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INSTITUTE OF  
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# **Why We Need a First Nations Education Act**

*by*

**Michael Mendelson**

**October 2009**

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Michael Mendelson is Senior Scholar at the Caledon Institute of Social Policy. The author gratefully acknowledges the financial contribution of Indian and Northern Affairs Canada (INAC). The opinions expressed in this paper are solely those of the author and do not necessarily represent the views of INAC.

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## ***Introduction***

In its path-breaking 1972 policy statement ‘Indian Control of Indian Education,’ the National Indian Brotherhood (forerunner of the Assembly of First Nations) demanded First Nations control of First Nations education [National Indian Brotherhood 1972]. This demand does not constitute a form of special status for First Nations. On the contrary, communal control over education is embedded in Canadian history.

Canada was made possible by Section 93 of the *Constitution Act* of 1867 explicitly giving provinces sovereignty with respect to education (except on reserves), within the confines of constitutional provisions protecting confessional education rights. These constitutional provisions were a necessary accommodation to make the Canadian federation possible, resulting in parallel Catholic and secular school boards. Today we continue to accept the inconvenience and expense of multiple school boards in many of our cities, town and rural areas – e.g., there are four school boards in the city of Ottawa alone. There is nothing unusual or in any way un-Canadian about a community seeking to protect its capacity to use schools to enhance cultural continuity. First Nations are just as protective of their rights to determine the education of their children as are Canada’s other peoples.

The first step in achieving ‘Indian Control of Indian Education’ was for the federal government to cede its control over First Nations education, and this has largely been done. But the second and more crucial step is for First Nations to step into the vacuum and create the necessary organizational and financial infrastructure for a high quality First Nations education system, and this has not been done. Despite many First Nations attempts to establish needed educational infrastructure, only bits and pieces of an education system have so far been set up on various reserves across Canada. For the most part, the major elements of an education system for First Nations are missing.

This paper describes those missing pieces and sets out a plan for how they may be put into place across Canada. It is a proposal for a new Act of Parliament which would allow First Nations who wished to do so to establish properly funded First Nations school boards with clear legal empowerment and the necessary regional educational agencies to support them.

## ***Whole system reform***

The renowned educational scholar Michael Fullan argues that the revitalization of a school system requires what he calls *whole system reform* [2009]. Fullan says that whole system reform must take place simultaneously at the school, district and state level, with dedicated unrelenting leadership from the state, focused ultimately on what goes on in the classroom. As a practical example, he and Ben Levin describe the process of whole system reform in Ontario, which has resulted in improved educational outcomes across the province – except, of course, on reserves which are not under provincial jurisdiction [Levin 2008; Fullan and Levin 2008].

Whole system reform is exactly what is urgently required for First Nations education, yet education on Canada's First Nations reserves is characterized by the absence of First Nations' school systems and the isolation of individual First Nations schools. Whole system reform is impossible when there is no 'system' to begin with. While there is a significant body of literature on how to improve schools (much of it controversial), this research almost always presupposes that there is a mechanism in place to organize and implement whatever reform is being advocated. To initiate whole system reform of First Nations education, a First Nations education system must first be constructed.

There is no doubt that reform is desperately needed. There are approximately 113,000 students resident on reserves in elementary and secondary education. About 60 percent of these students attend 515 schools located on-reserve, with the remainder attending mainly public high schools off-reserve [[www.ainc-inac.gc.ca](http://www.ainc-inac.gc.ca)]. According to Census data, the proportion of young people on-reserve who have completed high school has not increased in the last ten years, and the high school completion gap between youth on-reserve and those in the general population is getting larger, not smaller [Richards and Scott forthcoming; Mendelson 2008]. While some First Nations on-reserve schools are providing better education [Bell et al. 2004], many other on-reserve schools are doing worse. Piecemeal improvement of individual schools and even clusters of schools is failing to keep up with the continued deterioration of many other schools. On-reserve education is failing First Nations students, parents and society as a whole.

A plethora of social ills is associated with low educational achievement [Riddell 2005]. For example, lack of educational attainment has an important negative effect on health and longevity [Wolfe and Haveman 2001]. Parental education is a significant determinant of child health and intellectual development [de Coulon, Meschi and Vignoles 2008]. Lochner has reviewed empirical data and has concluded that "an increase in educational attainment significantly reduces subsequent violent and property crime yielding sizeable social benefits" [2007: 1]. Perreault shows that incarceration rates for Aboriginal people are much higher for those without high school graduation, than those who have graduated from high school [2009]. Lochner estimates that in the US each additional male high school graduate saves the public \$1,600 to \$2,900 just as a result of the reduction in crime – not taking account of savings in any other area [2007: 12]. Such costs and potential savings are doubtless similar in Canada.

The list of costly and harmful social consequences of poor education could doubtless go on and on, but besides social costs the destructive effect of the failure of First Nations education are also economic. The chances of getting and holding a good job are diminishingly small for those without a high school education [Richards and Scott forthcoming]. A young and dynamic First Nations population could be adding to the common wealth and well-being of Canada by fulfilling the demand for increasingly skilled workers and contributing to arts and culture, while also taking advantage of opportunities to start up exciting new businesses – and some of those businesses might be rooted in First Nations culture in ways we have not yet imagined. Instead we likely will have continuing and escalating dependency, resulting in a heavy financial cost to society, especially on the Prairies where First Nations are an increasing proportion of the working-age population.

**Table 1**  
**Total Full-Time Equivalent (FTE) students normally resident on**  
**First Nations reserves attending school on- and off-reserve**  
**2000-01 to 2007-08 fiscal year**

Fiscal year	total school going	on-reserve students		off-reserve students	
<b>2000-01</b>	112,701	69,131	61%	43,571	39%
<b>2001-02</b>	112,546	68,578	61%	43,968	39%
<b>2002-03</b>	113,216	68,373	60%	44,843	40%
<b>2003-04</b>	113,138	68,737	61%	44,401	39%
<b>2004-05</b>	114,720	69,589	61%	45,131	39%
<b>2005-06</b>	115,299	68,434	59%	46,865	41%
<b>2006-07</b>	113,121	67,478	60%	45,643	40%
<b>2007-08</b>	112,996	68,576	61%	44,420	39%

Source: Office of the Parliamentary Budget Officer (2009). Data provided to PBO by Indian and Northern Affairs, as identified in the nominal roll call. On-reserve includes approximately 1,500 FTE students in federal (non-Band operated) schools and off-reserve schools includes approximately 2,055 FTE students in private schools.

Given these costs, an investment which resulted in improved educational results for First Nations students on-reserve would have a high rate of return and be well worth the expenditure. In their extensive study of the effects of improved Aboriginal educational outcomes on the economy and government budgets, Sharpe et al. concluded that: “Investing in Aboriginal education will not only benefit the Aboriginal population itself, but will also benefit Canadian government and, by extension, the entire Canadian population” [2009: 70]. The researchers found that GDP growth would be up to .03 percentage points higher and government’s fiscal balances considerably improved if the Aboriginal population’s educational attainment could be brought to the 2001 level of educational attainment of the general population.

But under the present circumstances, it is not clear how additional funding can be provided for First Nations education so as to maximize its effect on improving educational outcomes. As is discussed further below, more money is probably necessary, but in itself will

not automatically redress the deficiencies of the existing non-system of First Nations education. The public policy challenge is to spend *effectively* – to find ways to invest more money into First Nations education on-reserve in such a way that the spending has a good chance of resulting in sustainable improvements in educational outcomes. A viable public policy strategy requires financing and educational reforms to be addressed simultaneously.

*What sorts of reforms are these?*

As has been discussed extensively elsewhere [see Mendelson 2008 for a review of reports], First Nations schools on-reserve are unlike any other public schools in Canada in that they usually operate as independent individual or very small groups of schools with relatively few students. Since the 1930s, all off-reserve public schools in Canada have been brought under the supervision of school boards, most of which have substantial educational and administrative resources. In British Columbia, for example, 830 school districts in 1932 were reduced to 89 by 1947 and 57 today [Fleming and Hutton 1997]. In a later reform movement (some would say following the Soviet Sputnik and the consequent fear of falling behind Russia), provincial ministries of education were modernized to provide significant resources and supports to school boards.

The old village school, sometimes operating under the administration of the town mayor, is long gone everywhere – except on First Nations reserves. In a speech to the House of Commons upon introduction of the *First Nations Jurisdiction Over Education in British Columbia Act*, former Minister of Indian and Northern Affairs Jim Prentice put it succinctly: “First Nation children, frankly, have been the only children in Canada who have lacked an education system.”

Why is this important? School boards and provincial ministries play a vital educational role, and are much more than added layers of bureaucracy. Each has functions that are crucial to the quality of education and especially to sustainable quality education over the long term. It is these institutions that make geographically dispersed schools into an education system. It is only through these organizations that a process of whole system reform can be lead.

Viable school boards and ministries are essential, but they do not automatically result in improved educational outcomes. There would be no great surprise in uncovering a poorly functioning school board or a provincial education ministry that does not do its job. Rather, school boards and ministries are a necessary but not sufficient condition to organize the process of improving on-reserve schools. This is like the relationship of a factory and a manager: It is possible to have a manager who does a terrible job, yet without a manager the factory will be chaotic and all but certainly go under. School boards and ministries are the required organizational infrastructure upon which may be built a better system of schools, but the ‘heavy lifting’ of changing what actually goes on in the classroom must still be taken on. However, without boards and ministries there will be no one to ensure that the heavy lifting occurs – to improve on-reserve schools systematically.



In the next sections we look at the functions of school boards and ministries in more detail, and discuss how these functions can be performed within a First Nations education system.

### *The need for school boards*

School boards perform two types of function in the school system: They are the executive manager of schools *and* a service provider for schools. As executive managers, school boards supervise their schools' performance and, if the school board is doing its job properly, intervene when schools are not succeeding. School boards oversee the human resources within their school system, negotiating contracts and the terms of employment for teachers and providing for stable employment with opportunities for professional training and advancement. School boards develop the leadership that is critical to successful schools by nurturing a cadre of principals, usually out of the ranks of teachers, with experience and knowledge. School boards administer the finances of the school system within their jurisdiction and the allocations to individual schools, including responsibility in some provinces for raising a portion of their own revenue.

In addition to management functions, school boards provide a range of centralized services. The school board service function is especially valuable where economies of scale require a shared speciality among many schools, such as speech therapy. But beyond the obvious examples of specialized educational services, there are many mundane and concrete services performed by school boards. To pick one example of a centralized service which does not involve the direct provision of educational services, most school boards have a building department including skilled and experienced professionals, such as architects and engineers, who are responsible for developing and maintaining the physical plant. For example, Winnipeg School Board, with 77 schools and 33,000 students, has approximately 20 people working directly for the Board in its building department [Winnipeg School Board web site <http://www.sdl.org/>]. Of course, simply having lots of engineers on staff does not guarantee that a Board will do a good job of capital planning and maintenance, but inadequate staffing will likely guarantee that they will do a poor job.

On a comparative basis, and ignoring the relatively more challenging infrastructure demands of many on-reserve schools, there should be about 130 to 150 centralized, specialized staff serving on-reserve educational infrastructure needs across all of Canada. Based on a rough interpretation of staffing charts, it appears that there is only a handful of engineers and other professionals working for Indian and Northern Affairs (INAC) on general infrastructure (not necessarily specializing in education) in national headquarters and in the regions, perhaps fewer than a half dozen. Most on-reserve schools have no specialized building support at all. An 'Asset Condition Report' is required every three years on all reserves, but the technical inspection is performed by outside contractors. The absence of in-house education-specialized technical physical plant capacities places severe obstacles in the path of good capital maintenance and development.

The Ontario government [<http://www.edu.gov.on.ca>] lists school boards responsibilities as:

- determining the number, size and location of schools
- building, equipping and furnishing schools
- providing education programs that meet the needs of the school community, including needs for special education
- prudent management of the funds allocated by the province to support all board activities, including education programs for elementary and secondary school students, and the building and maintaining of schools
- preparing an annual budget
- supervising the operation of schools and their teaching programs
- developing policy for safe arrival programs for elementary schools
- establishing a school council at each school
- hiring teachers and other staff
- helping teachers improve their teaching practices
- teacher performance
- approving schools' textbook and learning materials choices, based on the list of approved materials provided by the Ministry of Education
- enforcing the student attendance provisions of the *Education Act*
- ensuring schools abide by the *Education Act* and its regulations.

Most First Nations' schools on-reserve do not have the support of a fully empowered school board (some exceptions are discussed below). However, many First Nations have attempted to redress this deficiency, at least in part, by forming multi-school service organizations with some pooled resources. Indian and Northern Affairs has often encouraged and helped finance multi-school organizations. Many on-reserve schools are part of a multi-school service organization, at least as best as can be determined from a casual survey

Most of the First Nations multi-school service organizations are relatively small, with few resources and a limited range of services. Some are called a 'school board' or a 'school authority' but, when these organizations involve several Bands, only rarely do they have the range of responsibilities that are vested in off-reserve school boards. Nevertheless, it is at least theoretically possible for on-reserve schools to obtain some of the centralized service benefits of a school board through multi-school service organizations – without an actual school board operating like an off-reserve school board. By contrast, the school board's executive management function will always be missing without a true school board that is fully responsible for the schools under its administration. Yet it is the executive management function which is especially critical for the challenges now facing on-reserve schools – management of human resources, finances, development of a cadre of principals, identification and correction of underperforming schools and so on.

### Examples of First Nations multi-school organizational initiatives in 2006

First Nations Education Steering Committee  
Treaty Seven First Nations Education Consortium  
Treaty Six education initiative  
Treaty Eight education initiative  
Federation of Saskatchewan Indian Nations  
Northwest Nations Education Council  
Prince Albert Grand Council  
Northern Nishanawbe Education Council  
Fort Frances – Treaty 3  
Union of Ontario Indians  
Indigenous Education Coalition  
Association of Iroquois and Allied Indians  
Cree School Board  
L'Institut Culturel Educatif Montagnais  
New Brunswick Education Initiative  
Mi'kmaq Kina'matnewey

Source: McCue 2006

#### ***First Nations school boards***

First Nations schools need First Nations school boards.<sup>1</sup> First Nations school boards might be named something else, but whatever they are called, the functions they need to perform are the same. They must be fully vested with authority to manage the schools on reserves in their catchment area as well as provide shared services to these schools. In short, and to be as explicit as possible, if First Nations are to have a school *system*, and not just a collection of schools, full control and ownership of schools must be vested in First Nations school boards and not in individual Bands. Specialized agencies that are concerned solely with education – First Nations school boards – should become fully responsible for education on reserves, taking over from Band government and from small education authorities set up and sometimes appointed by Band governments.

In addition, First Nations school boards should have a responsibility that is not generally required of non-First Nations boards. As noted, many students normally resident on-reserve will have to attend high school off-reserve – and sometimes lower grades as well. In some instances off-reserve residents, particularly in isolated areas, attend on-reserve schools. First Nations school boards should negotiate and administer agreements with off-reserve school boards providing for expectations and accountability on behalf of their students attending schools off-reserve, and the reverse in the relatively rarer instances where non-reserve residents attend

schools on-reserve. These arrangements should include the payment and receipt of tuition fees, so that funds on behalf of students would be paid by the First Nations school board responsible for a geographic area. At present, funding on behalf of on-reserve students attending off-reserve schools is paid either directly by Indian and Northern Affairs to the off-reserve school or to the Band council which then pays the off-reserve school. A Board-to-Board relationship is more appropriate than a Band governance organization-to-Board relationship, and more likely to focus on educational requirements.

First Nations school boards' districts need to be large enough to be able to provide centralized services efficiently to their schools. There can be little doubt that First Nations need school boards, but how large their districts should be is one of the most difficult questions facing any attempt to establish a First Nations education system.

The Royal Commission on Aboriginal Peoples considered the restructuring of First Nations education and recommended the recognition of what they called "Aboriginal Nations" as the basis for the First Nations equivalent of school boards. According to the Royal Commission:

An Aboriginal Nation should be defined as a sizable body of Aboriginal people that possesses a shared sense of national identity and constitutes the predominant population of a certain territory or collection of territories. Thus, the Mi'kmaq, the Innu, the Anishnabe, the Blood, the Haida, the Innuvaluit, the western Métis nation and other peoples whose bonds have stayed at least partly intact, despite government interference, are nations. There are about 1,000 reserve and settlement communities in Canada, but there are 60 to 80 Aboriginal nations [Royal Commission on Aboriginal Peoples 1996: 5.10].

Although the Commission's approach would represent a dramatic consolidation, even with the Royal Commission definition of Aboriginal Nation many of the school districts would be small, averaging only six or seven schools with few students. Is this large enough?

Unfortunately, there is no clear guidance from the existing research as to the optimal size of a school district. The question of optimal school district size has always been a difficult pedagogical and political issue in Canada, and not just for First Nations. School district consolidation has vexed all politicians, particularly on the Prairies and especially in Saskatchewan due to a sparsely distributed rural population and a history of many small school districts which were not as forcefully amalgamated as in other provinces in the 1930s and 1940s.

A 1993 Task Force report commissioned by the Saskatchewan School Trustees Association recommended that the minimum student enrolment for each district be 2,500 to 5,000, though: "Exceptions to these enrolment guidelines might occur in areas where the population is sparse or dense" [Cited in Manitoba 1994: 59]. Apparently the 1993 Task Force did not end the discussion, as a further review of optimal school board size was undertaken on behalf of the Saskatchewan School Trustees Association in 1997 by Gord Erhardt who observed that:

The literature on school jurisdiction size and school jurisdiction consolidation is inconclusive and does not present a clear picture for policy-makers. There is no substantial evidence that

school jurisdiction size alone is a major factor in determining the costs or the quality of a school system. Furthermore, there is no solid foundation upon which to base a belief that school division consolidation will improve education or cost effectiveness. The research shows little evidence suggesting a causal link between the variables [1997].

Much of the research, Erhardt points out, is from the United States and may not be applicable to Canada. In his own report, Erhardt simulates the amalgamation of several smaller school districts (mainly with fewer than 2,000 students each) in Saskatchewan. He concludes that savings of about four percent could be achieved. However, about half of this amount would come from hypothesized school closings. Similar savings through closing smaller schools on reserves might not only be politically impossible; the geography itself might make this infeasible. Nor does Erhardt draw any conclusions about the effects on educational results.

In 1994, the Manitoba School Divisions/Boundaries Review Commission explicitly asked the question: “Is there an optimal size for a school division?” [Manitoba 1994: 55]. The Commission heard several well-researched submissions on both sides of the ‘bigger is better’ controversy, as well as commissioning its own independent review of the issue. It concluded that the literature did not provide a clear answer to the question of optimal size, but did arrive at a conclusion as to minimum size, which was the same as the initial recommendation of the Saskatchewan Trustees Association:

It is very difficult to rationalize a board and full administration for less than 2,500 students. In fact, that minimum should range closer to the 5,000 figure were it not for distance, density and transportation limitation factors in rural areas [Manitoba 1994: 61].

American economic research in 2002 concluded that “sizeable potential cost savings in instructional and administrative costs may exist by moving from a very small district (500 or fewer pupils) to a district with approximately 2,000 to 4,000 pupils” [Andrews, Duncombe and Yinger 2002: 1].

Overall, the research does not suggest an optimal size, but it does point towards a minimum size, likely in the order of 2,500 students. A more comprehensive review of the existing literature on optimal school board size should be undertaken – whether or not the recommendations in this paper are followed – since multi-Band educational alliances are being formed all the time, and this research could help inform that process. However, if we assume this lower threshold as a rough guideline, there would be about 30 First Nations school districts across Canada, which implies about half of the number suggested by the Royal Commission.

To achieve a larger threshold size, First Nations school boards could consist of two or more Aboriginal Nations. Alternatively, flexible arrangements could be negotiated according to local conditions, in which some services were centralized among multiple First Nations boards, while the boards’ executive management functions remain unconsolidated. There is an existing example of shared resources among First Nations schools today – the First Nations SchoolNet, which has successfully connected all First Nations schools to the Internet. SchoolNet is sponsored by Indian and Northern Affairs and run regionally by six non-profit First Nations

SchoolNet Regional Management Organizations, listed in the text box below. Service sharing agreements are also in place for many off-reserve school boards – e.g., the four City of Ottawa school boards share a single transportation agency.

However, it is not the *size* of First Nations school boards based on the Royal Commission’s concept of an Aboriginal Nation that would constitute the biggest difference between a true First Nations school board and existing multi-school First Nations organizations. The most important divergence from what exists today would be the *management* of the schools by the First Nations school board. This is in contrast to the current First Nations multi-school organization in which, in most cases, Bands continue to manage the schools either directly or indirectly through educational authorities.

First Nations school boards as proposed here would be governed by First Nations trustees, preferably elected by the members of participating Bands, so they would be entirely

<b>First Nations SchoolNet Regional Management Organizations</b>
<ul style="list-style-type: none"><li>• Atlantic: Mi’kmaw Kina’matnewey</li><li>• Quebec: First Nations Education Council</li><li>• Ontario: Keewaytinook Okimakanak</li><li>• Manitoba: Keewatin Tribal Council</li><li>• Saskatchewan and Alberta: Keewatin Career Development Corporation</li><li>• British Columbia: First Nations Education Steering Committee</li></ul>



within First Nations’ control. Of course, this approach would present some of the same governance challenges as does the current system, due to the colonial history of First Nations and the consequent deficit in expertise that confronts many Bands. It is hoped that definitively separating school and general Band governance, including two entirely separate budgets, would encourage over time a growth in knowledge and the selection of trustees deeply interested in matters of education. In addition, regional organizations, Indian and Northern Affairs and the Assembly of First Nations could look at various measures to improve governance capacity as part of the reform process. For example, a one- or two-week training course to accelerate the development of education governance capacity could be established for newly-elected First Nations trustees of school boards from across Canada, set up as part of the reformed system outlined here.

The concept of a First Nations school board is not only consistent with ‘Indian control of Indian education’ as set out in the foundational statement by the National Indian Brotherhood that began the process of decolonising First Nations education [National Indian Brotherhood 1972]: The development of First Nations school boards is the next step in asserting real First Nations control over their own education. Having wrested the management of schools away from non-

First Nations governments, the establishment of First Nations school boards involves First Nations setting up effective management organizations for their own schools. Nevertheless, the proposal for individual Bands to grant full authority to a special purpose First Nations organization made up of a number of Bands should be acknowledged as challenging the current *status quo* in First Nations governance.

### ***Independent schools***

None of this is to deny that, from time to time, a self-standing school (private or charter or whatever name is attached to it) may be established that thrives and provides excellent education. A dynamic and dedicated leader, with a clear philosophy of education can build an exceptional school – although if such a school is to take on all comers, as must a public school, and not just expel students who do not fit, it too needs the back-up of specialized resources that can only be provided economically to larger groupings of schools.

It may be possible to establish private or charter schools on a few reserves, with potential for positive results given the right combination of people and circumstances: If successful, these could provide good ideas and inspiration for other schools, and if unsuccessful they could provide equally important lessons for other schools. But in the meantime, the other approximately 500+ schools on reserves would continue to worsen unless there is a practical plan to reverse this trend.

The private or charter schools alternative does not provide a realistic alternative for whole system reform of First Nations education on-reserve precisely because it is not systemic. There is no prospect of 500+ wonderful principals springing up spontaneously and being offered the leadership of on-reserve schools, backed up by groups of empowered and engaged parents, with financial arrangements in place with the Band and Indian and Northern Affairs. As Ben Levin puts it:

The issue of scale [meaning improving not just one school but ‘scaling’ up to improve hundreds of schools] also raises the need to organize change in a way that is manageable for ordinary people. So many accounts of change seem to depend on heroic efforts by seemingly superhuman people. Yet entire education systems cannot depend for their success on having large numbers of extraordinary people – who, by definition, are always in short supply [2009: 4].

If there are to be competent leaders for on-reserve schools, there must be a concerted plan to create these leaders and get them in place with the support they need to do an excellent job, despite their being ordinary human beings with families who like to get home in time for dinner most nights and go on holidays. Human resource development, supervision and monitoring performance are the mandate of school boards. There is no guarantee that a school board will perform its functions well; but without a school board, there is a guarantee that the functions will rarely be performed at all.

Similar considerations need to be brought to proposals for a ‘voucher’ type of system or other mechanism to allow the money to follow the student rather than the student to follow the money. This approach would see First Nations students able to take the dollars of a ‘tuition agreement’ on their own to any school they wanted to attend and which would accept them. In practice, almost all First Nations students normally living on-reserve do not have the choice of several different schools: Geography imposes strict limitations. Even for those few urban and semi-urban reserves where such a choice could be meaningful, this option would be helpful only for those students whose parents were engaged, confident and knowledgeable enough to take advantage of this opportunity. Others would be left behind, and there is nothing to suggest that the pressure of losing a handful of relatively good students would turn non-performing schools into good schools. It seems more likely that bad schools would get worse.

### *Ministries of education*

Provincial ministries of education fulfill the vital role of executive leadership for the overall off-reserve education system in each province: In fact, it is the ministries together with the school boards which stitch it all together to make it a *system*. Provincial ministries work mainly with school boards and only indirectly with individual schools, principals, teachers and students. School boards for off-reserve schools are accountable to provincial ministries of education as well as their electorate.

Like school boards, ministries have both a management function and a service function. As a manager, the ministry of education is the executive leader of the whole education system, establishing the broadest goals, total budgets for K-12 (and in some provinces pre-K) and other aspects of executive leadership. Ministry service functions include setting standards for educational attainment, establishing certification, codes of conduct, and the establishment and continuous development of the provincial curriculum. Much of what the ministries do is mandatory for schools, usually also including some mandatory requirements for private and independent schools in the province (although provinces differ substantially from one another).

The provincial ministry of education is also responsible for the laws that govern education in each province, and will maintain and submit proposed revisions to their Minister and Cabinet, who may bring revisions to these statutes to legislatures as required from time to time. Off-reserve schools operate within a framework of law.

Provincial education ministries’ service functions are often expensive and may demand highly specialized knowledge, if they are to be done well. Consequently, these functions are most efficiently performed within a large system that provides substantial economies of scale. Some First Nations multi-school on-reserve organizations have attempted to take on some of the functions of provincial ministries, especially with respect to curriculum. Although many have reportedly done a good job, this is not an efficient use of resources over the long run as curriculum design and implementation need to be done on a large scale to minimize expense and



concentrate expertise. Nor is the job ever completed. Curriculum requires constant revision and updating and is never completed.

Current agreements between Ottawa and First Nations require schools on-reserve to educate to levels comparable to those found in similar off-reserve schools. For example, the Comprehensive Funding Arrangement with First Nations states that “education standards (e.g., certified teachers) shall allow students to transfer to an equivalent grade in another school within the school system of the province/territory” [Comprehensive Funding Arrangement: National Model for use with First Nations and Tribal Councils for 2009/2010 Section 6.1.2 <http://www.ainc-inac.gc.ca/>]. In practice, these policies are at best implemented unevenly, and some observers would contend they are implemented hardly at all. While transfers from a grade on-reserve to the same grade off-reserve do frequently occur, the anecdotal evidence is that most on-reserve students find themselves far behind [Mendelson 2008]. Evidence from BC cited in [Richards and Scott forthcoming] shows that 57 percent of First Nations students are one or more years behind in reading and 66 percent of students are one or more years behind in mathematics.

To the extent that on-reserve schools do attempt to meet the goal of ‘educating to levels comparable to those to be found in similar off-reserve schools,’ the expectation is that they will do so by adopting the standards and instruments of the provincial system, including most prominently the provincial curriculum. Teachers on reserves must also be certified by the provincial body responsible for teacher certification. Some provinces have additional requirements of any secondary school, be it public, private or on-reserve, if that school is to be permitted to offer a high school diploma recognized in the province.

The provincial ministries of education perform a necessary role to create and maintain a high-quality education system, and these roles – be it standards setting or curriculum design – are also needed to support First Nations schools. So why cannot First Nations schools just fall under the responsibility of their respective provincial ministries of education? While superficially appealing, upon deeper consideration this option is, at the very least, impractical and would tie First Nations educational reform in knots for another generation or more, stalling needed change in a morass of political, financial and legal battles. To understand why this option is unworkable, it is necessary to review the historical and legal context of First Nations education.

Any attempt to force First Nations education under the control of provinces would be fiercely resisted by most First Nations. Nor is resistance to a ‘provincial takeover’ merely paranoia on the part of First Nations. It was within living memory that schools were consciously used as a tool of ‘internal colonisation’ (as this policy is called in Australia) – deliberately designed to erase all aspects of indigenous culture and language from students. Thankfully this effort did not work. Today we see the re-emergence of rich indigenous cultural heritages from which all Canadians benefit, but history reminds us that it is not mere fantasy propelling First Nations to be vigilant about guarding their right to control their own schools. Nor is this all safely buried in the past. While all provincial governments are today to varying degrees sensitive and responsive to First Nations cultures, this could change in the blink of an eye just through a single provincial election.

Nor would such a transfer of responsibility be acceptable to most provincial governments. On a practical level, putting aside issues of principle, most provinces would not accept a jurisdictional transfer without ironclad guarantees from the federal government regarding financing. This is especially true of the Prairie Provinces with the largest numbers of First Nations peoples on reserves, relative to the size of these provinces. The financial negotiations would drag on, likely for decades, before a province would accept such a transfer – unless the federal government were willing to pay a huge premium to ‘bribe’ a province into accepting. The financial negotiations would be difficult not only because of the challenge of setting the amount to be transferred in the first few years, but also because some formula would have to be established for resolving how the amounts would be fixed far into the future.

From a legal perspective, many First Nations would certainly challenge any attempt to apply provincial education statutes on reserves without First Nations consent. It is generally accepted that First Nations education on-reserve is not subject to provincial education laws [for an interesting review of the law from an Aboriginal perspective see Henderson 1995]. It seems likely that First Nations would win such a challenge, especially given the recognition of Aboriginal rights in the constitution (Section 35).

A strategy of forcing all First Nations on-reserve education under provincial jurisdiction is one of those public policy chimeras that haunt policy development, presenting a seemingly attractive alternative which cannot actually be implemented but serves to obstruct the evolution of more complex but realistic strategies. It is a recipe for stagnation or, worse, continued decline.

Yet the practical reality is that students who graduate from schools on-reserve will want and deserve certification that does meet provincial standards and will also want the freedom to enter into further education just as would any other graduating student in the provinces. Moreover, even with effective First Nations regional organizations (discussed below), the number of students on-reserve will be relatively small given the scale that is required to take on all the responsibilities of a provincial ministry. Further, from a public expenditure perspective, it makes little sense to duplicate what already exists at the provincial level. The opposite strategy – of trying to set up a completely parallel and independent First Nations education system which has little relationship and no reliance upon the provinces – is equally a chimera.

What is therefore needed is neither a holus-bolus handover of on-reserve education to the provinces, nor the development of a separate education apparatus. Rather, a partnership is required in which a First Nations Regional Education Authority has many of the managerial responsibilities of a provincial education ministry to oversee First Nations school boards, but relies substantially on a voluntary partnership with the provincial education ministry for many services under the terms of a written agreement.

Notwithstanding the above discussion, there may be instances in which First Nations voluntarily wish to become part of a public school board, operating under provincial authority. There are at least two examples of this in Canada today.

The Cree School Board was set up as part of the James Bay Quebec Hydro development in 1978. The Cree School Board now includes nine schools with about 3,600 students. The Cree School Board is one model of voluntary integration into the provincial education system, with the Cree School Board operating as a special board under the Quebec *Education Act*. The Board is governed by commissioners from each of the Cree communities in the James Bay development agreement. Financing is 75 percent from Indian and Northern Affairs and 25 percent from Quebec, originally roughly meant to reflect the ratio of ‘status’ and ‘non-status’ students attending Cree School Board schools. The budget is negotiated between Ottawa and Quebec, supposedly reflecting funding levels for comparable Quebec schools plus an additional mandate for activities such as development of a Cree language curriculum. The Cree Board has consistently maintained – at least up to a few years ago – that funding did not, in fact, reflect their special mandate or needs. Moreover, the Board itself had been excluded from the Budget setting intergovernmental discussions, at least in the early years [Diamond 1987].

The educational outcomes of the Cree Board are discussed further below, but it is a model in which a First Nations school board opts voluntarily to operate as a provincial school board, with funding shared between the province and Ottawa. Assuming that satisfactory legislative and financing arrangements could be negotiated, other First Nations school boards might wish voluntarily to become part of a provincial system and opt for recognition under a provincial system. So long as there is no compulsion involved, there is no reason to stand in the way of such an arrangement.

Another unique arrangement in Canada is in Northern Manitoba where eight First Nations have opted to have their schools become part of the public school Board covering northern Manitoba, called the Frontier School Division. The Frontier Division on-reserve schools are financed by a tuition agreement whereby Indian and Northern Affairs pays the Division tuition for each student resident on-reserve in the reserve schools. Frontier is unusual in generally having a majority of Aboriginal trustees on its governing board at any given time. Frontier also has a ‘bottom-up’ method of electing its trustees. Each school elects a community board for the school. Each community then elects two of its community board trustees to sit on an area board, of which there are five in the Frontier Division. Trustees are then elected from each of the five area boards. This structure has led to good representation, and a highly experienced and skilled board of trustees.

The Frontier arrangement makes a great deal of sense in a sparsely populated area such as Northern Manitoba with a large First Nations population and many people identifying themselves as Aboriginal who are not living on reserve [but this does not encompass the majority of First Nations students as about 75 percent of First Nations students live in urban and rural areas, not in remote areas, according to the Indian and Northern Affairs Band Classification Manual cited in Richards and Scott 2009]. As a consequence, Frontier has always had substantial focus on First Nations language and culture as part of its curriculum. It might be possible to consider a similar arrangement in other areas sharing these features, such as northern Saskatchewan or perhaps North West Ontario. However, the Frontier arrangement has evolved (and was not planned) over many decades with a good deal of trust and deep relationships built up over time. Frontier is

careful to go through a long process of community engagement and consensus, reportedly taking about two years, before agreeing to bring a new reserve school into the Division. Even with willing First Nations and public school boards, it may not be easy to replicate the Frontier experience elsewhere in Canada.

The Frontier and the Quebec Cree experiences show that many different forms of partnership are possible, and some First Nations may wish to relate directly to a province either at a school board or at an individual school level. But if First Nations are not to be compelled to enter into these kinds of arrangements with their respective provinces – and such compulsion is unworkable as well as undesirable – First Nations Regional Education Authorities, working in partnership with provincial education ministries, are needed to provide both services and management for a First Nations education system.

### ***First Nations Regional Education Authorities***

Several First Nations Regional Education Authorities could be established across Canada to partner with provincial ministries and provide the equivalent of provincial education ministry functions to First Nations school boards. The First Nations Regional Education Authorities would, in some instances, develop and deliver services themselves, and, in other instances, would contract with the provincial ministry to do so. First Nations school boards would relate to the First Nations Regional Education Authorities analogously to the relationship between off-reserve school boards and provincial ministries of education.

The arrangements between the First Nations Regional Authority and the provincial ministry of education would be negotiated on a region-by-region basis, allowing flexibility to reflect regional differences. For example, as part of the negotiations surrounding the *First Nations Jurisdiction over Education in British Columbia Act 2006*, a BC First Nations Education Authority was to have been established. The proposed BC First Nations Education Authority shares many of the characteristics of both school boards and Regional Authorities as proposed here, but also differs in several respects. The BC initiative is discussed further below. However, the Terms of Reference for the proposed BC First Nations Education Authority provide a good example of the specific kinds of regional interests that a First Nations Education Authority might pursue.

In the case of BC, the aspects of the education system to be developed by the BC First Nations Education Authority were:

- teacher certification (except for language and culture teachers)
- school certification
- standards for curriculum and examinations for courses necessary to meet graduation requirements [Draft BC First Nations Education Authority Terms of Reference 2006 <http://www.fnesc.ca/>].

A First Nations regional Authority in Ontario might want to take a different approach and continue using the provincial processes now being used in on-reserve schools for teacher and school certification, while developing other areas.

As the First Nations Regional Education Authorities matured, federal financing for education on-reserve could be transferred to the Regional Authorities rather than the regional office of Indian and Northern Affairs, and the First Nations Regional Education Authority would fund the First Nations school boards (as is discussed further under financing). Most of the current Indian and Northern Affairs regional staff positions allocated to education-related matters would be transferred over time to the Regional Authorities.

Current regional funding for Indian and Northern Affairs education internal administration is about \$10 million annually. Although the total cost of First Nations Regional Education Authorities would be more than this, the existing regional administrative allocation does provide a major source for financing the new Authorities.

In many ways, the proposal for First Nations Regional Education Authorities should be seen as a transfer of Indian and Northern Affairs regional education responsibilities to First Nations control. It is crucial that any such transfer be done carefully and in stages as other attempts to ‘dismantle’ Indian and Northern Affairs functions at the regional level have floundered on inadequate planning and preparation.

There are several different possible models for governance of the First Nations Regional Education Authority. The Frontier School Division model would see trustees elected from each of the school boards with the Regional Authority, perhaps supplemented by a certain number of directly elected trustees. As with First Nations school boards, the development of governance capacity should be built into the reform process and not become a mere afterthought including, for example, special training and perhaps coaching for Authority trustees.

There has been no research to provide guidance as to the needed number of First Nations Regional Education Authorities. Provinces vary in size from tiny Prince Edward Island to Ontario, so they hardly constitute a model of efficiency. The Royal Commission on Aboriginal Peoples spoke of this function being undertaken by multi-First Nation organizations, but was not specific on how this would be accomplished. This question would require further investigation, but First Nations and governments would need to appreciate the real relationship between the size of Authorities and their independence. The larger the First Nations Education Authorities, the more they will be able to do on their own: The smaller the Authorities, the more they will have to rely upon the provinces. On this basis, and subject to investigation and research, it would seem that something like six First Nations Regional Education Authorities across the country would be appropriate.

## *Financing*

Finance Minister Paul Martin's 1995-96 Budget brought strict constraints into place in an effort to bring the federal deficit under control. In most departments, the budget was frozen or reduced for a number of years. Transfers to provinces were severely reduced, essentially eliminating one major multi-billion dollar transfer program – the Canada Assistance Plan. In what was at the time seen as a concession to the extraordinary needs of Aboriginal peoples, the 1995-96 Budget announced that Indian and Northern Affairs would be one of a small number of departments in which spending would be allowed to grow by three percent each year to 1997-98 (excluding land claims and northern programs). In the following year's Budget – 1996-97 – Indian and Northern Affairs was restrained by another percentage point to two percent [Department of Finance 1996: 111].

Given the substantial cuts and freezes in 1996 and the prevailing fiscal climate, the two percent limit was not at the time widely seen as overly onerous. To some extent, allowing any increase at all still recognized the special circumstances of First Nations. But it is now 13 years later. In the meantime, many of the provinces have invested substantial amounts in education. Even if Indian and Northern Affairs and its regional offices have diverted substantial amounts from other areas into education (the two percent applies to a wider range of programs than education and reallocations are permitted within the Departmental budget), and even with the addition of substantial amounts in specially targeted programs (discussed further below), it seems doubtful that funding for on-reserve education could have kept up on average with provincial off-reserve education financing over the last decade.

The need to update the funding of on-reserve education has long been recognized by First Nations and, in this author's view, by Indian and Northern Affairs officials as well. But the problem has been finding a way to do so that will satisfy all the diverse requirements of both First Nations and the federal government.

In 2004, Ottawa and the Assembly of First Nations established a Band Operated Schools Federal Funding Formula Working Group to review the funding formula and recommend changes. The first task of the Working Group was to try to understand the current real status of funding. To do so, it initiated a number of detailed analyses of funding in provincial schools compared to similar schools on reserves – e.g., see Matthews 2001. Only a few of these studies have been completed and made public and none seem especially conclusive – the morass of details in this kind of accounting sometimes becomes too large to allow any kind of clear assessment. In any case, the Working Group appears to have evaporated.

It would be possible to spend a good deal of time and effort attempting to establish whether on-reserve schools have been funded the same as comparable schools off-reserve, but is this the question that really needs to be answered? Even if it were found that many First Nations on-reserve schools had been funded less than comparative schools off-reserve, what then? What if, as seems possible, some First Nations schools in a few regions are funded more than their comparators off-reserve while most are funded less? Enquiring as to the past funding of schools

is essentially backward-looking. Spending a lot of time, money and energy on one-off studies about the level of funding over the past dozen or so years does not do much for the next dozen years. Even a large boost in funding in one year would last only so long, and then First Nations would be back in the same situation all over again. The demise of the Band Operated Schools Federal Funding Formula Working Group suggests that this path to reform may be another dead-end.

Instead of looking backward, what is needed is a forward-looking strategy that would address funding as part of systemic reform of First Nations on-reserve schools in the future. The *method* of financing First Nations schools has to change, so that the amounts provided as a result of a renewed process are adequate now and into the future.

A new method of funding would require turning the current financing system upside down as it applies to the ‘reformed’ First Nations school system. Payments to recognized First Nations school boards (‘recognition’ is discussed below) would become what is known as statutory spending. Statutory spending refers to expenditures that are authorized by a specific law which “sets out both the purpose of the expenditures and the terms and conditions under which they may be made” [The Government Expense Plan and the Main Estimates 2009-10]. Statutory expenditures are not approved annually, but instead are paid as required under the terms of their governing statute.

Many payments in all governments are statutory. For example, in provinces social assistance payments are statutory. Hundreds of payments in the Government of Canada are statutory. A small sample of federal statutory payments is included in the accompanying text box to show that this is not a radical or unusual proposition.

Making education financing for on-reserve schools statutory allows that financing to be an obligation of the Government of Canada, consistent with the terms of the statute. This permits a financing process to be established with an external determination of the amounts to be paid annually. A statutory payment does not mean that the government has no control over the amount paid out. An override mechanism can be written into the statute allowing the Cabinet to limit the total paid out or otherwise to determine the amount if it is necessary to do so in unusual circumstances. For example, the *Employment Insurance Act* empowers the Canada Employment Insurance Commission to set premiums for Employment Insurance, but section 66.3 of the Act provides that “on the joint recommendation of the Minister and the Minister of Finance, the Governor in Council may, on or before November 30 in a year, substitute a premium rate for the following year that is different from the one set by the Commission...” [*Employment Insurance Act* Part III Section 66.3].

Looked at purely from the perspective of financial risks involved in making these payments statutory, and ignoring for the moment what the payments would achieve, the potential cost increases are relatively small for the Government of Canada. For example, if funding increased by, say \$2,000 per student per year in on-reserve schools, the total additional costs would be less than \$140 million and that maximum amount would be reached only when all First

### Sample of existing federal statutory spending

- all contributions to employee benefit plans
- grant payments for the AgriStability Program
- payments in connection with the *Agricultural Marketing Programs Act*
- grant payments for the AgriInvest Program
- grant payments for the Agricultural Disaster Relief Program/AgriRecovery
- Canadian Cattlemen’s Association Legacy Fund
- grants to agencies established under the *Farm Products Agencies Act*
- Payments to provinces under the *Softwood Lumber Products Export Charge Act*
- Children’s Special Allowance payments
- loans to immigrants and refugees to facilitate the arrival of newcomers
- interest and other costs
- Canada Health Transfer
- fiscal equalization
- Canada Social Transfer
- territorial financing
- payments to International Development Association
- Wait Times Reduction Transfer
- Incentive for Provinces to Eliminate Taxes on Capital
- Old Age Security payments
- Guaranteed Income Supplement payments
- Universal Child Care Benefit
- Canada Education Savings Grant payments to registered Education Savings Plan (RESP)

Nations schools came under the responsibility of a recognized First Nations school board. The process of restructuring would take several years, so the annual financial ‘risk’ would likely be relatively small, say in the order of \$20 million to \$40 million. Adding a ball-park guess at all other costs, mainly for Regional Education Authorities, the total cost at maturity of these aspects of reform would likely be in the order of \$50 million. The annual incremental costs would be much less.

Total additional costs at maturity approaching \$200 million is a huge amount of money for any individual, but it is a modest amount in comparison to other ‘incentive funds’ that have been set up by the Government of Canada – e.g., the Wait Times Reduction Transfer to the provinces of \$250 million annually which was also made into a statutory payment. It is a fraction of the amount that provinces, such as Ontario, have invested in improving their education systems. This is small change to address what is likely the biggest social challenge facing Canada – if indeed taking this relatively small financial risk could establish one of the essential elements of a strategy to bring First Nations and government together in a process of building a First Nations



education system. Furthermore, as previously discussed, any successful investment in First Nations education will result in substantial future savings to government.

Against this financial risk, we have the risk of failure to reform First Nations education. Without the Government of Canada being willing to make a firm financial commitment of this kind, it is unlikely to be able to obtain the cooperation of First Nations in a reform project. There must be a *quid pro quo* to make First Nations education reform work, and a statutory undertaking of adequate financing is the kind of dramatic ‘*quid*’ that would be needed to obtain First Nations ‘*quo*.’

Rather than the new financing process being one of Ottawa telling the regions how much they have, and the regions then telling the schools how much they in turn will get, the budgeting process would begin with the First Nations Regional Education Authority (or the Indian and Northern Affairs Region and recognized First Nations school board until a Regional Authority is established) working with the province to apply the results of the province’s education funding formula (which is extremely complex in most provinces) to First Nations school boards under its jurisdiction. The estimated requirement would then be forwarded to Ottawa.

The statute would require that this amount be paid, subject to a simple and expeditious review mechanism built into the statute. The review mechanism would be open to any of the interested parties – schools, school boards, provinces, First Nations and the federal government itself. The review would provide for an impartial expert third-party review of the amounts to be paid. As noted, the amounts could be overridden by Cabinet should it feel necessary to do so due to fiscal circumstances, but this is not likely to happen. If the economy turns sour, provinces will probably be in at least as bad fiscal circumstances as the federal government. It is the provinces’ funding to their schools which would determine the amount of payments to the First Nations school boards, so it is unlikely that circumstances would arise in which provinces are making a payment larger than can be afforded by the federal government. And, at the end of the day, if a Cabinet did use the ‘special override’ route to reduce payments, it would at least have the virtue of making the amount of shortfall measurable public information, so it could presumably be made up at a later time.

The core concept here is one of reciprocal accountability. In the new reformed system, First Nations school boards and First Nations Regional Education Authorities would be accountable to First Nations peoples and to government for spending to implement quality education. But in return, Ottawa would be accountable to First Nations peoples to provide them with the means to deliver quality education. This deal is discussed further below.

### ***Attempts at reform***

As noted throughout this report, there have been numerous attempts over the last few decades to reform and improve schools on reserves. Most of these efforts have originated from First Nations themselves, often with assistance and support from Indian and Northern Affairs.

The organization of the Northern Quebec Cree School Board has been discussed above, but not its educational outcomes. There has been little evaluation available to the public of the successes and failures of the Cree Board, which is both surprising and disappointing given its unique status in Canada. What reports there have been of student outcomes seem to indicate that the Cree Board has not necessarily done much better than other on-reserve schools in Northern and remote locations in Canada in respect of graduating students from high school [Viser and Foscol 2007].

### **The Cree School Board's development in its own words**

The early years of the Cree School Board were difficult. The Board inherited three school systems, which it had to integrate into one, and was expected to develop a uniquely native education system without proper funding and support. In 15 years, the Board has come a long way. The Board now controls a substantial budget and provides services to more than 3,600 students at the primary, secondary and post-secondary levels. It has implemented a distinctively Cree curriculum in geography, history and economics, and established in service training for Cree teachers. Efforts are under way to develop a land based Cree hunting and trapping vocational option. With these accomplishments, the Board is an outstanding example of Native determination and it sets a precedent for other First Nations to take control of responsibilities directed by others [<http://www.cscree.qc.ca/GIHistory.htm>].

If the educational outcomes of the Cree School Board schools are indeed as dismal as the few reports suggest, this should serve as a cautionary tale regarding our expectations of the effectiveness of school reform – both for those looking for the provincial system to ‘save’ the on-reserve schools and those (as in this report) looking for First Nations self-government to improve the schools. In many Northern communities, children may make a calculation that there is not much sense in continuing in school – and this may not be irrational. The knowledge they learn in school may appear to have little practical application to their future lives, especially if they do not see post-secondary education as a possibility, while in the meantime they are forced to sit in classrooms and not acquire the needed knowledge of the land which they must have to survive with dignity in their own communities. And the students may also face a barrage of social barriers. If doing well in school is disparaged by the youth culture in a small community and not supported tangibly by parents, it is a lot to expect any young person to overcome these obstacles. In addition, where English (or French) is not the first language, difficult barriers are going to be encountered in taking on the provincial curriculum even if it is supposedly taught in a First Nations language, let alone transferring to a non-First Nations high school or post-secondary institution.

All of these barriers and more reportedly exist to some degree in many reserve communities, especially those that are isolated. It would be foolish to think that better schools in

and of themselves will overcome all challenges in a few years. There is no panacea and no silver bullet. Nevertheless, better schools are an essential ingredient in a community effort to better itself. If even a few students get a chance that they would otherwise not have had, they may begin to create a nucleus of success upon which further success can grow. But we should also be wary of becoming mesmerized by the most extreme and difficult situations: Most First Nations students living on reserves are not in isolated and remote areas, but in rural or urban areas. For these First Nations students, there are visible and tangible benefits from education and these obstacles do not loom so large.

On a more down-to-earth note, the Cree Board had a lot of difficulty in its first decade getting the recognition and resources it needed to develop a program adapted to its students' needs, and encountered many other organizational challenges. Perhaps a more conscious and deliberate plan to assist and resource the Board adequately to deal with these kinds of issues could have been more successful. Finally, it appears that the Cree Board has attempted to take on some of the tasks that would ordinarily be performed at a regional level, such as curriculum development and Cree language textbooks. This imposes a large extra burden on the Board, which has limited resources to begin with.

We should be better equipped to learn from some of the exceptional arrangements that do exist in Canada. To this end, it would be useful to have a public and culturally sensitive independent review of the Cree School Board experience of the last 30 years.

Ten years ago the Mi'kmaw Kina'matnewey (MK) was organized in Nova Scotia. MK was set up under the terms of the federal *Mi'kmaq Education Act*. The *Mi'kmaq Education Act* is essentially an administrative statute, recognizing the MK as an organization outside of the *Indian Act*. The *Mi'kmaq Education Act* contains little or no content relevant to the substance of education. It appears that the Act was passed without a great deal of planning. Like the Cree Board, MK reportedly had substantial problems in its initial years. It seems to be doing much better today with ten schools under its administration.

MK receives all of the funding for its schools and distributes these to its community-based schools. In 2005, MK signed an agreement on funding with the Government of Canada, which provided for its base funding plus increases to reflect changed enrollment and prices (by the Final Domestic Demand Implicit Price Index which is similar to the more familiar Consumer Price Index). However, MK believes it is still underfunded compared to Nova Scotia schools and has requested a funding increase at least sufficient to allow it to pay teachers' salaries at a comparable level to those paid off-reserve.

MK has several projects under way to improve the quality of education in its schools, including school success planning. In many respects, MK seems to be evolving into a true First Nations school board. For example, MK recently took the large step of equalizing the per capita funding of all of the schools within the organization.

MK is an optimistic story. Of course, none of the reserves in MK are remote and some of them (prominently Membertou) are well known for their success. Unfortunately, once again, there does not seem to be a publicly available independent review of the MK experience. Such a review would be useful for the lessons from the MK experience for other First Nations and for First Nations education policy generally.

On the other side of the continent, a coalition of BC First Nations has been working, together with the BC Regional Indian and Northern Affairs office and the province, for many years on measures to improve education on BC reserves through the First Nations Education Steering Committee. The Steering Committee has been a leader in relentlessly pursuing quality education and First Nations cultural relevance for BC First Nations. Over time, an impressive organization providing many valuable services to BC First Nations schools has grown up under the auspices of the Steering Committee.

The coalition of BC First Nations involved in the Steering Committee undertook to enhance the Committee's role and to obtain formal recognition of First Nations' jurisdiction in education, initiating negotiations with the federal and provincial governments to this end. After negotiating a detailed understanding of the role of Community Education Authorities and a new First Nation Education Authority in BC, but not the details of the financing, the federal government passed the *First Nations Jurisdiction over Education in British Columbia Act* in 2007. Like MK, a special purpose Act was required because the *Indian Act* does not provide for recognition of First Nations' authority over education – or even for the recognition of First Nations education authorities of any kind.

The new *First Nations Jurisdiction Act* gives legal standing to a First Nation Education Authority in BC which will be a kind of successor to the Steering Committee and will become responsible for support of the K-12 education program in participating First Nations, including teacher certification, curriculum design and other important functions. The provincial government of BC also passed parallel legislation – the *First Nations Education Act* – providing for complementary changes in provincial laws.

Unlike MK, the BC First Nations Education Authority would not act as a kind of nascent school board; rather, it would have very specific delegated responsibilities from the participating First Nations. In fact, the BC agreement with participating First Nations is careful to stress that the jurisdiction for education remains in the individual Bands and not in the new First Nations Education Authority. Unlike MK, the school budgets will not flow through the new BC Authority. If anything, it appears that the First Nations Education Authority is to be more like a provincial ministry, resembling the proposed First Nations Regional Education Authorities discussed here – except only with delegated powers, no responsibility for school budgets and, of course, smaller geographic reach. Aside from this and a few other differences, it does appear that the BC initiative could be accommodated as an interim form of Regional Authority as envisaged here. This would also clarify that the BC Authority is, in fact, a tertiary level and not a secondary level education service provider.

Despite the BC Act having been passed a year and a half ago with great fanfare, as of the publication of this report in September 2009 the BC Education Authority has not yet formally begun its work because negotiations on financing have not been successfully completed. Doubtless a financial agreement will emerge at some point and the new Authority will officially come into being. Since financial problems bedeviled both MK and the Cree Board for many years as they tried to establish their organizations – and still are problems for both organizations – it may well be a prudent strategy for the BC First Nations to take their time until they arrive at a financial arrangement which they believe will allow them to have a viable organization, given their mandate. Indian and Northern Affairs will doubtless also want to ensure that the BC Educational Authority is as successful as possible and perhaps can avoid some of the growing pains experienced by the Cree Board and MK.

The Cree Board, MK and the *BC Jurisdiction Act* are three examples of First Nations initiated reforms covering three different decades. There are many other examples, both successful and not so successful.

Indian and Northern Affairs has also initiated targeted programs attempting to improve First Nations schools. Most recently, in 2008, Indian and Northern Affairs introduced a new strategy in an effort to assist and encourage First Nations wanting to take steps to reform their

<b>Role of the BC First Nations Education Authority</b>
<ul style="list-style-type: none"> <li>• certify teachers in Participating First Nation schools using standards comparable to BC provincial certification standards</li> <li>• certify schools operated by Participating First Nations</li> <li>• establish education standards for Participating First Nation schools which reflect the importance of First Nations culture and language</li> <li>• ensure that curriculum, exams and other programs delivered by Participating First Nation schools will enable students to transfer to provincial schools and enter the BC post-secondary education system.</li> </ul>

education programs. The new strategy is called the Reforming First Nations Education Initiative. So far, two programs have been implemented under the Reforming First Nations Education Initiative – the First Nation Student Success Program and the Education Partnerships Program. Both these programs are application-driven in that interested First Nations education organizations must submit an application with a proposal that fits within the criteria established by the programs.

The First Nation Student Success is a multi-year program only for schools on reserves. The program consists of three components, all of which must be part of any application – a school success plan, student learning assessments and performance measurement of schools. The

goal is to help schools establish an ongoing planning process focusing on literacy, numeracy and student retention. The components are meant to work together to assist schools in implementing reforms and to measure the results to know whether the plans are succeeding. There have been more than 40 applications for grants under the First Nations Student Success Program in 2009-10, almost entirely from Tribal Councils and other multi-school organizations, including both the BC First Nations Education Steering Committee and MK.

The Education Partnerships Program is also in the implementation stage. This program provides funding for First Nations multi-school organization to develop a partnership with the province, including negotiating or renegotiating agreements regarding provisions for on-reserve students who must attend off-reserve schools, curriculum adaptation to First Nations culture and other measures. Some First Nations are reportedly suspicious that the program is an attempt to begin forcing First Nations schools to fall under provincial jurisdiction. But a careful reading of the program reveals that it is instead encouraging a business-like partnership wherein each partner – province and First Nations – can gain from utilizing the resources of the other.

As the implementation has barely begun for either program, we are a long way from knowing how successful these initiatives will be. The strength of these programs is that they provide carefully-targeted funding for specific and needed reforms. Unlike the three initiatives discussed above (Cree Board, MK and BC Education Jurisdiction), these programs are also open to all First Nations on an equitable basis. In addition, there is nothing coercive in these targeted programs. First Nations can either apply or not, at their discretion.

The weakness of this strategy is that it attempts to build needed reforms within a structure which is systemically failing. Many First Nations schools will doubtless use the funds effectively to, for example, set up a school success plan. But if the school cannot sustain a good teaching staff and is underfunded and working with an inappropriate curriculum, any progress made will likely not be sustainable. The targeted initiatives are positive in and of themselves but not sufficient. They do not fill in the big pieces that are missing from the First Nations school non-system. Given the continued systemic failure, while one school may move ahead with targeted initiatives, two others may be falling still further behind.

How can we encourage a process of systemic change?

### ***A First Nations Education Act***

The above discussion has described some of the ‘holes’ in First Nations education that need to be filled in order to construct a modern education system. It has also described briefly a few of the attempts that have been made at reform. In our view these attempts – both by First Nations and by Indian and Northern Affairs – are in the right direction and demonstrate the commitment of all parties to the need for vast improvements in First Nations education. But they

are like chipping away at a glacier with an ice pick – during an ice age. No system involving tens of thousands of people can be changed overnight, but the current processes are too little and too slow. We are losing another generation or perhaps two.

The idea of a *First Nations Education Act* (FNEA) has been proposed elsewhere by this author and the approach has been endorsed by others as well [Mendelson 2008; Richards 2008; *Globe and Mail* 2009]. The FNEA would allow First Nations that wish to form a School Board to do so, set up First Nations Regional Education Authorities, provide for reasonable funding of the new structures and the schools within them, and other measures. The proposed FNEA is meant to provide a base that will allow First Nations to undertake the systemic reform of their education, and build a First Nations education system. Equally important, the proposed FNEA is also meant to provide Indian and Northern Affairs with the tools it needs to support First Nations in the process of systemic reform. The FNEA is a legal and policy framework to build the necessary organizational infrastructure for whole system reform – and, over time, quality education in First Nations classrooms.

But the FNEA is best understood as a *strategy* for accelerating reform of First Nations education. Most of what is contemplated by a FNEA could be achieved, in theory, through other government instruments such as individual statutes for each First Nations multi-service organization that requires a legal existence beyond incorporation; Treasury Board authorities for financial arrangements; negotiation of a new funding formula; and so on. The FNEA would do all of this, and more, except in an open, legally-binding form with the consent of Parliament. Perhaps the most significant difference between the FNEA and the current piecemeal approach is its presentation of a comprehensive vision for a system of First Nations education.

The FNEA is an act of *trust*. It would say to First Nations that their educational rights and responsibilities are set out by Parliament and transcend the discretionary decisions of the government of the day. It would represent an enforceable commitment by the Government of Canada which could be the foundation for a new trusting relationship in working towards the goal everyone is seeking – an education system that gives First Nations’ children the best possible opportunity in life.

Following are some of the ways in which an FNEA would build a foundation for change.

#### *Creating a national plan for a First Nations education system*

The FNEA would enshrine the plan for the new First Nations education system in law, to be endorsed (or otherwise) by Parliament. The process of writing, discussion and debate of the FNEA would demand further clarification of the plan and, if the process were successful, create a national guiding vision for restructuring over the next few decades. It would answer the question: What should a First Nations education system look like?

### *Grounding First Nations education in law*

The FNEA would provide for the creation, purpose and roles of all of the main organizations required in the new system, just as does any other statute setting up a system of governance and administration for a public service. It would establish the administrative requirements such as financing, reporting and accountability. The FNEA would set out the legal duties and responsibilities of the federal government, First Nations Regional Education Authorities and First Nations school boards, the First Nations Education Financing Review Commission and any other organizations needed for the new reformed First Nations education system.

The FNEA would empower and require First Nations Regional Education Authorities to establish and maintain a First Nations Regional Educational Regulation which would have the status of a regulation under the FNEA, and so be fully recognized in Canadian law within the jurisdiction of each Regional Authority. The FNEA would set out the major topics to be covered in each First Nations Regional Educational Regulation, likely reflecting the main topics in most provincial education acts, as well as topics unique to First Nations culture and language.

The FNEA would make it clear that the First Nations Regional Education Authorities and School Boards operate under the auspices of the federal law and not provincial law, removing the jurisdictional concerns of some First Nations. The FNEA should also affirm existing Treaty rights regarding education.

### *Recognizing the jurisdiction of First Nations over their education*

As we have seen in the case of MK and the *BC Jurisdiction Act*, each time a First Nations multi-school organization needs to be recognized by federal authorities, a separate piece of federal legislation is required. There is inconvenience, cost and delay in this for a government, but this is not the critical problem. The critical problem is that there is no legislation that recognizes First Nations right to control their own education and to set up the organizations that allow them to do so effectively. The *Indian Act* does not recognize First Nations as entities with whom the Government of Canada may contract to run their own schools. Today's relation with First Nations education is all based on obscure uses of the Treasury Board authority.

As noted above, the FNEA would be important from a practical perspective, providing a clear legal basis for the new structures – so that we preserve the principle of 'rule of law' – but it would also be an Act of Parliament recognizing for the first time the right of all First Nations to assert their jurisdiction over their education.



### *Removal from the Indian Act*

The *Indian Act's* provisions regarding education are completely obsolete, colonialist and an embarrassment to Canada. First Nations schools recognized under the FNEA would be removed from section 114-122 on education under the *Indian Act*.

### *Enshrining the principle of reciprocal accountability*

The FNEA would set out the criteria for recognition under the *Act of First Nations* multi-school organizations, and it would also set out the responsibilities of the Government of Canada. Provincial education statutes all establish the duties of the province. The Parliament of Canada should also spell out in law the duties of the Government of Canada with respect to that portion of the education system for which it is responsible, namely on First Nations reserves. The FNEA would make it clear how First Nations educational bodies that are recognized in the legislation are responsible to both their own peoples and to the Government of Canada for First Nations education. The FNEA would also make it clear how the Government of Canada was responsible to its own electors and to First Nations. Reciprocal responsibility is the principle upon which a trusting relationship may be built.

### *Facilitating restructuring by setting out clear criteria*

When a group of First Nations want to initiate a reform, they must each time start afresh. The responsible government officials whom they contact must obtain a new mandate to negotiate. The whole process can take years or even decades and end up going nowhere. No one knows what the expectations should be from the start. Regional Indian and Northern Affairs officials can be put in a difficult position, not knowing what they can agree to, and caught between Indian and Northern Affairs headquarters and the First Nations in the region.

The FNEA would set out clearly the criteria for recognition of First Nations school boards and set the parameters for negotiation from the beginning. This would also provide government officials with their parameters. An orderly and reasonably efficient process could be established which would see a number of First Nations school boards set up within a few years.

### *Encouraging and recognizing real school boards for First Nations*

The FNEA would encourage the establishment of First Nations school boards, fully empowered as are off-reserve school boards, especially if the result would be an enforceable federal commitment to financing. The FNEA would set out the criteria for recognition, which should then follow simply and more or less automatically through

regulatory listing under the Act when a new First Nations school board meets the criteria. The FNEA would also establish parameters for election of the Board members, financial accountability and, in general, the other requirements of school boards analogous to those in provincial education Acts setting up their school boards. As Regional First Nations Education Authorities are established, they would assume the responsibility for the supervision of First Nations school boards.

#### *Providing stable and fair funding for First Nations schools*

As discussed above, the FNEA would include a statutory requirement for financing of First Nations school boards to a level of comparable boards in the province. The FNEA would also set out the process by which budgets would be decided and would obligate the Government of Canada to pay that amount, unless it decided to use an ‘emergency’ override. The FNEA would provide a mechanism for speedy, inexpensive and fair resolution of financial disputes and appeals could be made by First Nations or the Government of Canada. This would put to bed the ongoing discussion of funding levels which is dominating much of the current debate.

### **Conclusion**

This report describes the structural and financial fault lines in the current non-system of First Nations education on-reserve. It proposes establishing a legislative framework through an Act of Parliament which would encourage systemic reform of First Nations schooling, essentially by setting up the kind of educational structures that we have enjoyed off-reserve. Of course, this is only a proposal. The final form of any mechanism would have to be negotiated with responsible First Nations organizations, and should also call on the views of experts in educational systems. But it is hoped that the proposal for a *First Nations Education Act* and the reasons for it as set out here will help stimulate governments and First Nations to consider bold proposals to begin a process of radical reform of First Nations education and establish the foundations for whole system reform.

### **Endnote**

1. The situation in the territories is unique and the proposals made here would have to be adapted to their requirements. These proposals for structural reform do not apply at all to Nunavut.

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