

1st Place Essay Contest Winner
High School Category

REPEALING THE INDIAN ACT

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CANADA

CONSOLIDATION

CODIFICATION

Indian Act

Loi sur les Indiens

R.S.C., 1985, c. I-5

L.R.C., 1985, ch. I-5



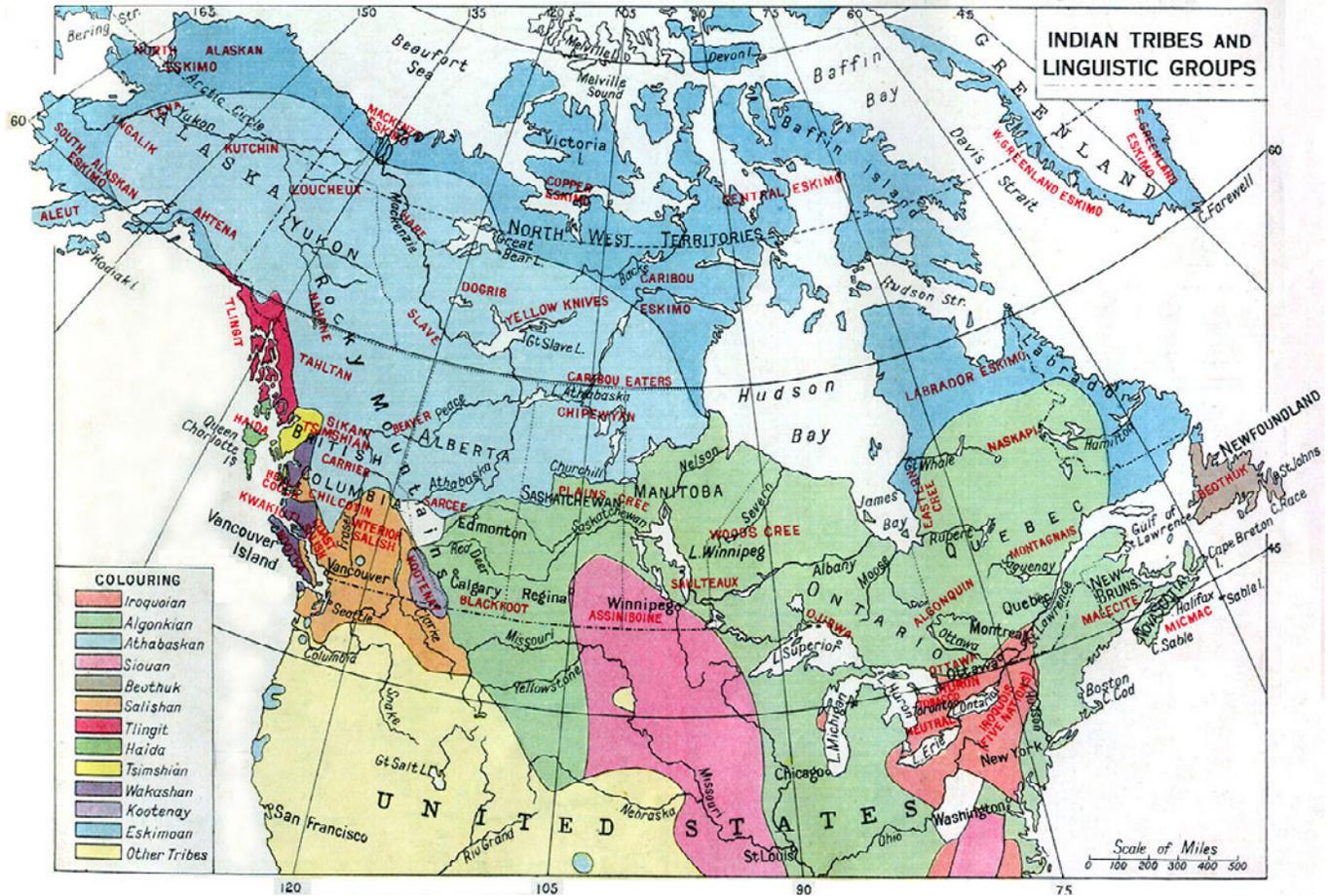
 On the 28th of October 2011, Attawapiskat First Nation, located in northern Ontario on the coast of James Bay, declared a state of emergency due to a lack of housing and infrastructure. At the time of the announcement it was revealed that an extraordinary 19 families on the reserve lived without running water or electricity and that a further 128 families were living in 87 buildings deemed fit for condemnation (Toulouse, 2011). While such ghastly conditions stunned many Canadians, similar situations continue to occur within First Nation communities across the country. In fact, that same year the Community Well Being Index found that 96 of the 100 lowest performing communities nationwide were under First Nation jurisdiction (INAC, 2015). The causes of such a predicament can be attributed to an atrociously oppressive, divisive and outdated statute known as the *Indian Act*. The *Indian Act* inhibits the economic development of First Nations citizens and their communities by preventing the creation of economic capital on-reserve and creates administrative inefficiencies with respect to on-reserve services, such as education. In order to ensure the economic freedom and basic equality of Canada's indigenous communities, it is imperative that this statute is repealed, that the First Nation reserve system be abolished and that the rights to all reserve lands are redistributed from the crown into the hands of Canada's First Nation, Inuit and Metis populations.

The *Indian Act* is the principal statute through which the Canadian federal

government administers local First Nations governments, such as through outlining the principles and regulations of on-reserve services including housing and education, and the management of reserve land and communal monies. While the *Indian Act* lays out the regulations and guidelines that are to be followed by the band and the federal government, the statute is also an archaic piece of legislation that grants both special privileges and blatant discrimination towards a single ethnic group. This has prompted some First Nations leaders to declare the *Indian Act* one of the main barriers to creating functional rules and systems to govern community life and, as such, inhibitors of economic development (INAC, 2013).

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In his seminal work, *The Mystery of Capital*, Hernando De Soto concludes that the reason for the lack of capital in the developing world is that assets in these countries, such as houses and the land on which they are built, do not have adequately recorded ownership. This means the majority of businesses remain unincorporated, rendering them unable to be readily turned into capital (De Soto, 2000). This parallels the situation on First Nations reserves where, unlike elsewhere in the country, individuals



Map: Lawrence J. Burpee, *An Historical Atlas Of Canada*, 1927

are unable to obtain fee-simple ownership of their property. Under the *Indian Act*, all reserve lands are held in trust for the bands by the crown. However, the Ministry of Indigenous and Northern Affairs, or INAC, can grant property rights to individuals on reserves, most often in the form of Certificates of Possession (CP). These individuals have limited abilities to transfer or lease the land (Brinkhurst and Kessler, 2013). As well, as this property is legally crown land and therefore immune from legal seizure, it is virtually impossible for a CP holder to mortgage or use their property as equity as financial institutions are severely

restricted in their ability to collect on defaults. Additionally, CP's are entirely under the discretion of INAC and can be revoked at any time for a variety of reasons (Alcantara, 2002). By preventing the fee-simple ownership of land, the *Indian Act* significantly discourages the creation of businesses and other employment opportunities on reserve. To illustrate this further, while Canada experienced an average national employment rate of 75.8% for the year of 2011, the employment rate on First Nations reserves was a meager 47.0% (Statistics Canada, 2011). The combination of low employment rates and reduced economic opportunities

has created an environment on many reserves where a large segment of the population is dependent on government aid.

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This level of dependency on government aid coupled with the rapid aging of Canada's workforce is widely anticipated to result in a fiscal crisis often referred to as the "Demographic Tsunami." Over the next decade or so, a large portion of Canada's population will be exiting the workforce and entering retirement. Statistics Canada estimates that by 2024, 20.1% of the Canadian population will be aged 65 years or older (Statistics Canada, 2015). This segment of the population will contribute far less to the nation's tax base while also relying more heavily on social programs, such as healthcare, swamping the nation's finances in the process (Helin, 2008). Several scholars, notably Tsimshian author Calvin Helin, suggest increasing economic prosperity for First Nations and mobilising the rapidly growing indigenous population into the workforce, particularly by unleashing the massive economic potential of the substantial amount of land held by First Nations through expanding access to fee-simple

property ownership and removing other barriers to the development of private enterprise found within the *Indian Act*, as a prime method to help combat the impending "Demographic Tsunami" (Helin, 2008). The abolition of the Indian Act will not only lead to a greater quality of life on reserves, but is urgently needed in order to ensure a strong fiscal future for Canada.

Elsewhere in the world, it has been demonstrated that proper land titling results in economic growth and increase in quality of life for those affected. For instance, in 1981 when a group of squatters lived on the outskirts of Buenos Aires, Argentina, the government ordered the transfer of the land from the original owners to the squatters. However, only some of the owners complied, which resulted in one group of squatters obtaining formal land rights, while others lived in the occupied parcels without paying rent, but without legal titles. The parcels inhabited by the entitled and untitled households were identical and the allocation of property rights was entirely independent of the characteristics of the squatters, thus creating a natural experiment allowing for the examination of the effects of land titling. 29 years later, it was found that while the group that did not obtain formal land rights experienced little change, the group that received legal titles to the land witnessed a dramatic increase in their quality of life (Galiani and Schragrodsky, 2010) the overall index of housing quality grew by 37% and the secondary education completion rate doubled. Moreover, the average

household size for the entitled group was 5.11 people, compared to 6.06 for the untitled group (Galiani and Schragrodsky, 2010).

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The administrative deficiencies created by the *Indian Act* are accentuated by the abysmal quality and ludicrous cost of education for reserve residents. As mandated by the *Indian Act*, education for children on First Nations reserves is funded by the federal government rather than their provincial counterparts and is independently administered by each band to its members. Due to the autonomy given to these bands, First Nations education systems have no requirement to teach a core curriculum that meets provincial standards, no requirement to have certified educators and no requirement to award a provincially recognized diploma to graduating students (Bains, 2014). This is demonstrated by low graduation rates as only around 40% of on-reserve students graduate high school compared to roughly 90% of off-reserve students in Canada (Omand, 2016). Education is a vital component to ensuring a high future quality of life for youth, especially considering it is one of the indicators used for the CWB Index. When over half of a population does not complete a

secondary education, the cycle of poverty continues into the future generations (Baker and Coley, 2013). Some reserves ultimately decide to send their students to off-reserve schools at provincially run institutions (Bains, 2014). However, given that these students are members of their reserves and under federal jurisdiction rather than the provincial jurisdiction off-reserve students are under, band governments must pay these students' tuition to the provinces (AFN, 2012). In other words, the federal government often funds First Nations reserves to ensure that the reserve can pay provincial governments to allow their residents to receive an education at provincial institutions (INAC, 2016). Education is one of several government services that are inefficiently administered to on-reserve members since it is a provincial responsibility that the federal government has jurisdiction over due to the *Indian Act*. Because of the manner in which the *Indian Act* mandates the administration of government services on reserve, costs tend to be higher given the added bureaucracy of going through various governmental departments.

In conclusion, the *Indian Act* continues to place barriers to on-reserve economic prosperity by not allowing fee-simple land ownership and by creating a system of administrative inefficiencies when delivering services on-reserve, most prominently in regards to education. If First Nations citizens are ever to obtain a quality of life remotely comparable to that of other Canadians, the *Indian Act* must be repealed. ©



William Dunstan is currently a Grade 11 student at St. Matthew High School and he plans to study public policy and administration after graduating. He has a particular interest in Aboriginal Policy and Economic Freedom.

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