

# FIRST NATIONS STRATEGIC BULLETIN

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

## Conservatives Take Over Liberal's Assault on First Nation Rights: *AFN's Partisan Politics Proven Futile*



Former Prime Minister Paul Martin in transition meeting with Prime Minister-Elect Stephen Harper in Feb. 2006. (Photo by David Chan PMO/CP)

By Russell Diabo

It has been over a year now since the Harper Conservatives have formed a minority government in Ottawa. What has changed for First Nations? In terms of recognizing and respecting Aboriginal and Treaty rights, nothing much has changed. The federal government continues to implement its unfair, outdated land claims and self-government policies. These policies are left over from the previous Liberal governments of **Jean Chrétien** and **Paul Martin**.

After a year witnessing the Conservative Party in office, from one issue to another we have seen the unprincipled and unethical conduct of the federal **Minister of Indian Affairs, Jim Prentice**, when it comes to First Nation issues. A couple of prominent examples include the denial from Minister Prentice that the federal government has any responsibility for the land claim negotiations in Caledonia, Ontario, or that moving the First Nation community of Kashechewan out of a flood plain is "*prohibitively expensive*".

While Minister Prentice, who is a lawyer and a former Co-Chair of the **Indian Claims Commission**, knows better, but in ambitious service of **Prime Minister Stephan Harper**, day after day during question period, Prentice issues denials of federal responsibility, or he gives evasive answers to opposition questions, all the while repeating the Conservative mantra that the Liberals had 13 years to fix the problems facing First Nations and the Liberals did nothing.

It is true that the Liberals broke or manipulated their **1993 Red Book promises** on First Nation issues, and then buried their 1993 promises to First Nations in subsequent Liberal Red Books. Until Paul Martin took over and kept First Nation Chiefs and Leaders, busy with his **Canada -Aboriginal Roundtable process** throughout the term of his administration.

However, the Indian Affairs Minister, Jim Prentice, is no better than the Liberals were, he hides the Conservatives real agenda behind his false concern for First Nations women and children as he purports to be defending their interests., while nothing could be further from the truth.

There are issues Minister Prentice likes to publicly point at in order to show progress, like improving water quality on reserve, or improving education and health services on reserve, are all statutory responsibilities of the federal government, and despite the Conservatives dislike of the so-called "**Kelowna Accord**", they have done nothing to create any real dialogue or plan with First Nations to address the systemic poverty, let alone protect Aboriginal and Treaty rights.

### Special points of interest:

- **Conservatives Use Liberals Policies to continue Assault on First Nation Rights**
- **Conservatives 2007 Budget Much Like Liberal Budgets Before**
- **Harpers' Second Year—What's Up?**
- **Willie Littlechild Says AFN Supports Bad Senate Bill on Self-Government**

### Inside this issue:

Harper's Assault	1
Budget 2007	5
AFN Supports Bill S-216	15
Blockaders Win Appeal	25
Indigenous Study	26
Contact Us	26

## 'Harper's Assault' continued from page 1



Jim Prentice, Minister of Indian Affairs speaking at AFN Special Chiefs' Assembly Dec. 2006. (Photo by R. Diabo)

**"It is clear that the Harper government is not respectful of First Nations rights or needs."**

### Attacking the Indian Act

A good example is the Conservative's "**Matrimonial Real Property**" initiative, which in reality is an attack on the **Indian Act** and an attempt to break up the reserve system from being a collectively held land-base into that of non-Indian "**fee simple**" title. The Conservative policy states that the objective of the Harper government is to:

**"Support the development of individual property ownership on reserves, to encourage lending for private housing and businesses."**

Another example is the unilateral move by Minister Prentice to have the **Indian Act** included under the **Canadian Human Rights Act**, by repealing the section 67 exemption from the **Canadian Human Rights Act**, is not a benevolent gesture to help First Nations people make complaints against their Chief and Council, it is to again attack the **Indian Act** and to deflect attention from the real culprit, the federal government. The **Indian Act** is without doubt an antiquated piece of legislation, but there are some minimal protections for collective rights of "**status Indians**" vis-à-vis provinces and municipalities contained in the **Indian Act**.

The reason that Parliament originally exempted the **Indian Act** from the **CHRA** in the first place back in 1977, was to allow for consultations with First Nations about amending the **Indian Act** itself. Now, since 1982, section 35 of the Canadian constitution exists and Aboriginal and Treaty rights are "**recognized and affirmed**" by the constitution.

Unfortunately, in 1995, the federal Liberal government of Jean Chrétien unilaterally imposed an **Aboriginal Self-Government policy**, which sets out the negotiation position of the federal government for First Nations that want to remove themselves from the **Indian Act**. Although it is called the federal "**inherent right**" policy, it is anything but recognition of an inherent right to self-government. Any self-government agreements under this policy lead to "**delegated rights**" of self-government, subordinate to the federal and provincial orders of government. As former **AFN National Chief Ovide Mercredi** once put it, "**it is like negotiating out of one jail cell into another.**"

The federal government takes advantage of First Nations political and fiscal inequity by imposing unfair land claims, and self-government negotiation policies upon First Nations coupled with inadequate and unfair fiscal arrangements. If there is to be an amendment to the **Canadian Human Rights Act**, it should include provision for Band Councils make complaints against federal departments and agencies for lack of funding to meet basic needs. However, this is not what Minister Prentice proposes or intends.

It is clear that the Harper government is not respectful of First Nations rights or needs. However, neither was the Chrétien government, and the Paul Martin government excelled at creating the Canada-Aboriginal Roundtable process, which culminated in a pre-election media event in Kelowna, B.C. a week before Parliament dissolved as a federal election began.

### Myth of Liberal Party as Ally

There seems to be this myth among many First Nations leaders and people that the **Liberal Party of Canada** was a good political ally of First Nations. The so-called "**Kelowna Accord**" is pointed to as the proof.

The fact is there was never any signed document coming out of the First Ministers' Meeting held in Kelowna, B.C. November 2005. I was there and the \$5.1 billion in money that was tabled was just a list of federal promises, which if Parliament had survived, would have had to be voted on in a budget or money bill, and whether we like it or not, there was an election with the Conservatives winning in January 2006, and the Conservative Party of Canada only committed to:

**"Accept the targets agreed upon at the . . . Meeting of First Ministers and National Abo-**



Logo of the Liberal Aboriginal Peoples Commission

## 'Harper's Assault' continued from page 2

*iginal Leaders, and work with first ministers and national aboriginal leaders on achieving these targets."*

I'm sure that Minister Prentice will spin it that he has been doing just what they promised in their platform, which is to try and achieve "**targets**" in the various program areas like water, education, health, housing, etc. But the fact remains that there has been no meaningful cooperation by the Harper government with First Nation leaders on any front, particularly the **Assembly of First Nations**.

One of the main reasons for AFN's irrelevance with the federal government is that the Harper government views National Chief, Phil Fontaine and AFN as being indistinguishable from the Liberal Party of Canada.

This optic was reinforced during the last federal election, when National Chief, Phil Fontaine, publicly encouraged First Nation citizens to vote in the federal election, Fontaine was also quoted in the media as saying First Nation citizens should vote for any party but the Conservatives.

There is no question that Phil Fontaine has a close personal history with the Liberal Party of Canada. Fontaine served as a **Regional Director of Indian Affairs** in the Yukon under a Liberal government. As Grand Chief of the Assembly of Manitoba Chiefs, Fontaine was on the same side as the Liberal Party of Canada, including Jean Chrétien, in opposing the "**Meech Lake Accord**". Something that Jean Chrétien no doubt remembered when he appointed Phil Fontaine to be the Co-Chair of the **Indian Claims Commission**, as the position became vacant when Jim Prentice resigned to run for leadership of the **Conservative Reform Alliance Party of Canada**.

Reportedly, before being appointed as Co-Chair of the Indian Claims Commission, Phil Fontaine was being considered on a short list by Prime Minister Jean Chrétien, as a Senator from Manitoba, but the more prominent **Sharon Carstairs** was chosen instead.

As AMC Grand Chief in 1994, Phil Fontaine, was able to receive the Chrétien government's cooperation to negotiate what was called the "**Framework Agreement Initiative**" (**FAI**) at the time. This agreement was supposed to lead to the resumption of First Nations jurisdiction from the Department of Indian Affairs. The process ended in failure with the recent announcement by the AMC of the termination of the process. The FAI process was subsumed under the 1995 Aboriginal Self-Government policy.

In his first term as AFN National Chief, Phil Fontaine, from 1997 until 2000, had the cooperation of the Chrétien government in a number of joint AFN-DIA policy initiatives. All of these joint AFN-DIA processes ended after Fontaine lost the 2000 AFN election to **Matthew Coon Come**.

Phil Fontaine continues to work closely with the Liberal Party of Canada, which is not too surprising since they are the official opposition in the House of Commons. However, National Chief Phil Fontaine and by extension AFN, will be largely considered by the Harper government to be irrelevant.

A recent example of the failure of the AFN partisan approach is AFN's support for the crusade by former Prime Minister Paul Martin in pressing for the so-called "**Kelowna Accord**" to be kept alive. On March 21, 2007, the House of Commons adopted **Bill 292 "An Act to implement the Kelowna Accord"**, a private member's bill introduced by former Prime Minister, Paul Martin.

**Bill 292** directs the federal government to "**take all measures necessary to implement the terms of the accord, known as the "Kelowna Accord"**", that was concluded on November 25, 2005 at Kelowna, British Columbia". The Bill also requires the federal Minister of Indian Affairs to issue progress reports to Parliament on fulfillment of the Kelowna Accord commitments.

**Bill 292** still needs to pass through the Senate before it is official adopted by Parliament, in



Phil Fontaine and Paul Martin during Happier days.  
(Photo by Jim Young/  
REUTERS)

"the Harper government views National Chief, Phil Fontaine and AFN as being indistinguishable from the Liberal Party of Canada"



Phil Fontaine and Paul Martin during FMM on Aboriginal Health Accord.

## 'Harper's Assault' continued from page 3

any case, the Bill is largely symbolic, as the federal government will not be required to spend any money as a result of the passage of the Private Members Bill.

The continued fixation on the "**Kelowna Accord**" by former Prime Minister, Paul Martin, is in my own estimation, an attempt to transform his political legacy from being that of a fiscally conservative federal Finance Minister, into that of a socially progressive Prime Minister, by focusing on Aboriginal and African development issues. These were the two major social issues that Paul Martin attempted to use in his failed bid for re-election in January 2006.

Remember the rock star **Bono**, from the rock group **U2**, showing up at the **Liberal Leadership Convention** in December 2004, promoting Paul Martin's recruitment into the war on AIDS in Africa?

As evidenced by the Briefing Note to AFN by "**The Parliamentary Group**" [see article on page 12] least National Chief Phil Fontaine is finally looking at a lobbying strategy that involves going after the Conservative M.P.'s on First Nation issues, although it will be Prime Minister Stephen Harper that decides in the end, getting at his caucus members is a good start.

### Conservative Majority Imminent?

The Conservative Party seems to be polling in majority territory if a federal election were called today. This does not bode well for First Nations.

The growing First Nations resentment against the Conservatives is no doubt valid, but First Nations should not be fooled into thinking that the Liberals are any better than the Conservatives when it comes to First Nations rights. Both **Jean Chrétien** and **Paul Martin** were masters of deception when it came to First Nations rights. Liberal budgets were no better for First Nations than the last two Conservative budgets have been.

The goal of the federal bureaucracy, regardless of who holds power, Conservative or Liberal, is to try and empty out section 35 of the Canadian constitution from any real meaning when it comes to "**recognizing and affirming**" Aboriginal and Treaty rights. One only has to look at the terms and conditions of the various self-government or "**Modern Treaties**", like the **Nisga'a Final Agreement**, to see that First Nations have compromised their constitutionally protected rights.

I know there are many among the First Nations who do not consider the Canadian constitution to be valid, or section 35 to be relevant, but given the recent media reports that there is a draft manual for the Canadian Armed Forces, which forecasts "**insurgency wars**" abroad and in Canada with "**radical Native American organizations**", then I suggest that First Nations had better push aggressively for an interpretation of section 35 of Canada's constitution that includes recognition of the **pre-existing sovereignty of First Nations**, over the assertion of Canadian Crown sovereignty. Otherwise, legitimate First Nations protest and resistance will no doubt be repressed by the police forces or the military with the result that First Nations peoples will be criminalized, or worse.

As for First Nation leadership, they should lay off the rhetoric about a long hot summer unless they are prepared to bring forward real and not frivolous complaints. Trying to get people out to barricades for the more program funding under the flag of the so-called "**Kelowna Accord**", is manipulative and wrong.

If First Nations plan to challenge the Crown governments in Canada this summer, it should be demanding recognition of, and respect for, Aboriginal and Treaty rights, not to mention access and ownership of lands and resources.

The federal government should be challenged for not seriously addressing First Nations rights and interests, but it should be in a professional non-partisan way. Let's face it, none of the mainstream parties really intends to address First Nations matters, unless First Nations make it a national priority. That is the only way the agenda has moved forward in the past. It is all that Ottawa understand—power politics. For First Nations that can't happen without the people. Our Chiefs and Leaders would do well to remember that!



House of Commons

"First Nations should not be fooled into thinking that the Liberals are any better than the Conservatives when it comes to First Nations rights"



First Nations protest language program cuts. Dec. 2006. (Photo by Fred Cattroll)

## A Liberal Budget From the Conservatives: But First Nations are Enraged



**L to R:** Prime Minister Stephen Harper and Finance Minister Jim Flaherty after the Conservative's tabled their Budget 2007. (Photo courtesy of the Conservative Party of Canada)

By Andrew Webster

### Introduction

My First Nations Strategic Bulletin article, of November 2006, reflected on the first six months (May to November 2006) of relations between First Nations and '**Canada's New Government.**' Let us now consider the rest of the first year of "**Canada's New Government**".

### The Landscape Today

Today at their Caucus meeting it is a bad day for Liberals, worse than usual. **Public Security Minister Stockwell Day** has just announced a special investigation into very serious allegations of RCMP corruption, which occurred during the Liberal watch. They are worried about what is next. The stench of corruption does not wash off easy. Recently they had started to come to grips with the fact that they are not gaining on environmental issues. **Mr. Dion** had been promoting the Liberals as the pro-environment and pro-unity option. But realising the **Clean Air Act** was likely to lead to their downfall, the Conservatives fired the Minister who tabled it. The replacement, the Party's Rotweiler named **John Baird**, had authority to do what it takes to win over Canadians on the environment and to savage any Liberals in the way.

The degree to which the Conservatives adapted is astonishing. In two months they have tabled a series of impressive, big-budget environment projects with just

enough environmental and economic logic to neutralise Mr. Dion's claims that he is Mr. Environment. These were aided by viciously witty Conservative attack ads, aired in Québec, which ridiculed Mr. Dion as the man under whose watch it became impossible to meet the Kyoto targets. This does not make the Conservatives our global warming redeemers. It does, however, show that the Liberals cannot claim this mantle.

But this was old news at the Liberal Caucus meeting today. Mr. Dion was also in damage control mode over the outfall of the Québec election two days previous. This election has profound implications for First Nations everywhere. The federalist Liberals (led by a former federal Progressive Conservative leader) were reduced to a minority. The ascendancy of the right-wing **Action Démocratique du Québec (ADQ)**, and the fall of the separatist **Parti Québécois**, has shifted the province's politics at least as far right as that of Mr. Harper's Conservatives. This has concurrently knocked the stuffing out of the separatist movement and put referenda on the back burner for years (unless federalists instigate one to bury the separatist question even deeper). This is not, however, necessarily a bad thing for First Nations in Québec.

The federal Conservatives have steadily built up their appeal in Québec. At present, this would assure them of 40% national support or enough to secure a majority. These polls go up and down, but there is no reason to think the Liberals can take away in the foreseeable future the gains the Conservatives have made. Mr. Harper's throwing back at the **Bloc Québécois**, their motion to recognise Québec as a nation, was brilliant. In a stroke he redefined Québec nation-status as something that exists within a united Canada, humiliating the Bloc and the PQ. Their recent 'fiscal imbalance' transfer to Québec was widely appreciated by provincial voters who elected a government and opposition able to work with Ottawa. The Conservatives have done more in a few months, to pacify the separatist dragon, than the Liberals did in a dec-



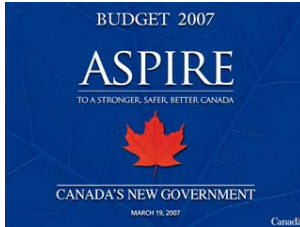
Stephane Dion, Leader of the Liberal Party of Canada. (Photo Gov't of Canada)

**"The federal Conservatives have steadily built up their appeal in Québec. At present, this would assure them of 40% national support or enough to secure a majority"**



Gilles Duceppe, Leader of the Bloc Québécois.

## 'Budget 2007' continued from page 5



“the national fiscal landscape changed dramatically in late November when the Government released its radical long-term economic vision”



ade. Now, the second of Mr. Dion’s imagined selling points has been seriously devalued. Who now is best suited to keep Canada together?

First Nations were far too visible at the Liberal love-in where Mr. Dion was crowned Saviour of the Liberal party. This gentleman is a brilliant intellectual whom few Conservatives care to take on over technical matters. So they don’t, and Mr. Dion spends a great deal of time making speeches in awkward English which seldom get air time. The erstwhile journal **The Economist** graced his party leader predecessor, **Paul Martin**, with the enduring and damaging nickname “**Mr. Dithers**”. Mr. Dion’s fan base is flirting with variations on “**Dr. Dolittle**”, “**Nutty Professor**”, and “**Absent Minded Professor**”. Like “**Taliban Jack**” of the **NDP**, these define the person in the public eye. However Mr. Dion may come across, it is not as decisive national leader material. Mr. Harper wins this hands-down as ‘**iron leader**’ even if we don’t like the snap decisions his Cabinet is unafraid to make. Mr. Dion has been positioned as ‘**soft on crime**’, Kyoto-incompetent, and more sympathetic to the treatment of Taliban bandits than Canadian infantry under daily attack. Enough of it is true to have stuck fast.

And the Liberals have failed in their bid to paint Mr. Harper as a sociopathic monster with a hidden agenda. There are three reasons for this. First, the Conservative leader has learned to hug babies and smile for the camera. He now appears much closer to an average person – if there is such a thing – than his counterpart, an awkward professor with dodgy English and a Chrétien inner sanctum legacy. Second, the Conservatives have put far more of their policies down on paper than the Liberals ever did and, except when new issues like climate come up and demand new thinking, they are following their script. Third, Canadians tend to find that the Conservatives are middle-of-the-road, while the Liberals have shifted sharply to the left in order to claim ground somewhere to hoist their flag. Middle-of-the-road generally gets you elected. In this regard Mr. Harper comes across as remarkably normal, perhaps not someone to invite to the barbeque, but an aloof neighbour who will call the police if someone is lurking in your garden.

So, we come now to the second Liberal Budget ever tabled by a Conservative government. The Liberal Opposition, smarting soon after an election defeat, voted for last year’s Conservative Budget promptly after declaring it something a Liberal government would table. This time the Liberals decided to vote against the **2007 Conservative Budget** before they knew what was in it, a fact which did not go unnoticed by the media. There is much debate in economic circles – and the blogosphere for that fact – over the extent to which the Conservative Budget is Liberal. All would agree that it shows far greater pragmatism and accommodation than was expected of the Tories. It is a mixture of tax cuts, paying down the national debt, pacifying provinces and municipalities with new transfers, capped spending (such as in Aboriginal programmes), and just enough new programme spending to raise eyebrows. The Conservatives read the public mood and responded with a widely acclaimed 2007 Budget of accommodation. This is precisely what the Liberals did in 1995 when they tabled their programme-gutting “**CHST**” budget. The Liberals became Conservatives, and now the Conservatives have done the same thing back to the Liberals.

Recall my November observation that the national fiscal landscape changed dramatically in late November when the Government released its radical long-term economic vision. Budget 2007 is merely this vision translated into action. The overall plan makes the long-term financial outlook for First Nations simple. Future federal annual surpluses will no longer be available to apply to for new programme investments like Kelowna promises. The priority will be lowering taxes and debt-payment. Like the Liberals in 1993, the Conservatives are quietly launching a ‘**programme review**’ in order to find cash in existing programmes. They are applying the same six tests as Mr. Martin, Finance Minister of the Day, invented and applied to all federal programmes. The Conservatives have added a seventh for good measure. First Nations should track this fiscal rebalancing initiative

## 'Budget 2007' continued from page 6

closely; presently they seem oblivious to it.

Minister Prentice, unable to find much paper trail from Kelowna and unwilling to write Mr. Martin into the history books as the Man Who Converted on the very death-bed of Liberal hegemony, has a second time said that Kelowna is dead. The Liberals and their opposition cohorts recently teamed up to pass a motion calling on the Government to respect the '*Kelowna agreement*'. Once again, First Nations were imprudently visible in this process. They just cannot stay under the partisan radar and do what they must behind closed doors. In any event, the Conservatives will disregard this non-binding motion with little if any electoral consequence. Partisan political commitments do not get much more deceased and shovelled under than this.

The **2005 Liberal Budget** was a confused attempt to be all things to all people, except Aboriginal people who benefited not a penny. Even **National Chief Fontaine** felt compelled to write a diplomatic letter expressing his disappointment after a dozen years of waiting for Manna from Liberal Heaven. One year ago, Canadians voted their disapproval of the Budget the Liberals promised should they have been re-elected in 2006. The Liberals were so desperate to stay in power that they promised about \$30B in new funding, stretched over time, to whatever group was likely to vote for them. This is when \$5.1B was offered at Kelowna after a failed attempt to get the provinces to sign onto strategy that would surely have entrapped them and offloaded more treaty responsibility. The offer was truly desperation, made in the dying hours of the government. There is no question they would have had to spread the investments over seven years, delay investments by two years so that First Nations could again '*determine their priorities*', and cannibalise existing programmes to bankroll the new commitments as they were accustomed to doing.

The desperation and lack of planning on the part of the Liberals came through to far more average voters than the Liberals expected. The Conservatives were elected on five priorities which, if you did not agree with them, you could at least understand them. The **new Conservative Budget has eight priorities**, again easy to understand and calculated to have appeal: **restoring fiscal balance; further tax relief for working families; further debt reductions; investing in Canadians; preserving the environment; improving health care; supporting our troops; and supporting our farmers.** '*Helping Aboriginal people*' is not among them, but then again, it has not made the top 20 list of any Liberal budget that I can recall. The Liberals called everything a priority but skilfully put money only where the votes are. The Conservatives do this too, but they are much more transparent.

The **2007 Budget** has slightly more new Aboriginal money than the last budget the Liberals tabled and which Mr. Fontaine found disappointing considering the uncommonly excellent relations he had with the former government. **Budget 2007 has six Aboriginal areas of special attention: Aboriginal labour force participation; Aboriginal justice strategy; First Nations participation in integrated Atlantic commercial fisheries; resolving specific claims quicker; and housing in First Nations communities.** The latter is interesting in that **\$300M** is dedicated developing a housing market in First Nations communities, whatever that means. Rest assured that federal officials are among those who do not know the answer yet. Moreover, much of the funding for these initiatives has, in the established Liberal tradition, been announced already or will be found by efficiency savings in non-core areas such as **Non-Insured Health Benefits.**

First Nations are now up in arms that, in Year 14, they have again been left out of the Budget. The last (**2005**) **Liberal Budget** delivered nothing out of the ordinary especially in the anticipated area of health.



**"The 2007 Budget has slightly more new Aboriginal money than the last budget the Liberals tabled and which Mr. Fontaine found disappointing considering the uncommonly excellent relations he had with the former government"**

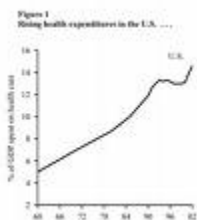


## 'Budget 2007' continued from page 7

The 2005 Budget Plan contained this little box explaining why everyone else was getting new money except Aboriginal people:



“Aboriginal programme spending continues to grow at its historic rate, driven mainly by unavoidable expenditures in ‘mandatory’ areas that the federal government has not been able to unload”



### Recent Federal Investments In Support of Aboriginal Health

The Government of Canada is strongly committed to working with Aboriginal people, provinces and territories to improve health care for Aboriginal people, and help them attain a level of health comparable to that of other Canadians.

In addition to the \$700 million over five years confirmed in this budget, a number of recent investments have supported this objective, including:

- In 2002, federal funding of \$320 million over five years was announced to expand and enhance the Aboriginal Head Start Program and the First Nations and Inuit Child Care Initiative, including intensified efforts to address fetal alcohol spectrum disorder on reserve.
- Budget 2003 committed \$1.3 billion over five years in new funding to help sustain First Nations and Inuit health programs. The new resources included investments in the Non-Insured Health Benefits Program, a nursing strategy, improvements to health infrastructure, and an immunization strategy.
- Budget 2003 also invested \$600 million over five years to upgrade, maintain and monitor water and wastewater systems on reserve.

Two years later, the Conservative’s 2007 Budget Plan contains a similar little box:

### Federal Spending on Aboriginal People

The Government spends more than \$9 billion<sup>1</sup> each year to fund programs directed towards Aboriginal people.

- Indian and Northern Affairs Canada provides about \$6.5 billion, of which about 80 per cent is for basic, province-type services for First Nations on reserve (e.g. education, social services, income assistance), where the Government has primary responsibility.
- Thirty-three other federal departments and agencies, the largest of which is Health Canada, with planned spending of about \$2.1 billion, also provide a wide variety of programs for First Nations, Inuit and Métis.
- Budget 2006 committed \$150 million in 2006–07 and \$300 million a year thereafter for a new approach to support priorities in education; women, children and families; and water and housing. In addition, the Government provided \$300 million for off-reserve Aboriginal housing and \$300 million for affordable housing in the territories, and announced \$500 million to assist communities affected by the Mackenzie Gas Project.

<sup>1</sup> Indian and Northern Affairs Canada, 2006–07 Estimates, Report on Plans and Priorities.

I analyse budgets and programme economics, and teach subjects such as political economy of social programmes, for a living. In the big picture, I simply do not see what has changed in terms of funding. Aboriginal programme spending continues to grow at its historic rate, driven mainly by unavoidable expenditures in ‘mandatory’ areas that the



## 'Budget 2007' continued from page 8

federal government has not been able to unload.

### Prognosis

In a word: unfortunate. First Nations are collectively paying a price for breaking the cardinal rule of lobbying: Never get too Close to One Side. A year has passed and First Nations still have no Plan B. There is a high probability that we will see another Conservative government, quite possibly a majority. Yet over the past few months First Nations have imprudently continued to share the spotlight with Liberals and co-operate in berating the Conservatives. Most Conservatives cannot tell the difference between a Liberal and an Indian. What is more, they are unsure on the basis of observed behaviour which is the more advanced species.

Minister Prentice has been clear that he will work with whatever '*coalitions of the willing*' present themselves ready to do business. The AFN, reduced of funds and frozen out of the offices of power, is increasingly considered irrelevant by most federal officials. There are now fewer officials willing to promote working with the national and regional system of AFN representation, and more willing to suggest other groups as partners in whatever needs to be done. These groups are the only ones with any possibility of influencing the Conservative Aboriginal agenda. This influence is limited. The resolve of the Conservatives to proceed with legislative changes, with or without First Nations input, should not be under-estimated. Neither should First Nations under-estimate their legal ability to do so.

The National Chief has at last discovered his innermost Brave. After years of requesting concessions from Liberal governments he is able to understand and work very closely with, he has now become the warrior. Fighting words echo forth from the **Trebla Building on Albert Street**. The Government has not, so far, felt sufficiently threatened to say much in response. Things are getting desperate elsewhere. The **AFN** and the **First Nations Child and Family Caring Society of Canada** formally filed a complaint with the **Canadian Human Rights Commission** over lack of funding for First Nations child welfare. This is playing Russian Roulette with treaty rights. Human Rights Commission complaints are appealing due to their cheapness. However, this Commission does not deliver predictable judgements; indeed, I have heard them called "*charmingly erratic*".

Evidently the AFN was unaware that the Commission's last judgement, in respect of welfare services and reserves, went solidly in favour of the government and had lasting impact. I will not cite details because I do not wish to make the job of any legal counsel in this matter easier. However, the decision in question, which was upheld, reinforced the federal idea that provincial welfare laws apply to First Nations. I recall the glee of colleagues when, at the time, I occupied an office at Indian Affairs. This is a very risky game to be playing with the rights of First Nations citizens, Mr. Fontaine. I hope that your experts understand the complex history of federal-provincial fiscal relations over Aboriginal programmes. And I hope the AFN has more money for legal counsel that INAC has. It is worth considering that Ottawa has spent about **\$100 million** defending itself in the first part of the behemoth breach of treaty and trust case launched by **Samson Cree Nation**.

It is more concerning that there are suddenly mounting calls for protest and disobedience against the Conservative Government. There will come a point where First Nations will revolt against the misery that surrounds them. So far they have been kept in check by (mostly) pacifist traditions and what psychologists call population level frustration-instigated behaviour. It is improbable that their increasingly well-educated youth will continue to react by directing rage inwards, rather than challenging the system on direct and uncompromising terms. I doubt that we have reached this stage yet, despite the agitations of various chiefs and other leaders whom, I admit, have got a point.

We should be worried that mounting political opposition is becoming increasingly parti-



**"The AFN, reduced of funds and frozen out of the offices of power, is increasingly considered irrelevant by most federal officials"**





“First Nations continue to see ex-Reform Party Indian expert Thomas Flanagan under every stone, when Mr. Prentice has all the brains and controls all the puppets”



## ‘Budget 2007’ continued from page 9

san, even more blinded by the unproved notion that the Liberals are the Good Guys. There are already too many eggs in that basket. We should be even more vexed that the dialectic is becoming personal. This is not the time to get personal, least of all to resort to name-calling and personal ridicule against ministers of the Crown. First Nations should not de-legitimise their legitimate grievances by letting the inability of leaders to communicate in a civil manner dominate relations. Moreover, the Conservatives will not hesitate to stop discretionary funding to their opponents or to call in the audit police. Considering remarks made recently, the **Assembly of Manitoba Chiefs** for example should take these issues seriously.

These matters are fresh in my mind because I have just taught a third year social work course in community organising. There are tried and true ways to go about protests, to advance social movements, to change social paradigms. There is quite a literature about it, dating back mainly to a radical and brutally effective fellow named **Alinsky** in the 1930s. Social movements fail unless they are organised and persist with a strategic plan for years. At the present time all that is happening is that a National Chief and a few other key figures are competing for the position of Most Vocal Agitator. It would be ironic if this camouflages the fact that the AFN still has no Plan B and lacks the tools to negotiate with a Conservative government. It is always possible to negotiate.

There is a good chance that ‘*Canada’s New Government*’ will be re-established with a stronger mandate and immediate reason to drop the moniker ‘*new*’. If so, First Nations should sweep aside their leaders unable to adjust to this reality, and replace them with people who can generate leverage, command respect, and negotiate in a business-like manner. Four guaranteed years of paralysed representation are too enormous to contemplate. The means to affect this First Nations house-cleaning are not immediately apparent. The house-cleaning is therefore likely to be messy, and during the process, the Conservatives will accelerate their agenda with impunity.

I am appalled by the failure of First Nations collectively to recognise the enormity of statements made by the Conservatives in their Party policy and during the last election campaign; e.g.:

***“A Conservative government will acknowledge its jurisdiction for basic programs and services to “Indians and Lands Reserved for Indians”. Legislation will be enacted in the main program areas. Ottawa will become responsible for results, ending four decades of service gaps and offloading costs onto the provinces. Legislation will provide a proper basis for accountability at departmental and First Nations levels. The existing financial transfer agreements will be replaced with ones that work.”*** 1

Some of what they proposed is clearly contrary to First Nations objectives. Some, like the proposition above, might be worked up into something with great positive potential. I do not wish to berate this point. Other propositions they have little appeal but, with dialogue, might be abandoned or diluted into something that stays down. Suffice it to say that the treaty rights potential of some of the Conservative propositions went right over the head of the AFN. Blinded by partisan sympathies they failed to grasp the significance of some of these propositions which originated with the curiously innovative Mr. Prentice. The less enlightened of First Nations continue to see **ex-Reform Party Indian expert Thomas Flanagan** under every stone, when Mr. Prentice has all the brains and controls all the puppets. Alas, the window now seems to have snapped shut. Federal officials, in the absence of input from First Nations, are developing these proposals in a direction more conservative than the Conservatives. First Nations may regret missing the window.

Another federal election is looming. If the Conservatives return to power, as they likely would, my advice to First Nations is to ruthlessly rid themselves of partisan leadership that is too close to any party. The Conservatives would welcome leaders able to do busi-

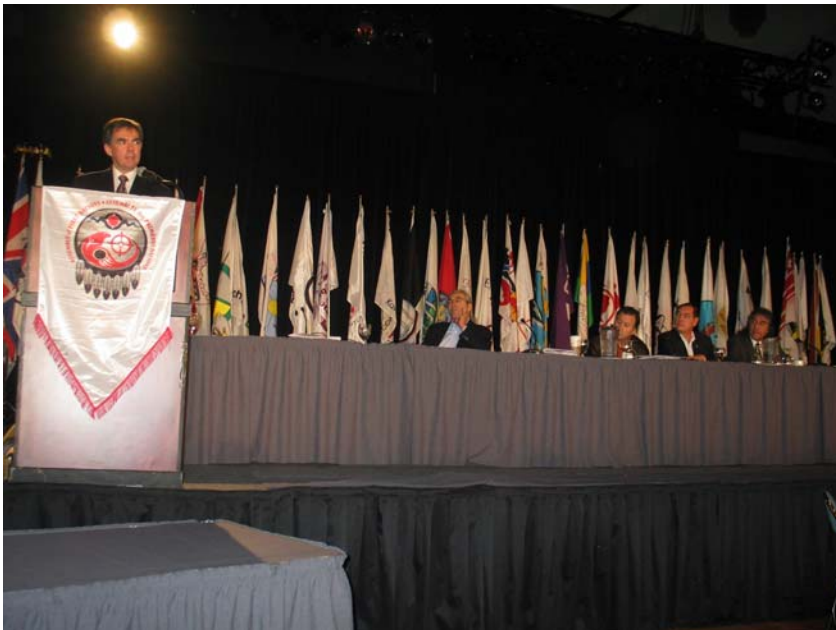
## 'Budget 2007' conclusion from page 10

ness on business-like terms. They respect strength, acknowledge democratic mandate, and despise weakness. In the absence of dialogue they will proceed according to the good advice of officials in Ottawa who are not known for their innovativeness or cross-cultural sensitivity.

First Nations have got to stop behaving as if time started with the Liberals' election in 1993. They are fed up because they have been patient and it is now Year 14. They want to see money and major policy changes in the direction they propose. They want these now. In fact, First Nations have been patient and sometimes stupid for much longer than 14 years. They need to reset the clock and disengage from Liberal benchmarks. All that matters now is that this is Year 1 into a new government and relations are positively toxic. First Nations must ask themselves why this is so, and start using the calendar that other Canadians use. If tensions due to frustration lead to more confrontation and violence, fine, this is understandable. But it will be tragic if this happens because First Nations now use a calendar starting on the Birth of the Chrétien Liberals. Am I the only one who sees in this a gross, self-inflicted insult to cultures thousands of years old?

Like it or not, the onus is on First Nations to give the olive branch. The National Chief needs to say "***We oppose some of your points, and others can lead to common ground. Let's agree to differ on some and negotiate common ground on others.***" Pride should not triumph over people. Alternatively, if First Nations cannot rid themselves of leaders who cannot adapt, their leaders should declare their Party affiliations and campaign on a party ticket. On no account should First Nations feel sorry for themselves for being represented by leaders unable to adapt to changing conditions. With another Conservative government in place, acceding again to today's status quo would ensure governance that First Nations deserve.

**ENDNOTE: 1. Conservative Party Leader Stephen Harper to Congress of Aboriginal Peoples President Dwight Dorey, 10 January 2006.**



Jim Prentice, Minister of Indian Affairs, speaks to AFN Assembly, Dec. 2006.



Logo of Liberal Party of Canada

**"First Nations have got to stop behaving as if time started with the Liberals' election in 1993"**



Liberal Redbook



Prime Minister Stephen Harper in front of Parliament Buildings.

“Harper can remain in power through support of NDP, Independents and a combination of absentee Liberals and Bloc members in Confidence votes”



## Governing in New Political Realities: Harper's Second Year

[Editor's Note: The Bulletin has received a copy of this Briefing Note Prepared for AFN by "The Parliamentary Group", a lobby group of former M.P.'s from various parties.]

### January 2007

#### Parliament Overview:

- House of Commons resumes Jan. 29th 2007.
- Party Caucuses are meeting this week. As expected, changes to Cabinet minimal.
- Heighten Election speculations. Increasingly partisan climate.
- MP's are anxious, focused on riding.

#### Standings in the House

125 Cons + 29 NDP = 154

99 Libs + 51 Bloc = 150

2 Independents, 1 Speaker, 1 Vacancy.

- Harper can remain in power through support of NDP, Independents and a combination of absentee Liberals and Bloc members in Confidence votes.

#### Harper's Priorities

- 5 priorities remain.
- Recent and upcoming political developments have shifted focus.
- Federal Liberal Leadership outcome and Provincial Elections.
- Environment: Top of political agenda attributed to polls.

#### Tories Need the NDP

The enemy of your enemy is my friend.

- NDP must recapture environment issue from Liberals and Greens.
- Continued siphoning of NDP support to Grits can damage Conservatives.
- Conservatives must regain & grow federalist support in Quebec.

#### Quebec

- Fiscal imbalance partially addressed in 07 Federal Budget.
- Charest to seek mandate for more transfers.
- Other Issues: Boisclair maturity, Afghanistan, VanDoos, Environment, regional job losses to dominate.

#### Ontario

- October 2007 election.
- Harper message will adjust following Ontario results.
- Environment, fiscal questions, economy and health remain central.

#### Other 07 Provincial Elections

- Saskatchewan.
- NDP government threatened by Saskatchewan Party.
- Manitoba.
- NDP government facing re-election. Provincial Tories are in slight lead.
- Alberta: possible late spring election.

#### Opposition Parties

- Liberal Leader prefers early election call, must also overcome serious policy, financial and organizational deficiencies.
- Bloc and NDP are not ready and will support government on short term.
- NDP must regain support away from Greens and Liberals on Environment, hence Jack Layton needs time.
- Bloc must remain in place until Quebec election, should Boisclair fail, Duceppe will follow.
- Bloc will keep either Tories or Grits in minority status for some time to come.

#### Budget—March

- Government moves on budget and other legislative measures. Environment, Tax Cuts, Fiscal Transfers.

## 'Harper's 2nd Year' continued from page 12

- Media speculation and polling numbers will influence government and opposition parties discourse.

### SPRING-TIME LINES

#### March Budget

- Legislation-Programs.
- Possible Quebec Election, Manitoba, Saskatchewan to follow.

#### April/May

- Window for federal election.
- Fiscal transfers to Quebec.

#### June

- House rises.
- Election focus Ontario.
- Federal window late.

#### Early 08

#### Foreseeable Minority Government

- Conservatives remain in low 30's.
- Liberals are statistically tied, with limited growth in Quebec.
- Greens and Liberals are siphoning away votes from NDP.
- Bloc support remains stable at 40%. If an election were held, a minority government would certainly ensue.

#### Consensus Building

- Government has heeded to NDP pressures on Special Committee for the Environment.
- On contentious issues, government, as in the case in Europe must confer with opposition parties.
- Witness: Jack Layton on Environment and Stephane Dion on Quebec Nation status.
- Canadian politics is entering a new age, one where Parliament is fragmented with no dominant party.
- Cross party consensus is now the norm.

#### Election

- Arguments being made for this Spring and 2008.
- Harper is the consummate strategist.
- From a Quebec perspective Harper is aware of positive spin of fiscal imbalance and lurking dangers in Afghanistan, possible Charest loss, hence the push to go sooner rather than later.

#### Delays in Policy Development



Parliamentary Mace

"Canadian politics is entering a new age, one where Parliament is fragmented with no dominant party"





Conservative MP's during SCAANO meeting, May 2006. (Photo by R. Diabo)

**“Minority government cannot initiate nor implement broad policy reviews without the participation and support of the opposition parties”**

## **‘Harper’s 2nd Year’ conclusion from page 13**

- Minority government cannot initiate nor implement broad policy reviews without the participation and support of the opposition parties.
- Substantive policy to be initiated or implemented after the next election.
- At this point every issue is competing with Environment for attention.
- In sum, for electoral purposes the Harper government will stick to the script in delivering on its initial 5 priorities.

## **Standing Committee on Aboriginal Affairs & Northern Development**

### **Current Studies**

- BC Treaty Process.
- Bill C-292: An Act to Implement the Kelowna Accord.
- Consideration of circumstances faced by the Pikangikum First Nation.
- Expenditure Plans and the effectiveness of their implementation by the Department of Aboriginal Affairs and Northern Development.
- Ministerial priorities.
- Post-Secondary Education.
- Review of Chapter 5 of Auditor General’s Report

### **AFN—Special Caucus Creation Status Conservatives**

**[Editor’s Note: In the original document there is a list of Conservative MP’s who have agreed to take part in Special Caucus Meetings with AFN.]**

#### **NOTE:**

All MP’s contacted are interested in the process of meeting outside of the media and in a non-political way to discuss the issues and look for solutions.

### **AFN Special Caucus Creation Liberals**

**[Editor’s Note: In the original document there is a list of Liberal MP’s & Senators who have agreed to take part in Special Caucus Meetings with AFN.]**

- MP’s and Senators contacted want to see what issues are to be prioritized.

### **Messaging**

- Need to focus on maximum three issues.
- Conservatives seek to meet without Senators for now.
- Opposition does share same view, Based on findings, a small cross party caucus can be constituted if there is agreement on broad issues.

### **Setting Agenda**

- March meetings with selected Conservative MP’s.
- Opposition MP’s to meet as a group or individually in same time frame.
- Advise policy people of initiative.
- Immediate need to define asks and agenda discussion prior to meetings.



Leaders of Federal Parties, Election 2006.

## Willie Littlechild Drags AFN into Supporting Seriously Flawed Bill S-216 on Self-Government

### THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES EVIDENCE

OTTAWA, Wednesday, February 28, 2007

The Standing Senate Committee on Aboriginal Peoples, to which was referred Bill S-216, providing for the Crown's recognition of self-governing First Nations of Canada, met this day at 6:15 p.m. to give consideration to the bill.

**Senator Gerry St. Germain** (*Chairman*) in the chair.

[*English*]

**The Chairman:** Good evening. I am from British Columbia. Before we begin, I want to introduce briefly some of the members of the committee. On my immediate right is Senator Watt from Quebec; beside him is Senator Campbell from British Columbia; on my left is Senator Hubley from Prince Edward Island; and beside her is Senator Dyck from Saskatchewan.

Today, the committee begins its study of Bill S-216, providing for the Crown's recognition of self-governing First Nations of Canada.

For the benefit of those viewing this hearing, it is helpful to state what Bill S-216 hopes to accomplish. The bill is enabling legislation. It will not be thrust upon our First Nations people.

This committee has heard time and again that the Indian Act does not empower First Nations to develop their economies and way of life as it should. First Nations communities and their members have been calling for this kind of legal empowerment for decades. In fact, First Nations people have been the architects, to a great degree, of this legislative initiative.

With respect to First Nations that have a land base, their members will be able to govern themselves and in an accountable and efficient manner for the benefit of all band members.

This evening, appearing before us is the Regional Chief from the province of Alberta for the Assembly of First Nations, Chief Wilton Littlechild.

Welcome to the committee. We understand you have a statement that you wish to make. Once you have concluded your presentation, senators will ask you a few questions.

**Wilton Littlechild, Regional Chief, Alberta, Assembly of First Nations:** Good evening to everyone. It is an honour to be here again. As I appeared in front of the committee on a different occasion wearing somewhat of a different headdress, if I may put it that way, I was honoured to make a presentation from an international perspective. Honourable members of the standing committee, thank you for your invitation to appear today on this important matter. I will approach the bill from a domestic perspective.

I begin by expressing the gratitude of the Assembly of First Nations, AFN, for the interest that this committee is taking in this issue and to you, Senator St. Germain, for raising the profile again.

The charter of the Assembly of First Nations supports the right of every First Nation to seek the recognition and implementation of its rights in its own way, including the right to self-government. In keeping with this position, the AFN supports the intention of the legislation as a reflection of a community-driven initiative.

The recognition of First Nations government is long overdue. Perhaps, I should say the



Willie Littlechild during Ottawa Press Conference. October 2006. (Photo by R. Diabo)

“the AFN supports the intention of the legislation as a reflection of a community-driven initiative”



Willie Littlechild at IBA Conference in Vancouver Oct. 2003.

## ‘Bill S-216’ continued from page 15



“The status of our governments as governments is a reality, but that reality remains threatened due to the unwillingness of the federal government to provide legal recognition, in addition to their policy-based recognition”



reality of First Nations governments having been recognized must be accommodated, and this accommodation is long overdue. I make this distinction because our governments have been recognized many times since first contact. Our governments were recognized in treaties between nations. They were recognized in royal proclamations, constitutions and domestic laws. They were recognized by all the European and Canadian governments that have come and gone over the intervening 500 years.

Internationally, the United Nations Declaration on rights of Indigenous Peoples also recognizes the right to self-government. As I stated previously, I have been involved in this declaration and have presented to you from that perspective.

I would like to provide a copy of a paper that I have written on this subject to the committee. Unfortunately, it is only in English. Once I have a French copy, I will submit both as a written submission. I apologize for that.

The reality of our governments was not accommodated. Instead, we had colonial relationships and then, with the advent of the new Government of Canada, we had the Indian Act. The Constitution Act of 1982 confirms the reality that our governments and the courts have repeatedly affirmed and recognized our rights. However, still an accurate reflection or accommodation of this reality has not been made in legislation or policy.

A commitment is required to reconciliation. Reconciling the reality of our governments is imperative of the Constitution and rule of law in the country.

Unfortunately, we continue to see evidence to the contrary as the federal government continues to act in ways to undermine and ignore the reality of our governments. The most recent examples include Bill C-2, where one clause treated all municipal, provincial and foreign governments with the respect they deserve, but First Nations governments were treated as agents of the Crown. We fought that and had it amended before Bill C-2 became law.

Since then, we have seen, rather than supporting the positive expression and capacity required for First Nations to address critical issues, attempts to impose regulations. Examples include regulations relating to drinking water, proposed legislation relating to the division of property, and the repeal of section 67 of the Canadian Human Rights Act.

On this latter point, the Canadian Human Rights Commission itself recognizes the fundamental need to balance collective and individual human rights and to support the evolution of First Nation institutional and other capacity to foster protection of human rights. This action of Canada to unilaterally impose legislation again is particularly ironic and deeply troubling, as it is being carried on at the same time as denying our rights as indigenous peoples on the international stage.

The status of our governments as governments is a reality, but that reality remains threatened due to the unwillingness of the federal government to provide legal recognition, in addition to their policy-based recognition. We agree with the framers of Bill S-216 that there must be a reaffirmation by the Government of Canada as to the reality of First Nations in this country — a confirmation that our governments are governments and that our nations are nations and our peoples have the right to demand the respect and accommodation that any other people would receive. First Nations have the right to implement their governments.

First Nations have developed such plans. You have in front of you, in Bill S-216, the reflection of one such effort. The Assembly of First Nations has also developed a plan for the recognition and implementation of First Nations governments. We believe our plan is strong as it is born from within our traditions. It respects our ways of dealing with each other and respects all those who have an interest and perspective to share. This work stems from



## 'Bill S-216' continued from page 16

many sources, including the approach suggested by the Royal Commission on Aboriginal Peoples.

The RCAP report spoke at length of this issue. It reviewed prior studies such as the Penner report. It reviewed the available data and, significantly, it repeated the testimony of many First Nations individuals. In that report, among its more than 400 recommendations was discussion of how to achieve recognition of First Nations governments.

Since then, the Assembly of First Nations has persisted in its pursuit of this objective. We travelled the country and spoke to people from every region to obtain input for our own study on this issue. We were given a mandate from the chiefs and assembly, and convened a panel of experts to oversee the process and produce recommendations. Those recommendations led to a framework for real action to implement First Nations government. We brought that report back to chiefs and the assembly for their approval. I have tabled this document with the committee as background to this discussion.

I believe this document has been circulated to you.

We also brought ideas to the Government of Canada. For over a year we participated in the Canada-Aboriginal People's round table process and heard from even more people, including representatives of the federal government.

In May of 2005, we signed the First Nations — Canada political accord on the Recognition and Implementation of First Nations Government, the RIFNG accord. I have also tabled this document with the committee as well.

This accord sets out a relationship and a methodology to be pursued by both First Nations and the Government of Canada. This approach to realizing self-government is cooperative, constructive and principled. It is consistent with the First Nations' view of self-government and with Canada's Constitution.

Since signing the RIFNG accord, we have been working on the means to implement it. It begins with a vision "To enable the political, social, economic and cultural development of First Nations peoples to exist, continue and prosper, consistent with Treaties and Aboriginal rights."

It continues with the principles for recognition and implementation of First Nations government. Again, I quote the exact principles:

- *First Nations hold a "nation-to-nation" relationship with the Crown.*
- *First Nations have an inherent (not delegated) right to self-government and they are a distinct order of government as recognized in section 35 of the Constitution.*
- *The Crown has a fiduciary responsibility to protect the inherent rights of First Nations and to uphold the spirit and intent of the treaties.*
- *First Nations have the right, through the treaties and the Constitution, to share, manage and benefit from the lands and resources in their traditional territories.*

Lands and resources are essential to foster self-dependent, self-governing First Nations. Each of these elements is essential to appropriate recognition, but we also need implementation of First Nations governments. For that, the RIFNG process has developed a plan. This involves three critical steps.

The first step is community processes and capacity building leading to capable First Nations governments. Elements essential to that step include our First Nations wanting to make the transition to self-government effectively and involving First Nations citizens in rebuilding their governments. Governments and the institutions of government will be



National Chief Phil Fontaine signing Political Accord with Federal Government May 31, 2005. (Photo by R. Diabo)

**"In May of 2005, we signed the First Nations — Canada political accord on the Recognition and Implementation of First Nations Government, the RIFNG accord"**



Federal Cabinet Committee on Aboriginal Affairs in meeting with NAO's, May 31, 2005. (Photo by R. Diabo)



**“The current policy and approach does not legally recognize the inherent rights of self-government. A new recognition policy is needed that recognizes this right”**



## ‘Bill S-216’ continued from page 17

legitimate only if they are seen to be legitimate by the people being governed. Like everyone else, First Nations want capable governments.

Training and capacity building is required to ensure strong administrative and technical skills within First Nations, including a skilled and professional First Nations public service. Capable governments also imply that First Nations governments obtain adequate resources so their governments are sustainable. New financial arrangements will be required that are fair and balanced.

Ultimately First Nations want sustainable economies. This state involves resource revenue sharing, claims settlements, access to resources in traditional territories, investing on and off reserves and long-term economic planning. First Nations want to be participants in a national and international economy, but are severely hampered by current policies. It is in everyone's best interest to foster First Nations economic development.

The second step is policy reforms to advance First Nations government including protocol, legal instruments and other arrangements to address comprehensive claims, Aboriginal rights and title. The current policy has not kept pace with existing and evolving case law. It needs to be updated. I am sure you all know that from your study.

In respect of treaty implementation, First Nations and the federal government must develop a new approach that reconciles both the Crown's perspective of the treaties and the First Nation's perspective.

The current policy and approach does not legally recognize the inherent rights of self-government. A new recognition policy is needed that recognizes this right. This instrument could replace the Indian Act.

The role of the government as judge and jury in the process of specific claims is unjust and unfair. A new process is needed that is fair and efficient. This process will provide certainty for Canada and First Nations.

First Nations and the federal Crown should develop jointly a code of conduct for the honour of the Crown so that both parties can monitor discussions and identify violations.

The third step is that the structure and machinery of the government changes would include a diminished role for the Department of Indian and Northern Affairs, restricted program delivery, a new ministry for First Nations and Crown relations, an office of treaty commissioner, an office of fiscal relations, a First Nations auditor general, a First Nations ombudsperson and an Aboriginal and treaty rights tribunal.

The accord commits both parties to work cooperatively through a joint steering committee. This committee oversees joint action and cooperation on policy change, including the establishment of frameworks to promote the recognition and reconciliation of rights in section 35 of the Constitution, including the implementation of First Nations governments.

Recognizing and implementing First Nations governments will enable First Nations to chart their own path to progress and prosperity. It will ensure that Canada remains a productive and competitive country for all its citizens, and it will lead to the long-needed reconciliation between First Nations and Canada.

Recognizing and implementing First Nations governments is not only a challenge to Canada, it is a tremendous opportunity as well. It will fulfill our shared vision of a strong, just and united country for all Canadians.

In closing, Mr. Chairman, I urge you to work with us to recognize First Nations governments; and to do so in a way that respects not only the aspirations of our peoples, but of our paths to those goals.

## 'Bill S-216' continued from page 18

**The Chairman:** Thank you, Chief. I followed your delivery carefully and, toward the end, you spoke of specific claims. I am sure you know that this committee has reported recently on the specific claims and treaty land entitlement.

I saw an AFN report that commented favourably on the committee's report. Possibly you could comment on this, if you are in a position to do so, because you have mentioned it here. I think it is an integral part of dealing fairly with our Aboriginal peoples, in that if we do not deal with the injustices that have been wrought upon our Aboriginal peoples, we will go nowhere. I think it is a major first step.

In regard to Bill S-216, I will ask the first question. I know that you have gone through this bill carefully, Chief. How would the bill mitigate costs? As you know, any self-government arrangements that have been negotiated to date have been extremely costly to the taxpayer — and to our Aboriginal peoples as well. By way of enabling legislation, do you see this bill as mitigating the costs to this process considerably?

**Mr. Littlechild:** Yes: perhaps I will respond in two ways. One is in relation to human cost. By that, I mean we are aware of the negative statistics we always hear about for our communities in terms of youth suicide, as an example. The problem is not only youth suicide, but a disastrous rate of suicide in general.

A recent study has been conducted that concludes that the more self-governing a community is, the lower the rate of suicide. From a human cost factor, that consideration is important.

The second one is more in terms of a financial perspective. It gives me an opportunity to make a comment that may lead to a recommendation. We hear about the amount of \$9 billion being allocated to First Nations. You and I, as colleagues, know that at some point we had a different figure; at that time, at least, it was a lesser amount. It seems to be increasing. The cost of delivering the industry is escalating.

I want to analyze it from the perspective of how much of that allocation of \$9 billion reaches the First Nations community. We have numerous figures and scenarios of that financial allocation. Let us take only administrative costs for the Department of Indian and Northern Affairs, \$600 million. If \$600 million were made available to First Nations to govern themselves better, over the long term, certainly there will be a cost reduction. When you ask about mitigating costs, I think that there are not only financial costs to be mitigated, but human costs as well: enabling First Nations to govern themselves in a better way, and recognizing that self-government is a way to do it.

**The Chairman:** All the evidence that we have heard, whether it be from Harvard University or any of the studies, is that there is leadership, education and governance — and not necessarily in that order.

**Senator Hubley:** Thank you very much, Chief Littlechild, for your presentation this evening. Professor Patrick Macklem told the committee in May 2005 that, in his view.

*Bill S-16 codifies, in a modest and realistic way, most of the best practices on Aboriginal self-government that have emerged as a result of litigation, negotiation and legislation. . . . It operates within the demands of the Constitution and the Charter. . . . It offers real democratic participation to Aboriginal people to alter the way they are currently governed for the better. . . . It offers real self-government to First Nations across the country. It is a very good bill. . . .*

I wonder if you might comment on Professor Macklem's assessment of Bill S-216. Would you like to add anything to that, or do you agree or disagree?

**Mr. Littlechild:** I agree. I think I would also refer to my previous intervention to the committee, when I stated that there are self-governing First Nations doing well right now in



“any self-government arrangements that have been negotiated to date have been extremely costly to the taxpayer”





“In 1986, the Sechelt in British Columbia became self-governing. I think that is working well. Coming from British Columbia, I think that whole process is excellent. Within Bill S-216, there are similar provisions”



## ‘Bill S-216’ continued from page 19

terms of traditional laws. What is missing is the recognition. I think this bill goes a long way to providing that recognition.

Much in line with Professor Macklem's previous testimony, I agree that within the existing structure we have, that would work. However, I think we need also to pay respect to traditional forms of government that need recognition, not just under federal legislation but under traditional laws. I think this bill could lead to that option as well by way of recognizing the proposals under the judicial part of the bill, where they recognize the establishment of courts. We need a mechanism, through that process, to recognize traditional laws.

**Senator Campbell:** My question has to do with step 3 — structural and machinery of government. I agree with you about the administrative costs and pushing that money down to the ground, where we need it.

Is a diminished role for the Department of Indian and Northern Affairs restricted to program delivery? Why even have them deliver the program? If we move toward self-government, why can the First Nations, as a self-governing organization, not deliver programs and have a new ministry for First Nations and Crown relations? I do not know what I would call that ministry, but would it not make sense? Nobody disagrees that we need to move to self-government. Would not it make sense that the First Nations deliver the programs, and ensure that those programs serve the communities and the money goes to those communities?

**Mr. Littlechild:** Yes, I agree, definitely. However, the observation I would make in terms of that suggestion is that there must be a transitional period. Within that transitional period, as the First Nations build the capacity to deliver their own programs and services, that can happen.

There is a concern that if they were to have it immediately, there would be no transitional opportunity to take that delivery of programs and services from the department over to the First Nations governments.

I agree with you, in terms of the end result being much better. The best solution is First Nations governments doing it themselves.

**Senator Campbell:** I was not suggesting that we wake up one morning and the Department of Indian and Northern Affairs is gone. I agree with the transition.

Then I look at office of treaty commissioner, office of fiscal relations, First Nations auditor general, First Nations ombudsman and an Aboriginal treaty rights tribunal. This is not something that we should decide: you should decide who these people will be. Otherwise, we keep going in the same top-down direction. Through that transition, perhaps then we have ongoing training. However, right now we have none of that. We have, "this is our program, and we will deliver it." That worries me.

In 1986, the Sechelt in British Columbia became self-governing. I think that is working well. Coming from British Columbia, I think that whole process is excellent. Within Bill S-216, there are similar provisions.

In your view, does Bill S-216 adopt the same approach to self-government generally as the Sechelt legislation? In what ways, if any, does Bill S-216 differ in purpose, context and effect? What are the implications of any differences? I do not know if you can answer that. The area is complicated.

**Mr. Littlechild:** Through you, Mr. Chairman, I want to come back to that question in a more detailed way later. Models have been compared, including the Sechelt and Nisga'a models, to this particular bill. An analysis was done on that. I do not have it with me now. However, I would like to provide it to you to indicate the analysis that has been conducted

## 'Bill S-216' continued from page 20

with the various models including the Sechelt.

To answer your question, it identifies the differences with this bill. It gives a better option for others, not in the same circumstance as Sechelt, but it certainly provides an option.

**Senator Campbell:** My last question is: Do you believe there is one model?

**Mr. Littlechild:** No.

**Senator Campbell:** I have difficulty imagining that there is one model. Democracy is continually changing. Do you agree that there is not one model: it may be an amalgam of many, it may be one or it may be the other? Each First Nation must make a decision on what model best fits their situation.

**Mr. Littlechild:** Yes, I agree. I think one of the advantages of this bill is that it provides that framework for which First Nations can choose a model that best reflects their community.

The framework is there in the bill. It offers the First Nations the opportunity. You are right, there is no one model. The benefit of this bill is that the framework is there to choose a more relevant model for a particular community. Providing the options, for example, of amalgamating communities or regionalizing: one approach or model may be better or more suitable than another. That is why I think the framework is there for that opportunity.

Again, I agree with you that there is no one model.

**Senator Dyck:** Thank you, Chief Littlechild for the presentation and the updated information. The question I have for you is with regard to the RIFNG accord.

In your presentation you noted that the AFN supports the intention of legislation as the reflection of a community-driven initiative. The simplest part of the question would be: Do you think that Bill S-216 is a good reflection of the needs of the Aboriginal communities, the First Nations communities?

**Mr. Littlechild:** Yes: When I say "a community-driven initiative," we have two approaches on how we could do this. One approach has been to go ahead and draft legislation and then consult communities on that legislation. This bill started from the community and, from there, became draft legislation. As you know, there has been a lot of support for that process to happen. As a model, in terms of one way of doing it, I am not saying that is the only way but the community-based initiative is a good option. Counter to some of the previous proposals that have been resisted, it was because they were the other way around.

The last time I was here, I felt we needed an opportunity like this one for First Nations to draft their own legislation that is recognized by the federal government, and not always a process that works the other way around. I think the bill is a good community reflection. It is a good basis for building on.

**Senator Dyck:** To follow along that vein of thought, how do you envision the implementation of Bill S-216 with respect to the federal-AFN political accord such as in the RIFNG document? What do you see as the further role of this RIFNG accord?

**Mr. Littlechild:** Let me phrase it this way, because I have thought about that and I have come to my own conclusion: We are climbing the same mountain but we are using different paths. This path is one way to the goal of recognizing First Nations government. The RIFNG process is complementary. It is another path. If you said, "We are taking this path in terms of the RIFNG process"; then you could say, "This is one way to do it." I do not think it counters the RIFNG process. The RIFNG process is complementary.

**Senator Watt:** Nice to meet you again, Chief. I think the sense of what you brought to this committee is new, at least to me anyway: The way you phrase the issue and the way you



"how do you envision the implementation of Bill S-216 with respect to the federal-AFN political accord such as in the RIFNG document? What do you see as the further role of this RIFNG accord?"



## 'Bill S-216' continued from page 21



“we want our inherent right to self-government to be recognized in Bill S-216? If that is the case, we must revisit this matter to take it into account, because that is not included in this legislation”



would like to find the solutions to — I guess the word that you use is "reconciliation." Saying that, we both know there are two ways to interpret section 35. Some people call it the "full-box theory"; some people call it the "empty-box theory." It depends on what angle you come from to call upon inherent rights to self-government; current policy does not recognize legally the inherent right to self-government. A new recognition policy is needed to recognize these rights. This instrument could replace the Indian Act.

If you look at it from the empty-pocket theory concept, inherent rights are not part of section 35. I want to be clear so I know where you are coming from.

The other part of it is that if we want the Government of Canada to recognize the inherent right to self-government, our right to self-government, we governed ourselves before anybody stepped into this country.

Would you like this matter to be recognized in this new piece of legislation, either by way of creating a new act or by way of replacing the Indian Act?

Are you saying that until our inherent rights are entrenched and recognized by government, the rest will not work? We want recognition of our rights but, unless they are recognized, self-government will not materialize. Am I understanding you correctly?

**Mr. Littlechild:** I think so, yes.

**Senator Watt:** Bill S-216 does not cover the particular issue you are talking about. Are you saying that the bill is good, but that we need more, that we want our inherent right to self-government to be recognized in Bill S-216? If that is the case, we must revisit this matter to take it into account, because that is not included in this legislation.

**Mr. Littlechild:** If it is not there, there is more work to be done. Maybe there is another way of approaching this. Perhaps a legislative committee could deal with it.

I am not sure that I fully understand what you are asking me.

**Senator Watt:** It is the same argument I have put to you before with regard to general laws of application regardless of what new rights might have been negotiated and implemented. What I have gained through negotiations has been quashed by the general laws of application. It is always a question of what applies and what does not apply.

I do not want you to believe that this will be resolved. I support this initiative, because I believe it is the beginning. However, we must be precise and clear in order not to give a false impression to the people we are dealing with. I have lived through this issue for a number of years, and I do not want to be part of something that is not real. I do not like to deal with make-believe.

People talk about self-government. The Nunavut government is not a self-government; it is an extension of the federal government. Labrador's new settlement is not a self-government; it is a simple municipality. My area is another simple municipality.

The only areas that I know of that come close to self-government are Nisga'a and Sechelt. My only problem with those areas is that their land base is narrow and does not take into account traditional activities outside of their reserves.

**Mr. Littlechild:** The bill attempts to provide a solution to general laws of application. For example, it provides for what happens when there is a general application of federal law or a general application of provincial law. For example, within an indigenous territory, indigenous law is paramount. The bill attempts to address the issue of paramountcy, and hopefully it addresses it adequately.

**The Chairman:** You spoke about regionalizing and amalgamation. That issue logically has to be a question because, due to the size of some of our First Nations, they would not have

## 'Bill S-216' continued from page 22

the capacity or the human resources base on which to operate.

How many First Nations do you believe would be able to take advantage of Bill S-216? I know that your experience is vast and that you have studied at the international, national and regional levels.

**Mr. Littlechild:** I will address that from two perspectives. First, it is available to all First Nations because it is opt-in legislation. Another perspective is a language-based approach. Under a language-based approach, for example, combining all Cree-speaking First Nations, the Royal Commission on Aboriginal Peoples indicated that there may be 56 to 58 such possibilities. The main point is that option is available to everyone. Whether the approach is geographic or linguistic is another aspect.

**Senator Dyck:** My question is about land. You said that the First Nations have the right to share, manage and benefit from the lands and resources within their traditional territories. Bill C-216 does not stipulate that Aboriginal lands governed by First Nations communities would remain lands reserved for the Indians within the meaning of section 91.24 of the Constitution Act of 1867.

Do you think this section is significant? What would be the significance of not maintaining section 91.24 status for Aboriginal lands covered by the bill? Do you think this will create difficulties, or is it okay as it stands?

**Mr. Littlechild:** I think it creates more opportunities. The question may also be from a jurisdictional perspective, that is, the government having jurisdiction over reserve lands, treaty territories or traditionally owned lands. Various options are possible under the legislation, so I believe the bill makes it better from that perspective.

Land is critical to all of this. Land and resources are equally important from an economic and human resource perspective. The attention given to land in a definition section gives numerous possibilities. Clause 2 of the bill defines Aboriginal land and gives a number of possibilities in defining what that land base is.

**Senator Dyck:** Are you saying that if this bill were to be implemented, self-governing First Nations would have more opportunities?

**Mr. Littlechild:** Yes.

**Senator Dyck:** Can you give us an example?

**Mr. Littlechild:** Yes: If a self-governing First Nation were economically viable and could access revenues, they could purchase additional lands. That is an opportunity, with a solid economic foundation, to increase their land base, not only from an economic perspective but also to house their members.

For example, in my community, our reserve boundaries have stayed the same, but our population has multiplied. We have not been able to increase that land base except by buying land. The bill offers that opportunity as well.

**Senator Dyck:** You do not sense any danger of there being loss of traditional land?

**Mr. Littlechild:** No.

**Senator Hubley:** My question concerns membership or citizenship in First Nations communities.

Bill S-216 provides that for communities whose membership list is maintained by the government, persons on that list must be confirmed as members by the First Nations community to vote in the referendum to determine participation in the Bill S-216 regime.



“Bill C-216 does not stipulate that Aboriginal lands governed by First Nations communities would remain lands reserved for the Indians within the meaning of section 91.24 of the Constitution Act of 1867”





“We held a four-day conference in the province of Manitoba that was put on by the Ojibway band. Several bands in Manitoba came together to discuss the merits and to add to the building of this particular piece of legislation”



## ‘Bill S-216’ conclusion from page 23

Do you find that this issue might be contentious? Perhaps you might comment on the requirement for membership confirmation by communities for persons on government-maintained membership lists.

**Chief Littlechild:** It is a contentious issue. It is so contentious that in this last week a substantial court case started on that particular issue. We need to wait for the court to reach a decision on that question. Whatever I may say might be inappropriate to what the court might say, except to say that the issue is so contentious that it had to go to court.

A court process right now is dealing with that issue, and we must wait for the decision. The fact to consider in the backdrop is that First Nations need the right to control their own membership. That principle underlies that part of the bill.

**Senator Dyck:** Thank you. I do respect that answer.

**The Chairman:** Thank you, Chief Littlechild. There is no doubt that this process originated from the grassroots of our Aboriginal communities. This process is not top-down. I happen to be sponsoring this bill, but it was not my brainchild. Someone else at the ground level decided that this bill was a necessity for our Aboriginal peoples.

Hopefully, if Bill S-216 is enacted into law and the government accepts this legislation, it will be an affordable option. There is support for this bill, honourable senators. We held a four-day conference in the province of Manitoba that was put on by the Ojibway band. Several bands in Manitoba came together to discuss the merits and to add to the building of this particular piece of legislation. I have always said that I do not care whose name is on it — it does not need anyone's name on it — as long as it serves the constituency that we are trying to serve as a community, our Aboriginal peoples, who have paid a horrific price since the arrival of the non-Aboriginals in Canada in a lot of ways.

With that, Chief Littlechild, do you have a document that you want to table with this committee? Is this document the one that you referred to, which was not translated?

**Chief Littlechild:** Yes, it is only in English.

**The Chairman:** We can accept it in one language only. We will have it translated. If you want to table it as an exhibit with the committee, I would like to have agreement from the committee.

This document will be accepted as an exhibit and filed with the clerk of the committee. Is it agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Carried.

I thank you again, Chief. Is there anything else you want to say before we adjourn this hearing?

**Chief Littlechild:** I want to thank you all of you again for your continued interest. I sincerely think we are doing the right thing.

The committee continued in camera.

\*\*\*\*\*



## Pair Wins Right to Appeal Conviction for 2001 Blockade

By Darah Hasen, Vancouver Sun

Saturday, March 31, 2007

(Kamloops, B.C.) A mother and daughter, members of the Secwepemc First Nation in B.C.'s southern Interior, have won the right to appeal their 2002 convictions for taking part in a roadblock on the Sun Peaks Road near Kamloops one year earlier.

In a hearing earlier this month before the B.C. Court of Appeal in Vancouver, **Nicole Valencia Manuel**, 30, and her mother **Beverly Phylis Manuel**, 51, argued through their lawyer they believed they had the legal right under aboriginal law to participate in the **Sun Peaks** roadblock in August, 2001.

The roadblock was set up in response to a controversial ski hill development on land claimed by the **Secwepemc (or Shuswap)** people as traditional territory. Protesters said the development threatened traditional hunting and medicinal plant-gathering grounds on the mountain, as well as several sacred sites.

**"My grandparents and my great-grandparents, they used to walk up that mountain. It was a gathering area for people in this area,"** Bev Manuel said in a phone interview Friday.

**"We've always been told to take care of the land, and that's what we're telling the courts,"** she said.

The argument failed in 2002, when both women were convicted in provincial court on charges of unlawful obstruction of a road. At that time, the provincial court judge, while accepting the sincerity of the women's beliefs, determined they were pursuing a moral right under the "law of the Creator", rather than a legal right.

The convictions were upheld on appeal to the B.C. Supreme Court in November, 2004. Bev Manuel served one year on probation, while Nicole spent 30 days in prison.

Within days of Nicole's release, both mother and daughter filed a second ap-

peal. At the time, Bev Manuel said, neither woman was feeling particularly hopeful, but they were determined not to give up.

**"This is our life. It's our ancestors' lives. It's our future,"** she said.

On March 8, an application for leave to appeal the case was heard in Vancouver, and on Tuesday **Justice Risa Levine** granted her consent.

**"I am persuaded that the appellants (Bev and Nicole Manuel) have raised an issue of law of importance that has not previously been addressed by this court,"** the judge noted in her ruling.

**Murray Browne**, a lawyer working in aboriginal issues with the Victoria-based firm **Woodward and Company**, said the court's decision to grant the appeal was **"fairly significant."**

**"Because the implication is that first nations people who feel they are defending their territory cannot be just summarily removed with injunctions from companies or the government,"** he said.

Browne said the ruling appears to be part of a trend by the courts recognizing aboriginal perspective in law -- **"that when first nations people stand on a road or protest mining or development, that they may have some legal basis to do so."**

Bev Manuel said her goal is to encourage other first nations people to stand up for what they believe in.

**"As a mother, and a grandmother, we have to become vocal about what is important to us as a people, for future generations. Otherwise, where will we go in this world?"** she said.

dahansen@png.canwest.com

[Reprinted from the Vancouver Sun ©]



**"the implication is that first nations people who feel they are defending their territory cannot be just summarily removed with injunctions from companies or the government"**



Advancing the Right of First Nations to Information

First Nations Strategic Policy Council  
Ottawa, Ontario

Phone: (613) 296-0331  
Email: rdiabo@rogers.com



The First Nations Strategic Policy Council is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it. Feedback is welcome. Let us know what you think of the Bulletin. Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

---

FOR BACK ISSUES GO TO:

[HTTP://WWW.GATHERINGPLACEFIRSTNATIONSCANNEWS.CA/GOVERNANCE.HTM](http://www.gatheringplacefirstnationscanews.ca/governance.htm)

---

## Indigenous Peoples, Poverty and Self-Determination in Australia, New Zealand, Canada, and the United States

by Stephen Cornell  
(PDF 1.79MB)

Australia, New Zealand, Canada, and the United States share certain characteristics. All four are predominantly European-settler societies. All are English-speaking. Their legal and political systems, while different, share a primarily English heritage. They also share a particular pattern of relationships with indigenous peoples. In all four, European settlement dispossessed — often violently — indigenous peoples of their lands. But in all four, remnant indigenous peoples remain today on remnant lands, and in all four, those peoples are engaged to one degree or another in movements for indigenous self-determination. There is another commonality among these countries: **In all four, central governments have tended to be more willing to address issues of indigenous poverty than issues of indigenous self-determination.** But what if the two are connected? This paper argues that there is strong evidence from the United States that **effective solutions to indigenous poverty depend on, among other things, indigenous self-determination.** After making the case for comparative analysis among these four settings, it summarizes the U.S. evidence and considers its applicability to the situations of indigenous peoples in the other three countries. It also argues that while indigenous self-determination and self-governance are keys to positive economic change, self-determined indigenous governance in these countries is likely to be diverse, and that a single form of self-governance is unlikely to work across groups or across countries. **[Emphasis added]**

JOPNA No. 2006-02 44pp.

[http://www.jopna.net/pubs/jopna%202006\\_02\\_coverandinside.pdf](http://www.jopna.net/pubs/jopna%202006_02_coverandinside.pdf)