010027>>.

229 *R. v. Van der Peet*, [1996] 2 S.C.R. at para. 30 [*Van der Peet*].



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to post-secondary education could be viewed as a right in and of itself – given pre-existing higher education practices that long pre-dated Canada. It could also be viewed as a right which is a sub-category of a larger overarching right, like the right to be self-determining and/or the right to exercise jurisdiction over all governance matters including post-secondary education. Alternatively, one might argue that it is also a right which is incidental to a larger right, like the right to practice, protect and preserve traditional Indigenous knowledge(s), cultures, languages, and modern knowledge acquired over time.

While some may argue that these claims have not yet been tested in court, the case law and current research clearly supports an Aboriginal right to education and we should not be forced to court to benefit from our rights.<sup>230</sup> As an Aboriginal right, it should be afforded constitutional protection and priority over all other non-constitutionally-protected rights to education.

By way of comparison, French citizens of Canada have a constitutionally-protected right to have their children receive primary and secondary education in French.<sup>231</sup> This constitutional right is directly translated into significant funding investments to ensure French Canadians can enjoy this right. Federal and provincial governments spend well over \$2.4 billion a year to protect the French language; the majority of which goes to French-language education.<sup>232</sup> Thus, the matter of an Aboriginal right to education generally, and/or an Aboriginal right to the transmission of traditional Indigenous knowledge and languages specifically, is not insignificant. Whether or not there is an Aboriginal right to fully supported education generally and post-secondary education specifically, would be subject to the same tests as has been laid out by the SCC in other Aboriginal rights cases.<sup>233</sup>

This would require the First Nation to prove they have an existing Aboriginal right that was integral to their culture pre-contact and there must be continuity between past and current practices. It is hard to imagine that an Aboriginal right to education would not be found, given that the federal government has already issued a policy statement recognizing: (1) that the right for First Nations to be self-governing is captured within section 35 and (2) one of the areas over which First Nations have jurisdiction is education.<sup>234</sup> This view is also supported by the findings of the *Royal Commission on Aboriginal Peoples*.<sup>235</sup>

230 J. Paquette, G. Fallon, *First Nations Education Policy in Canada: Progress or Gridlock* (Toronto: University of Toronto Press, 2010).

231 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c.11 [*Charter of Rights*] at s. 23.

232 F. Vaillancourt, et. al., “Official Language Policies of the Canadian Provinces: Costs and Benefits in 2006” (Vancouver: Fraser Institute, 2012), online: <<https://www.fraserinstitute.org/sites/default/files/official-language-policies-of-canadian-provinces-rev.pdf>> [*Official Language Policies*]. K. Carlson, “Official bilingualism costs \$2.4B a year: study” (Toronto: National Post, 16 January 2012), online: <<http://news.nationalpost.com/news/canada/official-bilingualism-costs-2-4b-a-year-study>> [*Official bilingualism*].

233 *Van der Peet*, *supra* note 229.

234 Indigenous and Northern Affairs Canada, “The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government” (Ottawa: INAC, 1997), online: <<https://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844>> [*Inherent Right Policy*].

235 *RCAP supra* note 3.



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Certainly, over and above constitutional rights, one can't imagine that providing First Nations less money than French Canadians for language preservation and education would meet the non-discrimination standard in Canada's human rights laws.<sup>236</sup>

**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.**

## (b) Treaty Rights

The constitutional right which gets the most amount of attention is the treaty right to education. While federal and provincial governments rarely, if ever concede Aboriginal or treaty rights in general, the federal government has specifically denied that First Nations have a treaty right to fully supported post-secondary education. Canada's Auditor General summarized the core differences in position in her 2004 Report to Parliament which reviewed INAC's Post-Secondary Student Support Program (PSSSP):

*First Nations and their organizations believe that education is a treaty right that covers all education levels, including post-secondary. The federal government does not agree with this position. The Department's elementary and secondary programs are guided by various statutes, treaties, agreements, and government policy. At the post-secondary level, the government considers that assistance to First Nations students results from policy.<sup>237</sup>*

So far, the only court to date to directly address the issue of whether First Nation's treaties cover a right to education was the federal court in *Beattie v. Canada* which dealt specifically with the treaty obligations in Treaty #11.<sup>238</sup> In considering the large and liberal interpretation to be given to treaties as set out in previous SCC decisions, the court held that there was a treaty right to education and that the education provided must be no less than that which is provided to non-First Nations:

*In fact, by virtue of subsection 35(1) of the Constitution Act, 1982, they are constitutionally guaranteed to have access to free education. The extent of that constitutional safeguard is, in my opinion, as follows:*

- 1. They are to have access to free education;*
- 2. The free education, however, is confined to the area defined in the treaty;*
- 3. The free education provided in the schools established therein must be akin or equivalent to the education provided to non-Native children in the public school system.<sup>239</sup>*

236 For similar arguments made in the context of discriminatory underfunding of First Nations child and family funding, see: *CHRT decision, supra* note 13.

237 OAG 2004, *supra* note 12 at 3.

238 *Beattie v. Canada* [1998] 1 F.C. 104 [*Beattie*].

239 *Ibid.*



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It is important to note that there is no indication that the treaty right to education is limited to k-12 education. This case was never appealed, nor was it referenced in any other case directly on point. Therefore, *Beattie* stands as the only case on the treaty right to education – which specifically recognized it. Given that the wording in some treaties in Ontario is similar, it is fair to argue that the treaty right to education could be protected under section 35. In fact, the pleadings and arguments put forth by the Grand Council of Treaty 3 set out their claim that there is a treaty to education on reserve:

*...a declaration that Treaty 3 (as defined below) imposes on Her Majesty the Queen in right of Canada (“Canada”) a duty to provide education services to the beneficiaries of Treaty 3 on their reserves (the “Treaty 3 Education Right”) that are commensurate with those made available to the Canadian population generally...<sup>240</sup>*

This interpretation is well-supported in the academic and related literature. Sheila Carr-Stewart is an Assistant Professor in Educational Policy Studies at the University of Alberta and has researched and published extensively on Indigenous education as a treaty right.<sup>241</sup> She has analyzed many of the numbered treaties and concluded that there is a treaty right to education, which includes post-secondary education as a modern evolution of the treaty right in a modern economy.<sup>242</sup> She explains:

*Promises to First Nations in the numbered treaties were for “allowances... to count upon and receive from Her Majesty’s bounty and benevolence” (Morris, 1180/1991, p.351) not just “for today or tomorrow only but should continue as long as the sun shone and the river flowed” (p.208). The Queen’s “bounty and benevolence” was to “promote the welfare of the Indian Tribes” and to enable “the people... to live and prosper and provide like the white man” (p.28). In order to fulfill such promises, among other services the Crown undertook to provide educational services on each reserve whenever requested to do so by First Nations communities. Furthermore, not only the written records recorded by the Crown representatives, but the oral history of the First Nations give force to the true intent of the treaties.<sup>243</sup>*

Her research, which included many interviews with Indigenous elders about their oral history on the treaty promises, presents an understanding of the treaty right to education that specifically promises First Nations higher education in order to participate in the new economy and that education was a lifelong process – not limited to children under a certain age.<sup>244</sup> Phillips argues that the federal government does in fact have a constitutional obligation to First Nations in education through the treaties and that Canada’s failure to accept this responsibility has led to the poor educational outcomes in First Nations.<sup>245</sup>

240 *Kelly v. Canada (Attorney General)* (2013) ONSC 1220, *Kelly v. Canada (Attorney General)* (2014) ONCA 92.

241 University of Alberta, “Sheila Carr-Stewart” (Edmonton: University of Alberta, 2016), online: <<http://www.edpolicystudies.ualberta.ca/en/People/Faculty/Carr-Stewart.aspx>>.

242 S. Carr-Stewart, “Perceptions and Parameters of Education as a Treaty Right within the Context of Treaty 7” (Edmonton: Sheila Carr-Stewart, 2001) [doctoral thesis]. *Obligations & Barriers*, *supra* note 106. Carr-S. Stewart, “A Post Secondary Education as a Treaty Right within the Context of Treaty 6” (2011) 4:1 *First Nations Perspectives*, 84, online: <[http://mfncrc.org/wp-content/uploads/2012/11/6\\_Carr-Stewart.pdf](http://mfncrc.org/wp-content/uploads/2012/11/6_Carr-Stewart.pdf)> [*Post-Secondary Education*]. S. Carr-Stewart, “Treaty 6 Education: In Search of Her Majesty’s Bounty and Benevolence” (2007) 30:2 *Canadian Journal of Native Education* 248 [*Treaty 6 Education*]. *Treaty Right to Education*, *supra* note 64.

243 *Treaty 6 Education*, *supra* note 242 at 232.

244 *Ibid.* at 183.

245 R. Phillips, “The Absentee Minister of Education of Canada: The Canadian Federal Government’s Constitutional Role in First



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RCAP also studied the issue of First Nation rights to post-secondary education and as part of that study, considered First Nation oral histories. The RCAP commissioners quoted Pauline Pelly from Saskatchewan who confirmed that the treaties promised post-secondary education:

*Education was given to us. They promised us that you will be very smart, like the cunning of the white man. The highest education that you can get, that is what they promised to us. That is what we wanted.*<sup>246</sup>

Treaties numbers 1-6 made no mention of whether the schools are only for the children, which is consistent with the oral histories of the elders related to higher learning and post-secondary education for adults.<sup>247</sup> Carr-Stewart notes that even though Canada effectively ignored its treaty obligations for many decades that it did (50 years after the signing of Treaty 6) recognize its treaty obligations to provide free education (including post-secondary) in its 1929 Indian Affairs *Annual Report* to Parliament.<sup>248</sup>

*The year under review is the first that all expenditure for education has been provided by parliamentary appropriation. The program of free education is now extended to all Indians of Canada.*<sup>249</sup>

Indian Affairs further reported in relation to post-secondary students that their education was also funded:

*One hundred and forty-five graduates of Indian schools, who showed academic promise, received grants for the purpose of continuing their studies at high schools, universities and business colleges.*<sup>250</sup>

This report is consistent with the federal government's description of its Indian education program in 1950's which stated that no Indian would be denied a post-secondary education "solely due to lack of funds".<sup>251</sup> There is no doubt about fully-funded post-secondary education forming part of Canada's treaty obligations to treaty First Nations or the federal government's decision to extend these rights to all First Nations thereafter. The only matter at issue is the Crown's failure to live up to these treaty promises.

It is our position that these treaty rights take the form of legal obligations of not just Her Majesty the Queen in Right of Canada, but also Her Majesty the Queen in Right of the Province of Ontario. Some would argue it is easier to attach provincial responsibilities to treaties like Treaty 9, which was negotiated and signed by Canada and the province of Ontario. Commentators often refer to the federal government as the government with exclusive jurisdiction in relation to First Nations. Treaty 9 was a treaty where both the federal and provincial levels of government were parties to the treaty. Ontario has always taken the position that according to division of powers under section 91(24), it's the federal government's sole responsibility alone to fulfil Aboriginal and treaty right obligations.

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Nations Education" (2011) 46:2 *McGill Journal of Education* 231.

246 *RCAP supra* note 3 at 506-7.

247 *Treaty Right to Education, supra* note 64.

248 *Post-Secondary Education, supra* note 242 at 98-99.

249 *Ibid.*

250 *Ibid.*

251 *Ibid.* at 100.



The latest SCC decision in *Grassy Narrows* has significantly impacted old interpretations on the division of powers.<sup>252</sup> *Grassy Narrows* dealt with federal and provincial obligations under Treaty 3 – a treaty which did not specifically include the province of Ontario as a signatory. The Court held that since the province of Ontario enjoys certain powers & benefits under the treaty (the beneficial interest in land and the taking up of lands for mining, settlement and development), that it had corresponding legal obligations. Specifically, the Court held that in exercising a benefit or power from the treaty, the province of Ontario must uphold the honour of the Crown and is subject to a fiduciary obligation to ensure no breach of the treaty rights. While First Nations are still analyzing the case and there are divergent opinions on its legal impact, this case has the potential to change the entire legal landscape in relation to federal-provincial jurisdiction and responsibility in relation to First Nations – at least in Treaty 3 territory.

The province of Ontario has reaped the largest benefit from Treaty 3 in its taking up of Indigenous lands for resource extraction, settlement, development and other economic purposes – yet very little, if any benefit, has ever flowed back to First Nations in Treaty 3. One could also argue that the province of Ontario has failed to live up to its other treaty obligations – which includes far more than merely consulting on Aboriginal rights prior to taking up lands. Treaty 3 contains education provisions which, to date, have only been addressed, in part, by the federal government. If the province of Ontario reaps the majority of the benefit from the beneficial interest in Treaty 3 territory, which has the effect of removing lands available to engage in traditional subsistence practices and economies; is it not reasonable to presume that they have a corresponding treaty obligation to help fund both k-12 and the post-secondary obligations under the treaty? Ontario cannot reap the benefits of the treaty and not contribute to the treaty obligations jointly with the federal government, even if the federal government has primary jurisdiction. There may be other non-treaty related financial and legal implications for Ontario where First Nations funds were used to actually build and support off-reserve post-secondary institutions without First Nation consent and to their financial detriment.<sup>253</sup>

## (c) International Rights

The inherent, Aboriginal and treaty rights of Indigenous peoples are not only recognized in domestic laws and policies, but are also recognized at the international level. Indigenous rights are an integral part of basic human rights and are protected in international customary law and in various declarations, treaties and other related instruments.<sup>254</sup> Yet, despite all of these protections, the United Nations recognizes that Indigenous peoples continue to face human rights challenges which threaten their lands and resources, as well as their cultures and basic human rights.<sup>255</sup> The states which govern the territories once governed by Indigenous peoples often sacrifice Indigenous rights for the sake of settlement and development, pitting the lives of Indigenous peoples against the extractive industry.<sup>256</sup>

252 *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SC.R. 447 [*Grassy Narrows*].

253 Two Row Times, “Six Nations’ funded colleges and universities and never repaid” (Hagersville, Ontario: Two Row Times, 28 December, 2016), online: <<https://tworowtimes.com/historical/six-nations-funded-colleges-universities-never-repaid/>>.

254 United Nations Human Rights Office of the High Commissioner, “Indigenous Peoples and the United Nations Human Rights System” (New York & Geneva: United Nations, 2013), online: <<http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>>.

255 *Ibid.* at 4.

256 J. Anaya, “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and



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It is because domestic legal mechanisms have failed to fully protect Indigenous rights in relation to Indigenous education that some have turned to various regional and international bodies for assistance. Despite our many attempts to have Canada recognize and implement our treaty and other rights to fully supported post-secondary education – many of our students are refused a higher education. It is therefore important in any rights-based discussion of First Nation post-secondary education that international rights be considered. While one of the drawbacks to international rights is that there are relatively few, if any, practical enforcement mechanisms – recommendations or decisions made at the international level are persuasive in domestic courts, help educate the public, and put political pressure on federal and provincial governments to act. What follows is a general review of some of the international human rights mechanisms which support our human right to First Nation-controlled, state-funded, culturally relevant post-secondary education.

Turning first to non-Indigenous specific human rights instruments, article 26 of the *Universal Declaration of Human Rights (UDHR)* guarantees that “everyone has the right to education”<sup>257</sup> and further that “Parents have a prior right to choose the kind of education that shall be given to their children.”<sup>258</sup> Article 25 provides that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”<sup>259</sup> Article 7 also ensures that all peoples can enjoy the above rights without discrimination of any kind.<sup>260</sup> Based on the research presented in this report, it is clear that First Nations in Ontario are being discriminated against in the federal and provincial denial of our right to a post-secondary education in the form of our choice which has resulted in an inadequate standard of living.

The *International Covenant on Civil and Political Rights* ratified in 1966 also contains provisions which support a First Nation right to First Nation-controlled, culturally-relevant, state-funded post-secondary education.<sup>261</sup> Article 1 specifically protects our right of self-determination:

## Article 1

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

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indigenous peoples” (Geneva; United Nations, 1 July 2013), online: <<http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>>.

257 *Universal Declaration of Human Rights*, G.A. Res. 217A, at 71, U.N. GAOR, 3rd Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [UDHR] at article 26(1).

258 *Ibid.* at Article 26(3).

259 *Ibid.* at Article 25.

260 *Ibid.* at Article 7.

261 *International Covenant on Civil and Political Rights*, adopted by the General Assembly December 16, 1966, U.N. Doc. A/6316, at 52, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [ICCPR].



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A critical part of the right to self-determination protected in Article 1, is our right not to be deprived of our own means of subsistence. Having deprived us of this, it is arguable that the state has a legal obligation to make amends by fully funding post-secondary education so that we may have the education to rebuild our Nations in the new economies. Like the *UDHR*, the rights contained in this covenant must be afforded to us without discrimination of any kind including on the basis of race, sex, birth or other status.<sup>262</sup> Article 27 provides that states shall not deny the right of ethnic or linguistic minorities the right to enjoy their own culture and language with other members of their group.<sup>263</sup> Taken together, it could be argued that by failing to recognize First Nation jurisdiction over post-secondary education, Canada is depriving us of our right to be self-determining and to provide for ourselves. Forcing First Nations to abide by provincial curriculum or limit access to culturally-relevant post-secondary education effectively denies us the right to share our language and culture.

A decade later in 1976, the *International Covenant on Economic, Social and Cultural Rights* also protected the right of all peoples to self-determination, to freely determine their own development and not be deprived of their means of subsistence.<sup>264</sup> Article 11, like the *UDHR*, also protects the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”<sup>265</sup> Article 13 specifically guarantees our right to education at all levels primary, secondary and post-secondary education which is to be free and made accessible “by every appropriate means.”<sup>266</sup> These rights that have been denied to First Nations in Ontario (and the rest of Canada) for many decades and have directly resulted in our impoverished socio-economic conditions.

Although targeted at children, the *Convention on the Rights of the Child* also speaks to rights similar to those noted above.<sup>267</sup> The Convention mandates that the state ensure “to the maximum extent possible the survival and development of the child”<sup>268</sup>, the right of the child to preserve his/her identity without lawful interference<sup>269</sup>, and the right of the child not to be separated from his/her parents<sup>270</sup>, protect the child from violence, abuse or exploitation<sup>271</sup>, have the highest standard of health and standard of living<sup>272</sup>, and the right to a free education, including higher education “by every appropriate means”<sup>273</sup> All of these rights are guaranteed to children without

262 *Ibid.* at Article 2.

263 *Ibid.* at Article 27. This was the article used by the United Nations Human Rights Committee when Sandra Lovelace (Now Senator Lovelace-Nicholas) won her international human rights case against Canada for preventing Indian women from enjoying their culture with their communities due to gender discriminatory *Indian Act* registration provisions. See: *Sandra Lovelace v. Canada, Communication* (1981) No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166.

264 *International Covenant on Economic, Social and Cultural Rights*, adopted by the General Assembly December 16, 1966, U.N. Doc. A/6316, at 490, 6 I.L.M. 360 (1967), 999 U.N.T.S. 3 [ICESCR] at Article 1.

265 *Ibid.* at Article 11.

266 *Ibid.* at Article 13.

267 *Convention on the Rights of the Child*, adopted by the General Assembly September 2, 1990, U.N. Doc. A/44/49 (1989) [CRC] at Article 28(1)(a).

268 *Ibid.* at Article 6.

269 *Ibid.* at Article 8.

270 *Ibid.* at Article 9.

271 *Ibid.* at Article 19.

272 *Ibid.* at Article 24 & Article 27.

273 *Ibid.* at Article 28.



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discrimination by the state of any kind including on the basis of race, sex, birth or other status.<sup>274</sup> It is clear that Canada and the province of Ontario have breached and continue to breach the rights of our children to post-secondary education.

The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* was adopted by the United Nations General Assembly in 2007 and contains human rights specific to Indigenous peoples.<sup>275</sup> These rights include the right to be protected by all other United Nations human rights instruments<sup>276</sup>, a right to be self-determining<sup>277</sup>, a right against assimilation or destruction of our cultures<sup>278</sup>, practice and revitalize our traditions<sup>279</sup>, and to revitalize and transmit our histories and languages<sup>280</sup>. *UNDRIP* also specifically includes education rights:

## *Article 14*

- 1. 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.*
- 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.*
- 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.<sup>281</sup>*

Our specific treaty right to post-secondary education in Ontario First Nations is also protected in *UNDRIP*:

## *Article 37*

- 1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.*
- 2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.<sup>282</sup>*

These two rights: education and treaty, must be read in conjunction with the other rights previously noted, including the right to free, informed and prior consent before the state takes any legislative or administrative

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274 *Ibid.* at Article 2.  
275 *UNDRIP*, *supra* note 25.  
276 *Ibid.* at Article 1.  
277 *Ibid.* at Article 3.  
278 *Ibid.* at Article 8.  
279 *Ibid.* at Article 11.  
280 *Ibid.* at Article 13.  
281 *Ibid.* at Article 14.  
282 *Ibid.* at Article 37.



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measure impacting our rights<sup>283</sup>; the right to maintain and develop our own institutions<sup>284</sup>; and the improvement of social and economic conditions (including education).<sup>285</sup> Within *UNDRIP*, the state is responsible to ensure the implementation of these rights including state funding, effective redress, compensation, restitution for breaches, and impartial adjudication.

*The right to education is itself a fundamental but also an essential means by which we realize other important rights and freedoms. According to the former Special Rapporteur on the Right to Education, Katarina Tomasev right to education “functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated.” This understanding of the right to education takes on particular relevance where indigenous peoples are concerned...<sup>286</sup>*

It is important to remember that these international human rights obligations that apply to Canada – do not apply only to the federal government. These obligations bind the state – which includes both the federal and provincial levels of government. This is consistent with domestic case law, like *Grassy Narrows*, which has held that treaty obligations apply to the Crown – and that includes both levels of government. While First Nation post-secondary education may not be the only solution to the current socio-economic crisis in First Nations in Ontario, it is one of the strongest means by which to effect the type of substantive changes needed by First Nations, and for which we have the basic human right to attain. Moving forward will require a drastic departure from the status quo to achieve the original treaty vision of mutual prosperity.

**Federal and provincial governments should ensure that First Nation rights to fully-funded and culturally relevant 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.**

## (5) Moving Forward

*The deferrals has [sic] discouraged the students. Deferrals cause unnecessary conflict. Deferrals affect communities from moving forward.<sup>287</sup>*

Fundamental change in First Nation post-secondary education is required not simply because of the many legal obligations of the federal and provincial government, nor because of our domestic and international rights. Improving First Nation post-secondary education is also the “right” thing to do and many Canadians are starting to realize this. Students across Canada, including the Canadian Federation of Students, have called on the government to “honour Aboriginal treaty rights to post-secondary education by removing a cap on funding

283 *Ibid.* at Article 19 & 32.

284 *Ibid.* at Article 20.

285 *Ibid.* at Article 21.

286 L. Graham, “The Right to Education and the UN Declaration on the Rights of Indigenous Peoples” (2010) Research Paper 10-61 Suffolk University Law School: Legal Studies Research Paper Series, online: <[http://www.afn.ca/uploads/files/education/28.\\_2010\\_nov\\_lorie\\_graham\\_suffolk\\_law\\_school\\_education\\_and\\_undrip.pdf](http://www.afn.ca/uploads/files/education/28._2010_nov_lorie_graham_suffolk_law_school_education_and_undrip.pdf)> at 13.

287 *New Summary Report*, *supra* note 102 at 10.



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growth”<sup>288</sup> Criticizing the many First Nations students on waiting lists for post-secondary funding, the Canadian Association of University Teachers issued a statement regarding the most recent Liberal budget and stated: “It is time the federal government honours its historical commitments to Canada’s First Nations, recognize education is a treaty right, and provide appropriate funding.”<sup>289</sup>

John Ralston Saul, a leading Canadian thinker, dedicated his last book, *The Comeback*, to the idea that the path forward for Canada and First Nations is for Canada to honour its treaty obligations as a means of supporting First Nation healing, revitalization and rebuilding of our First Nations - which includes commitments to education.<sup>290</sup> Former Prime Minister Paul Martin (who ironically was in the Liberal government when the original 2% cap on First Nation education was put in place), has publically stated that the ongoing cap is “discrimination” and “contrary to every single value this country has stood for”.<sup>291</sup> Rather than trying to explain the statistics or legal rights to fully-funded education, Martin made this plea to Canadians:

*If somebody asks you a second time why it is so important, don’t go into a lot of detail, don’t go into a lot of study, simply tell them it’s because you love your children as much as any Canadian loves theirs... And you want your children to have any other opportunity that any other Canadian child will have.*<sup>292</sup>

This is a message about doing the right thing because First Nations are human beings who are deserved of (at a minimum) the same basic human rights and opportunities as everyone else. Ongoing federal and provincial failures to address First Nation post-secondary education is not only wrong and discriminatory, it causes great harm to our children, families, communities and Nations. No one is proud of Canada’s dark history of residential schools. Therefore, we should all have a vested interested in making sure the same mistakes are not repeated causing delayed justice for more generations of First Nations students, families, communities and Nations.

The section which follows reconfirms our collective position on the best path forward. Which includes a firm commitment to recognizing our jurisdiction over post-secondary education; ensuring all our education needs are met and that the protection of our languages, cultures and identities form part of this commitment.

## (a) First Nation Jurisdiction

The Indigenous right to education is part of our inherent, pre-existing rights that derive from our prior occupation and governance of our territories. Since time immemorial we have been providing education to our Nations with a view to transferring knowledge; maintaining culture, language and identity; maintaining our economies; and nation-building. Indigenous Nations were able to do this under our own sovereignty and governing systems, supported by the wealth from our lands, waters and resources; our diverse economies and

288 A. Shiel, “Students call on federal government to honour treaty rights to post-secondary education” (Montreal: The McGill Daily, 11 February 2012).

289 Canadian Association of University Teachers, “Statement Regarding the 2017/18 Federal Budget” (Ottawa: CAUT, 2016), online: <[https://www.caut.ca/docs/default-source/briefs/caut-statement---2017-2018-federal-budget-\(2016-08\).pdf?sfvrsn=4](https://www.caut.ca/docs/default-source/briefs/caut-statement---2017-2018-federal-budget-(2016-08).pdf?sfvrsn=4)>.

290 J. Ralston Saul, *The Comeback: How Aboriginals are Reclaiming Power and Influence* (Toronto: Viking, 2014).

291 R. Remiorz, “Aboriginal education woefully underfunded, Paul Martin says” (Montreal: Montreal Gazette, 9 July 2015), online: <<http://montrealgazette.com/news/aboriginal-education-woefully-underfunded-paul-martin-says>>.

292 *Ibid.*



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professions; and through our highly guarded trading routes and inter-national treaties and relations. Self-determination in education, including post-secondary education, is critical to advancing any substantive change for our current and future generations.

The RCAP report explained that post-secondary education is not just about individual benefit, but about supporting families and rebuilding strong communities and Nations.<sup>293</sup> It confirmed that education is a core aspect of First Nation jurisdiction and that this equates to First Nations assuming control over education “in its entirety”.<sup>294</sup> Their report recommended that: (1) federal and provincial governments acknowledge education as core area of Aboriginal jurisdiction; and (2) governments work with Aboriginal groups to develop Aboriginal-controlled institutions. We adopt the RCAP recommendations in this regard, and their more detailed recommendations on how to integrate into a First Nation-controlled education system outside of finalized self-government agreements.

The TRC came to similar conclusions regarding First Nation education with “Calls to Action” that demand the federal government honour the treaty relationships and work with First Nations to overhaul the education system.<sup>295</sup> Specifically, it called on federal, provincial, territorial and municipal governments to fully adopt and implement *UNDRIP*, which includes the right of First Nations to control their own education systems and content, and to honour the treaty commitments to fund post-secondary education.<sup>296</sup> The former United Nations Special Rapporteur on Indigenous Peoples, James Anaya, recommended in his report that federal and provincial governments should increase their efforts to work with First Nations to enhance education opportunities and “support indigenous-run and culturally appropriate social services” – like education.<sup>297</sup>

More recently, the Committee for the Elimination of Discrimination Against Women (CEDAW) recommended that Canada ratify ILO Convention No.169 (1989) on Indigenous and Tribal Peoples<sup>298</sup>, which contains Article 26 “to acquire education at all levels on at least an equal footing with the rest of the national community” and Article 27 which requires control over education be transferred to Indigenous peoples.<sup>299</sup> We adopt these recommendations in the spirit of supporting First Nation jurisdiction over First Nation post-secondary education.

First Nation jurisdiction and control over post-secondary education takes many forms. It means control at the local First Nation level and/or tribal council and/or regional level (as First Nations so choose) including (but not limited to) the following:

- post-secondary education policy development and implementation;
- administration of post-secondary education budgets, proposals and special initiatives;

293 *RCAP, supra* note 3 at vol. 3, chap. 5 Education at 6.

294 *Ibid.* at vol. 3, chap. 5 Education at 1.5.

295 *TRC Report, supra* note 15 at Calls to Action #6-12.

296 *TRC Report, supra* note 15 at 43-44.

297 *Anaya Report, supra* note 101 at paras. 87 & 85.

298 Convention concerning Indigenous and Tribal Peoples in Independent Countries, entered into force May 9, 1991, ILO Convention (No. 169) (1989) [*ILO Conv. (No. 169)*] at Article 26.

299 *Ibid.* at Articles 26 & 27.



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- development and management of post-secondary supports for students (funding, tutors, counselling, etc.);
- control and collection of relevant data for reporting, research and planning; and
- training and capacity development for post-secondary education administration at the local-tribal-regional-national level, etc.;
- professional development for staff to participate in university, college and training institutes on advisory boards, Senates, joint committees, and senior administrative meetings and processes in relation to First Nations post-secondary education;
- training and development to act as advisors to other universities, colleges and training institutes on how to infuse First Nation content into existing courses, develop stand-alone courses and programs that meet First Nation needs and input into, and partnerships with universities for research undertaken on First Nation issues;

It would also include the management and operation of First Nation-controlled post-secondary institutes (which includes but is not limited to):

- training and professional development for AIC staff and administrators;
- recruitment and retention of students and relationship building with student home communities;
- recruitment, retention and training of First Nation instructors and administrators;
- development of culturally-appropriate courses;
- training and development in research proposal writing;
- development of research projects, conferences and other inter-institute academic activities;
- provision of culturally appropriate student support services (tutoring, study and writing skills, counselling, etc.);
- creation and maintenance of libraries, computer labs, research labs, etc. to support student success;
- accreditation of courses and programs to become degree bearing institutions at the undergraduate and graduate levels.

While there is no way to include every aspect of First Nation control and management of post-secondary education, it is clear from the lists above that First Nations must be supported at every level of post-secondary education from student to local community administration to First Nation-led institutes. It is only through this comprehensive participation and control over post-secondary education that First Nations in Ontario can make a significant difference in the lives of their students and communities in a way that the federal and provincial governments have not been able to do.

## **(b) Needs/Rights-Based Funding**

First Nation control over post-secondary education will not be fully possible without significant financial contributions from both the federal government and the province of Ontario. Current funding levels for



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individual First Nation students, local First Nation administrations, and First Nation institutes are not enough to close the gap in attainment levels for individuals or to bring about a substantive improvement in socio-economic conditions in communities. There has been a 2% cap on funding for First Nation education which has not kept up with First Nation population increases, rising tuition costs, or the cost of inflation. This has resulted in an overall decline in the number of First Nation student able to attend university by 18.3% since 1997.<sup>300</sup> This means that First Nations are forced to administer the meager post-secondary education funds in a way which violates the treaty – by denying treaty beneficiaries the right to attend university.

While we acknowledge that the primary responsibility to fund post-secondary education rests with the federal government by way of its constitutional jurisdiction, the *Indian Act*, treaty and other legal obligations, this report has shown that the province of Ontario also has a legal obligation to First Nations in Ontario which stem not only from treaty obligations, but from international human rights obligations. A recent report on reforming Ontario's public services also noted the importance of Ontario contributing to First Nation post-secondary education as a means to economic prosperity for all.<sup>301</sup> While we do not necessarily agree with the entirety of that report or its recommendations, we do agree that the province of Ontario should pressure the federal government to provide additional education funds at least on par with the province; and that the province of Ontario should “step up to provide funding to ensure that on-reserve schools are funded at parity”.<sup>302</sup>

It is important to note that even funding at parity with provincial schools would not address the cumulative backlog of education funds and the extra funds that would be needed to bring First Nations schools to at least the same level. We are not suggesting First Nation funding should be only at parity, rather that the province of Ontario should also contribute funding to First Nation education to help address this backlog. Addressing inequities at the k-12 level would help alleviate problems at the post-secondary level for barriers like student readiness.

One issue that has not been taken into account in the determination of First Nation post-secondary education funding is the real cost of preserving and teaching Indigenous languages. The TRC recommended that Canada formally acknowledge that Aboriginal rights include Aboriginal language rights and enact legislation to protect them.<sup>303</sup> It further recommended that the federal government provide sufficient funds for language revitalization and preservation which is best managed by Aboriginal communities themselves.<sup>304</sup> The TRC also called on post-secondary institutions to create degree and diploma programs in Aboriginal programs, which in our opinion implicates both federal provincial governments.<sup>305</sup> These recommendations are similar to those offered by RCAP in 1996 which recommended that governments recognize the importance of Aboriginal languages and commit to funding their revitalization and conservation.<sup>306</sup>

300 *Cap leads to steep drop, supra* note 13.

301 D. Drummond, “Commission on the Reform of Ontario’s Public Services: Public Services for Ontarians: A Path to Sustainability and Excellence” (Toronto: Queen’s Printer for Ontario, 2012), online: <<http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>> [*Drummond Report*] at 209-212.

302 *Ibid.* at 211-212.

303 TRC, *supra* note 15 at Calls to Action #13-17.

304 *Ibid.*

305 *Ibid.*

306 RCAP, *supra* note 3 at vol.3.



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Indigenous peoples represent approximately 4% of the population in Canada and they speak 59 languages. The current \$5 million budget for Indigenous languages from INAC represents less than \$85,000 annually per language, \$9000 per First Nation, or \$5 per person.<sup>307</sup> The amount is even less when you take into account the funds needed for First Nation organizations that provide services to off-reserve First Nation people. The \$5 million dollar budget pales in comparison to the \$2.4 billion spent annually for French language preservation for a population of less than 1.7%.<sup>308</sup> The province of Ontario spends the most on French language preservation – over \$623 million annually or \$1,275 per person.<sup>309</sup> Yet Ontario spends nothing on Indigenous language education and preservation. It is critical that federal and provincial governments take the real cost of language preservation into account when calculating funding for post-secondary education. While jurisdictional debates have often kept either government from taking the necessary steps to address critical funding issues, the *Grassy Narrows* case has made it clear that both levels of government, representing one Crown, are responsible.

Indigenous peoples in Canada have always shouldered the burden of austerity measures even in healthy economic times. The 2% cap on funding has been in place since 1996 and First Nations have suffered while Canadians have benefitted.<sup>310</sup> Despite recent federal promises to lift the 2% cap on social programs for First Nations, including education, this has not been done.<sup>311</sup> However, the federal government's failure to live up to its promises is not for lack of available funds. INAC recently turned back nearly \$1 billion in unused funding to pay down Canada's debt, instead of putting it towards desperately-needed social programs for First Nations or the \$50 extra million a year promised for First Nation post-secondary education.<sup>312</sup> Knowing that the cap has resulted in 18.3% less students accessing university, the recent report from CEDAW specifically recommended that Canada "remove the funding cap on the Post-Secondary Student Support Program to ensure that Indigenous women and girls have access to funding for post-secondary education."<sup>313</sup>

We agree with the United Nation's recommendations that the cap be lifted. We also agree with the TRC recommendations to eliminate the education gap between First Nations and Canadians; eliminate the discrepancy in federal education funding for k-12 education; provide sufficient funding to close the gap; and to

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307 Indigenous and Northern Affairs Canada, "Budget 2016: Indigenous and Northern Investments" (Ottawa: INAC, 2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1458682313288/1458682419457>>. This number was arrived at by dividing \$5 million dollars by the number First Nations (613) and the second number was \$5 million dollars divided by the number of First Nations people in Canada (851,560) according to the 2011 Census. See: Statistics Canada, "Aboriginal Peoples in Canada: First Nations People, Metis and Inuit: National Household Survey, 2011" (Ottawa: Statistics Canada, 2011), online: <<http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.pdf>>.

308 *Official Language Policies*, *supra* note 232. *Official Bilingualism*, *supra* note 232.

309 *Ibid.* at xii.

310 *Cap leads to steep drop*, *supra* note 13.

311 J. Smith, "First Nations Funding Cap is Still There, Despite Trudeau's Promise" (Toronto: Huffington Post, 16 June 2016), online: <[http://www.huffingtonpost.ca/2016/06/16/political-will-to-lift-first-nations-funding-cap-is-there-needs-time-chief\\_n\\_10515960.html](http://www.huffingtonpost.ca/2016/06/16/political-will-to-lift-first-nations-funding-cap-is-there-needs-time-chief_n_10515960.html)>.

312 D. Akin, "Liberals rapped as \$900M unspent by Indigenous Affairs among 'lapsed' funding for fiscal 2016" (Toronto: National Post, 31 October 2016), online: <<http://news.nationalpost.com/news/canada/canadian-politics/liberals-left-900-million-unspent-last-year-at-indigenous-affairs>>.

313 Committee on the Elimination of Discrimination against Women, "Concluding Observations on the combined eighth and ninth periodic reports of Canada" CEDAW/C/CAN/CO/8-9 (18 November 2016) [CEDAW report] at 12.



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“provide adequate funding to end the backlog of First nations students seeking a post-secondary education”<sup>314</sup>  
RCAP made recommendations twenty years ago which echoed the same ones we heard at the TRC:

## 3.5.20

*The government of Canada recognize and fulfil its obligation to treaty nations by supporting a full range of education services, including post-secondary education, for members of treaty nations where a promise of education appears in treaty texts, related documents or oral histories of the parties involved.*

## 3.5.21

*The federal government continue to support the costs of post-secondary education for First Nations and Inuit post-secondary students and make additional resources available*

*(a) to mitigate the impact of increased costs as post-secondary institutions shift to a new policy environment in post-secondary education; and*

*(b) to meet the anticipated higher level of demand for post-secondary education services.<sup>315</sup>*

We agree with all of the above recommendations and urge the federal and provincial governments to 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 supporting our own post-secondary institutions. The funding must address population increases, rising tuition costs and inflation. Every single qualifying student must be provided with an opportunity to acquire post-secondary education to the highest level desired. Our institutions must also be supported in a secure and stable manner that properly reflects the real costs of offering programs and supports while building for accreditation. It is only through a combination of supporting our students, communities and institutions that post-secondary education will be able to help us empower our people while preserving our languages and cultures.

**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.**

## **(c) Protection of Languages, Cultures & Identities**

UNDRIP made it very clear that the Indigenous rights contained in the Declaration, including the revitalization, preservation and enjoyment of our cultures, languages and identities, represents the minimum standards of human rights. Not only does it protect the right to enjoy our languages, cultures, practices and traditions, but it guarantees our right to incorporate them into our institutions and education systems to ensure we can transmit them to future generations. RCAP also made very strong recommendations in terms of preserving languages and cultures:

314 TRC, *supra note 15* at Calls to Action # 7, 8, 10, 11.

315 RCAP, *supra note 3* at vol. 3, chap. 5, Education.



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## 3.5.6

*Aboriginal language education be assigned priority in Aboriginal, provincial and territorial education systems to complement and support language preservation efforts in local communities through*

*(a) first- or second-language instruction or immersion programs where parents desire it and numbers warrant;*

*(b) recognition of Aboriginal language competence for second-language academic credit whether competence is acquired through classroom or out-of-school instruction;*

*(c) involving elders and fluent Aboriginal speakers in programs to enhance Aboriginal language acquisition and fluency;*

*(d) developing instructional materials; and*

*(e) encouraging and rewarding language teaching as a career path and language research in lexical elaboration, structural analysis and cultural contexts as professional and academic specializations.<sup>316</sup>*

This could also be applied in the post-secondary education context – both within First Nation institutes and within Ontario’s colleges, universities and training centres. Significant, long-term, stable funding would be required to support language instruction and revitalization in both k-12 and post-secondary levels. As a start, the funding could be similar to that of French language instruction to be assessed with additional amounts added as required. It must be remembered that the protection of Indigenous traditional knowledge requires support for Indigenous languages.

The TRC also made strong recommendations with regards to preserving Indigenous languages and cultures as one of the ways to make amends for the devastating inter-generational impacts of residential schools which tried to wipe out Indigenous languages and cultures. It recommended not only formal recognition of Indigenous languages rights – but also adequate funding to support their revitalization and preservation. The TRC further recommended that the revitalization and preservation of languages would be best done by First Nations themselves. We support the TRC’s recommendations on Indigenous languages and their specific recommendations calling on post-secondary institutions to offer certificates, diplomas and degrees in Indigenous languages.

RCAP specifically envisioned increasing the “number, capacity and stability of Aboriginal institutions” which would promote “culturally based, relevant learning opportunities” – a network of Aboriginal institutions that could support one another.<sup>317</sup> Our First Nation-controlled institutes have a significant role to play in revitalizing Indigenous languages not only in their institutions, but also to act as experts, advisors and directors of how language revitalization can happen in Ontario’s post-secondary institutions. 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

316 *Ibid.*

317 *Ibid.* at 9.



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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 path of reconciliation.

**Federal and provincial governments must establish needs/rights-based funding mechanisms to address the crisis of language loss.**

## (6) Conclusion

*The provision of educational services was for all future generations – for those who “are with you now, [and for] those who are coming after you”.<sup>318</sup>*

Education is one of the keys to empowering citizens, transmitting cultures, languages and identities, generating wealth, and nation-building. Control over education is one of the core elements of First Nation sovereignty. It is the only chance we have of undoing some of the damage done in residential schools, for healing our communities and rebuilding our Nations. One of the best ways to protect our languages is control over post-secondary education in terms of what is taught, by whom, and where. Control over our post-secondary education isn't just about sending individual students to college or university, it is also about developing our own institutions and forging our own path. The original treaty vision promised education, not merely for individual benefit, but so as to ensure that our Nations would have the tools necessary to prosper in the new economy. Instead, we have been cut out of the new economy and the education and training that goes along with it.

The recommendations included in this report have all been made before in various documents, resolutions, position papers and research reports. It is unfortunate that we are here, many decades later, advocating the same path forward as we have so many times before. Had governments acted decades ago on our recommendations, we could have advanced First Nation social well-being for the last several generations. We might not have undone all of the damage, but we would be much further ahead in closing the ever widening gap. The education gap is 28 years and widening, and the corresponding income gap is 63 years and widening. If we don't act soon, the socio-economic crisis which has gripped many of our First Nations will be a multi-generational legacy of epic proportions.

None of this makes any sense in the context of both domestic and international rights. First Nations in Ontario have constitutionally-protected treaty rights to education and international human rights to free education, including post-secondary education. It shouldn't be this hard to get the federal and provincial governments to the table. If one only looked at the issue from a purely economic perspective – denying First Nations, the treaty right to post-secondary education doesn't even make economic sense. The Centre for the Study of Living Standards calculated that if Canada closed the education gap between First Nations and Canadians, Canada would see a “cumulative increase in real economic output of \$401 billion” and “\$180 billion is attributed to the impact of improved educational outcomes alone”.<sup>319</sup> Why wouldn't the federal government and province of Ontario step up and ensure the mutual wealth and prosperity promised in the treaties?

318 *Post-Secondary Education*, *supra* note 242 at 95 quoting Chief Treaty Commissioner's promises to the Indians.

319 *Drummond Report*, *supra* note 301 at 210, citing the findings of Centre for the Study of Living Standards, “The Effect of Increasing Aboriginal Educational Attainment on the Labour Force, Output and the Fiscal Balance” (Ottawa: CSLS, 2009), online:



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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, Indigenous languages are protected and every First Nation student on the waiting list is funded to go to university. Even the United Nations has warned Canada about its "grave" human rights violations which has 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 government 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.

## (7) Summary of Recommendations

- (1) 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.
- (2) 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.
- (3) The Province of Ontario must make 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 staff to be hired; and
  - (b) Jointly agree upon additional First Nation courses, programs, and research supports.
- (4) 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.
- (5) 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.

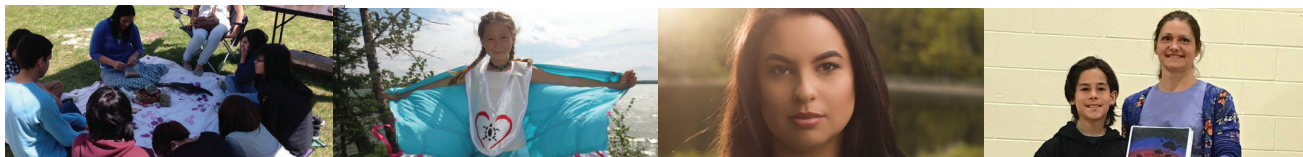
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<<http://www.csls.ca/reports/csls2009-3.pdf>>.



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- (6) 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.
- (7) 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.
- (8) 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.
- (9) Federal and provincial governments should ensure that First Nation rights to fully-funded and culturally relevant 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.
- (10) 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.
- (11) Federal and provincial governments must establish needs/rights-based funding mechanisms to address the crisis of language loss.



# Our Nations, Our Future, Our Vision

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## Notes



