

**FIRST NATIONS EDUCATIONAL GOVERNANCE:
A FRACTURED MIRROR**

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The Constitutional Act 1867 established a dual system of education in Canada – provincial authority and federal responsibility for First Nations’ education. As a part of its treaty obligations, Canada agreed to provide western schools and services equitable with that provided by provincial systems (Morris 1880/1991). The authors argue that the federal system of education for First Nations children has only a surface similarity with the provincial systems. The fractured federal approach to First Nations education – lack of a governance system, educational policy, limited second level services and funding inequities – contributes to dissimilar educational services and inhibits First Nations’ student learning and effective educational outcomes.

At the time of contact with Europeans explorers in the 16th century, approximately 500,000 Indigenous people lived in self-governing communities spanning from the Atlantic to the Pacific Ocean. As self-determining nations, each with their own language, culture, and socio- economic systems, people lived and prospered on the land, adapted to changing environments and trade patterns, and “evolved and grew within the spiritual traditions given to them by the Creator” (Cardinal & Hildebrandt, 2000, p.3). Elders and community members passed on knowledge from one generation to the next as a part of their robust system of Indigenous education. However, “from the beginning of contact with European culture until the present,” Deloria (1994) argued, “education has been a major area of conflict and concern” (as cited in Cajete, 1994, p. 11). Conflict has resulted not only from the collision of educational

practices and differing world views (Little Bear, 2000), but also from the exclusion of First Nations communities, parents, and Elders in the delivery of educational services by colonial and subsequently Canadian governments. In the nineteenth century, exclusion of parents and community members in the education of their children was a deliberate initiative by the Canadian government in order to implement its educational policy “known as that of ‘aggressive civilization’” (Davin Report, 1879, p. 1). The Indian Act, 1876, institutionalized the exclusion of First Nations people in the delivery of educational services. While the current Indian Act (1985) has not changed significantly in the past one hundred years in relation to education, nevertheless, policy and practice has provided an impetus for change.

Purpose

The purpose of this paper is to provide a legislative and policy analysis of First Nations educational governance within Canada. While the *Constitutional Act*, 1982, and the numbered treaties, 1871-1910, articulated Canada and the Crown’s responsibility to provide educational services for First Nations people, the provision of education, the authors argue has lacked foresight and focus on continued improvement. Despite the federal government’s intent to provide a comparable system of education to that provided by provincial systems for Canadian children, the delivery of First Nation education is a fractured image of the provincial system and does not furthermore build on the Indigenous education practices, culture and languages of Canada’s First peoples. Thus while purporting to provide a comparable education system to those established in each province the federal system is only similar on the surface – a surface marred by cracks and a lack of continuum and focus on education. Thus the federal system lacks

governance structure(s), legislation and policies which support effective schools and enhanced student learning. Recent research focused on provincial and First Nations schools in Saskatchewan (Marshall, Steeves, & Carr-Stewart (2009) suggests that the federal funded First Nations system does not provide comparable funding levels for second level services. As a result, second level services such as student services or curriculum development and adaptation appear to be less prevalent in First Nations schools than in the Saskatchewan provincial school system. This has implications for student achievement. The *Saskatchewan Indicators Report* (2008) documents the difference in high school completion between Aboriginal and non-Aboriginal students in the province. Furthermore, the federally funded First Nations schools do not build on the Indigenous education practices, culture and languages of Canada's First Peoples. Thus while purporting to provide a system of education comparable with that provided by the provinces the federal system of education is only similar on the surface.

The underlying reason for this fractured approach to First Nations education relates, in part, to decisions taken at the very inception of Canada as a nation. In 1867, the British North America Act (BNA) created two separate educational systems in Canada – a provincial system and a federal system of education. “In and for each Province the Legislature may exclusively make Laws in relation to Education” (s. 93), while the federal educational system for children living on reserves, stems from Canada's responsibility for “Indians, and land reserved for Indians” (s. 91). Over the last century, each province has enacted an Education Act and associated legislation, established departments of education, professional requirements for educational practitioners, curriculum guidelines, and a variety of policy and administrative guidelines pertaining to the operation of schools. Furthermore, each province has, consistently protected its jurisdictional authority for education from the encroachment of the federal government. The decision by

federal authorities to encourage comparable systems, while not attending to legal and governance, resourcing, curriculum, or cultural issues has encouraged the development of a fractured First Nations system of education.

Authority for First Nations Education

While education was not defined within the British North America Act (BNA), education was clearly within the realm of provincial jurisdiction. Uniquely however, First Nation education was not mentioned in the Act simply encompassed within the scope of the Canada's responsibility "to make Laws for the Peace, Order, and good Government of Canada" (s.91). Within this area of obligation, the federal government was identified as responsible for "Indians, and Lands reserved for the Indians" (s. 91-24). The Indian Act became the all encompassing mechanism for fulfilling Canada's obligations (including education) in all matters related to First Nations people. Thus two education systems – a federal system for First Nations people, and provincial systems for all other Canadians – were established from the outset of the signing of the BNA. From 1867 onwards, educational delivery, standards, expectations, and modes of schooling and educational attainment were significantly different for students in each system (Barman, Hebert, McCaskill, 1996). The Indian Act, 1985, remains in force today and with it a fractured system that has not served the interests of First Nations children.

Unlike the provinces, the federal government did not enact any specific educational legislation, but rather relied on the Indian Act and educational guidelines established by the Department of Indian Affairs in order to carry out what Canada considered to be its constitutional obligations for educational services for First Nations people. Within the

parameters of the Indian Act all educational programs, services and the level of financial commitment to education were defined by the federal government. The Act limited the authority of the Chief and Council in all aspects of governance including education. Amended in 1880, the Indian Act enabled the Chief and Council, subject to Canada's approval to establish "rules and regulations" (s.74:1-7) related to the "religious denomination of the teacher of the school established on the reserve" (s.74:1-7) and also involvement in the construction and repair of school houses. In 1886, the Indian Act enabled Chief and Council to enact "rules and regulations" in relation to "the attendance of school children between the ages of six and fifteen years" (s.76-g): an age requirement mandated by the Act despite the lack of schools on many reserves.

In 1894, an amendment to the Indian Act re-enforced Canada's Indian educational policy of not involving parents or communities in the education of their children (s.137). Canada undertook to "make regulations...to secure the compulsory attendance of children at [residential] school" in order that family ties would be "severed during the school term" (Indian Affairs, 1884, p. xiii). By the turn of the century, as a result of the federal policy of closing day schools, residential schools became the norm and "isolated [children] from their own people" (Indian Affairs, 1896, p. xxiv). The force of law was used to ensure parents complied with the edict on residential schooling: parents who prevented their children from attending were "upon summary conviction" fined, imprisoned, or both (Indian Act 1894, s. 137-2). During the 1920s, under mounting public criticism regarding the substandard schools on reserves, the federal government amended the *Indian Act* in order to address school standards. Section 9-4 stated "the Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such

schools.” At the same time, the Act extended the power of the “chief and council of any band that has children in a school” to allow for “the right to inspect such school at such reasonable times as may be agreed upon [by] the Indian agent and the principal of the school” (Section 9-5).

In 1951, the Indian Act underwent significant amendments including the sections relating to education. The amended Act, Sections 113-122, related to education and specified that the Minister “may, in accordance with this Act, establish, operate and maintain schools for Indian children” (Section 114-2) as well the Minister “may enter into agreements ...on behalf of Indian children” with a variety of organizations – such as provinces, school boards, religious organizations (Section 114-1).

Devolution of Educational Administration to First Nations Communities

Little changed regarding the limited involvement of First Nations parents and community members in the education of their children until the 1970s. In 1969, the Liberal government unveiled the *Statement of the Government of Canada on Indian Policy*, more commonly referred to as “the White Paper.” The document proposed transferring all services for First Nations people, including education, to the provinces. Reaction and resistance by First Nations communities to this document was swift and potent (Villeneuve, 2001). The White Paper served as a catalyst for First Nations action across the country as communities joined together in opposition to the proposed Government policy.

The National Indian Brotherhood (NIB), today known as the Assembly of First Nations (AFN), countered the Liberal policy paper with the document *Indian Control of Indian Education* (ICIE): a statement of educational philosophy, values, and future direction for First

Nations educational jurisdiction. *Indian Control of Indian Education* was based on the principles of local control of education and emphasized the role of parents in setting educational goals for their children. Goals, not only provided “the training necessary for students to make a good living in modern society,” but also reflected the traditional role of parents and “the right of treaty Indians to choose an appropriate educational system for their children” (Henderson, 1995, p. 245).

In 1973, the Minister of Indian and Northern Affairs Canada (INAC) notified the President of the NIB that he agreed “completely with the paper’s basic position of Indian parental responsibility and local control in education in partnership with the Federal Government” (Chretien, 1973, p.1). INAC embarked upon a devolution plan to transfer educational administrative responsibility to First Nations. The transfer of schools to (for the most part) individual First Nations was accomplished within existing federal legislation, administrative arrangements, and policies without any significant increase in budgetary levels – salary costs previously required for federally employed teachers offset requirements for teachers salary at the First Nations level. Maintaining statutory responsibility for Indian education, the role of INAC became one of establishing the level of funding for schools and ensuring that annual educational statistical information was completed through the national Nominal Role – a school reporting of basic student information related to age, grade, and school attended.

Over the next thirty years, band-managed schools became the school of choice for most First Nations parents and communities. The first band-managed school was Blue Quills Native Education Centre established in Alberta in 1971. First Nations have increasingly made the decision to administer schools on their reserves: the number of band administered schools has grown from one in 1971-72 to approximately five hundred today. Despite the growth in the

number of schools and the enrolment growth of First Nations students attending locally managed First Nations schools, a number of administrative, governance, and educational issues remain.

In 2000 and in 2004, the Auditor General of Canada noted “we remain concerned that a significant educational gap exists between First Nations people living on reserves and the Canadian population as a whole and that the time estimated to close this gap has increased slightly, from about 27 to 28 years” (Auditor General, 2004, p. 1). The annual *Indian and Northern Affairs Basic Department Data 2003* reported that over the past decade high school graduation rates have decreased annually from 33.9% in 1995-1996 to 29.6% in 2001-2002 (p. 40). While many factors intertwine in this dismal picture, educational governance and administration is part of the problem as is the absence of federal educational legislation and long term educational planning.

Across Canada, from the 1970s onward, First Nations have implemented *Indian Control of Indian Education* in different ways as INAC moved to quickly transfer administration responsibility for schools to the First Nation level. INAC divested itself of teachers, educational superintendents, and other professionals as schools were devolved to First Nations. In 2002, the Department of Indian Affairs noted that what was devolved was “the specific operation of the school. What was not devolved was an [education] system which would support the school” and assist students in their educational goals (INAC, 2002, p. 5). Thus devolution resulted in the transfer of salaries for teachers, educational assistants, and school principals, for example but did not include second level services or an educational system similar to that established by provincial school boards/divisions to support those involved in the daily operation of the school. The further decision to cap federal funding at a 2% funding increase per year in effect guaranteed an inadequate funding formula for First Nations education since the cap did not take into account

cost of living increases. In effect, devolution and funding decisions helped guarantee that the fractured mirror would exist, and encouraged the maintenance of a system that does not service the interests of First Nations students effectively.

Devolution and Promising Practices

To overcome these barriers and address the needs of supporting schools both from an educational administrative and a student service focus, a number of initiatives have been undertaken by First Nations across Canada. In 1997, nine Mi’Kmaq Chiefs and the Minister of Indian Affairs signed *An Agreement with Respect to Mi’Kmaq Education Nova Scotia*, and subsequent provincial and federal legislation enabled the Mi’Kmaq to opt out of the Indian Act and gain jurisdiction over primary, elementary, and secondary educational programs and services. The agreement supports the delivery of culturally relevant curriculum, First Nations educational governance and administrative structures, and supports a fair, open and transparent educational regime and accountability mechanisms – all supported by appropriate INAC funding. Thus empowered by both federal and provincial legislation as well as funding, the Mi’Kmaq have the capacity to provide full educational services to support both students and teachers. The Mi’Kmaq structure ensures the involvement of parents and the local community in the on-going delivery and organization of educational services.

A similar situation developed in British Columbia. In 2006, the signing of the *Tripartite Educational Jurisdiction Framework Agreement* between the First Nations Education Steering Committee, British Columbia, and the federal government established a similar mechanism for the administration of First Nations education in British Columbia. It was noted by the Minister of

Indian Affairs at the occasion of the signing that the Agreement “is a major step toward our goal of closing the education gap between Aboriginal and non-Aboriginal students” (INAC, 2006, p.1). Chief Negotiator for the First Nations Education Steering Committee, Nathan Matthew stated “the agreement also strengthens the framework for the provision of high quality, relevant education for First Nations students in British Columbia” (p. 1). Research supports these initiatives. Richards (2008) argued that the quality of schools and students’ educational experience makes a positive difference regarding student achievement. Similarly, Grissmer and Flanagan (2006) suggested that both the level of expenditures per pupil as well as its allocation, affected student achievement levels. Related research “also suggested that the provision of enhanced support in areas such as student or special education services results in enhanced student learning” (Yorkton Tribal Council, 2009).

The Numbered Treaties

An essential aspect of any discussion related to First Nations education must include the numbered treaties. The numbered treaties formal contractual agreements between the Crown and First Nations, delineated the terms under which First Nations agreed to share their traditional lands with the newcomers. The numbered treaties entered into between Canada on behalf of the Crown and prairie First Nations, 1871-1899, spelled out the obligations of the two parties – both the Crown and First Nations. Each of the numbered treaties identified the responsibility of the Crown to provide educational services. The Numbered Treaties each established the treaty right to education for treaty First Nations people. Treaty 6 signed in 1876 stated:

Her Majesty agrees to maintain schools for instruction in such reserves hereby made, as to her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it. (Morris, 1880/1991, p. 353)

Despite the Crown and Canada's obligation to provide education as a treaty responsibility, it has been the federal government's long standing policy and practice to deliver educational services within the context of its own legislation boundaries – the Indian Act. Since the signing of the numbered treaties, First Nations have consistently demanded, to no avail, that educational services be provided within the *spirit and intent* of the treaties they negotiated with the Crown (Treaty 7 Elders and Tribal Council, 1996, p. 1). Member nations of Treaty 6 in Alberta joined together to establish *A Vision of Educational Change: A Strategic Plan for the Future Success and Well-being of Treaty Six Students* (2001). In part, First Nations within Treaty 6 in Alberta pursued shared services to better serve their students while each Nation maintaining responsibility for the overall delivery of education – an attempt to organize educational delivery within treaty boundaries. The Treaty 7 Management Corporation provides advisory educational services to member nations in a variety of areas including the enhancement of educational services and “representing Treaty 7 First Nations equally and equitably on a national level by bringing forth a Treaty 7 perspective on educational issues” (Treaty 7 Management Corporation, n.d.).

In Saskatchewan, partnerships between First Nations and provincial divisions/boards reflect the differing priorities and circumstances of the Nations. The Whitecap Dakota/Sioux First Nations and the Saskatoon Public School Division have entered into an agreement related to integrated professional development, student services, and curriculum development. In North Battleford, the public and separate school boards, the North Battleford Tribal Council, the Saskatchewan Ministry of Education, and Indian and Northern Affairs Canada have entered into

a funding arrangement to operate Sakewew First Nations High School within the city for urban Aboriginal and on-reserve students. In the eastern part of the province, an agreement between Victoria Elementary School, a provincial school in the town of Kamsack, and Keeseekoose First Nation School provided for joint in-service for teachers, student exchange days, and the involvement of Elders in each school. In the north of the province, Prince Albert Grand Council provides student services for member Nations while each Nation retains overall responsibility for the staffing and running of their school on their reserve. The Yorkton Tribal Council through its Education Office provides supervisory services, instruction activities, and professional development initiatives for its member schools.

Educational initiatives across Canada whether within legal frameworks such as the Mi'Kamq Educational Act or partnerships between school systems, illustrate a growing recognition and demand for a focused and encompassing array of second level support to First Nations schools. School administration and support services are a vital part of providing effective and meaningful school environments for all children. A recent case study conducted by Marshall, Steeves, and Carr-Stewart (2009), *Improving Student Learning: A Study of the Contribution of Enhanced Second-Level Services within the Yorkton Tribal Council in Relation to the Saskatchewan Pre-kindergarten to Grade 12 Educational System*, compared second level educational services delivery by the Yorkton Tribal Council and the Prairie Valley School Division. Services such as professional development activities, supervisory services related to program/curriculum and instruction, as well as student services – special education/speech pathology and other psychological services – were compared. Adjusting for differences in fiscal year and accounting line items, funding spent on second level services for First Nations schools within the Yorkton Tribal Council was \$280 per student compared to \$379 per student in the

provincially operated Prairie Valley School Division. This study argued that Yorkton Tribal Council would need 46.9% more in the budget to match provincial second level services for students attending First Nation schools (Yorkton Tribal Council, 2009).

Recommendations from the Yorkton Tribal Council (2009) study suggested the need for additional funding that could support an increased focus on culturally appropriate curriculum instruction. In addition, the Yorkton Tribal Council recommendations suggested that improved funding was necessary for capacity building and enhanced accountability at the community, teacher, and administrative levels. Other recent research (Richards, 2008; Saskatchewan 2008) highlighted the existence of lower levels of academic and educational attainment among the Aboriginal students in British Columbia and Saskatchewan. Similar research in Canada (Bell et al., 2004; Fulford, Moore, Daigle, Stevenson, Tolley, & Wade, 2007) has supported these findings, arguing that strong leadership and governance structures, improved curriculum and instruction, and appropriate levels of funding are essential factors in fostering strong First Nations schools and positive student achievement.

Conclusion

This paper has argued that decisions with respect to the governance and funding by the federal government have created a fractured mirror that has negatively impacted First Nations education. In order to improve student achievement among First Nations children it is essential to provide support for First Nations schools that transcend the simple act of transferring teacher salaries. If the interests of First Nations children are to be effectively served, more must be done. Over the last century, provincial initiatives including education departments, governance

structures, legal structures, and educational initiatives have established a quality education system for Canadian children. The same is necessary for First Nations children. A governance and administrative structure which supports local control and parental involvement is no less required and needed at the First Nations level. If the fulfillment of the promises of the numbered treaties to provide educational services “equitable with the whites” is to be fulfilled then “highly effective governance structures...stable leadership, long-term planning, and strategic alignment of available resources towards” First Nations educational goals are essential (Bell et al., 2004, p. 13). Canada must move beyond simply espousing comparable services and fulfill its Constitutional and treaty obligations to provide educational structures, services, and legal parameters equitable with provincial frameworks and commitment to student achievement. Only by meeting these commitments do First Nations children have a realistic opportunity of experiencing the same learning opportunities available within provincial systems of education. Only then can the fractured mirror be reconciled. Only then can First Nations people receive the educational commitments that were promised in the treaties.

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