

# Apartheid in Canada

"The Indian Act is the most paternalistic piece of legislation that there is in our country. And I say to a lot of my white friends, you ought to get down on your knees every night and thank God that there is no such thing as a Department of White Affairs." — Witness John Letandre of Winnipeg speaking at Manitoba's Aboriginal Justice Inquiry.

by Jeff Harrington  
 Canadian University Press

Hull, Quebec — Across the Ottawa river from Parliament Hill, the Canadian Museum of Civilization sprawls like an alien layer cake. This year, Halloween visitors to its cavernous Grand Hall were treated to a different sort of exhibit.

With a gigantic Haida totem pole towering behind him, Joe Clark looked for all the world like an angry chipmunk in a dark, silken suit.

An important chipmunk, mind you. The TV cameras whirred and the boom mikes hung on Clark's every word as he made the most of his appearance before the roving parallel hearings on the constitution organized by the Assembly of First Nations.

His hands shaking, the flush-faced Constitutional Affairs Minister attacked the AFN for placing a full-page ad in *The Globe and Mail* that branded the government's proposals for aboriginal self-government a hoax.

No need to parrot his words here. His headline-grabbing tantrum over, Clark calmed down and told a story familiar to many in the audience: the government version of the way things are.

"My approach (to self-government) is simple," he told the seven aboriginal panel members at one point. "Your unique place in Canada's history must be recognized. But it does not separate you from other Canadians."

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Canada's 592,000 status Indians might beg to differ. Like the Inuit, the Metis (aboriginal people of mixed ancestry) and "non-status Indians," they are separated from "other Canadians" — socially, politically, culturally and economically.

But they are also separated because of their "race" — the government considers them to be legally "Indian," no matter which First Nation they belong to.

Their day-to-day lives are governed by an arcane set of regulations that reads "more like a municipal ordinance on sewers and drains than a charter of legal rights and duties of a people," as a well-known jurist once put it. The Indian Act — apartheid, Canadian-style — hasn't changed much since 1876, when a number of earlier statutes were cobbled together to solve "the Indian problem."

"The objective was to assimilate aboriginal people and it's still reflected in the modern Act. It hasn't changed substantially, really," says Rolland Pangowish, an Odawa who advises the AFN on land rights.

The Act still gives the Department of Indian Affairs power over civil, criminal and domestic law, business regulations and the administration of justice on the reserves.



Although the government has delegated some powers in recent years — over social services and education, for example — those administrative changes are not constitutionally protected.

Pangowish, 33, says the Act has undermined every pillar of First Nations society, partially by fostering a cycle of dependency.

"Nobody can solve our problems for us, that's proven. And we can't do it ourselves without recognition of our governmental authority," he says.

But while there is widespread agreement the Indian Act has been directly responsible for the well-documented disintegration of First Nations communities, constitutional experts say the legislation cannot simply be revoked.

"Nobody wants the Act," says Mary Ellen Turpel, a Cree who teaches law at Dalhousie University in Halifax. "But nobody is willing to remove it without a commitment to self-government."

Self-government, self-determination, sovereignty. From the government's point of view, this pesky triumvirate of s-words is the new "Indian problem." Self-government is now *the* aboriginal issue, but to address it fairly, Canadians must face up to a past of racism and colonialism.

For Turpel, that past is present. In the 1950s, her father was a member of a band in northern Manitoba called Norway House. He sold his status so he could buy a pickup truck and start a business.

Under the patriarchal provisions of the Indian Act, his family automatically lost their status. Turpel recently found herself in the humiliating position of asking the government to reinstate her — to put her name on a list she is fundamentally opposed to.

"The idea that you can have one definition — namely an Indian — for all these different cultural and historical groups is offensive," she says.

## Impediments to progress

When Europeans arrived in what is now

called Canada, they needed the help of those different groups to survive. Early treaties were seen by both sides as agreements between independent nations. But as soon as the Europeans no longer needed the first peoples as allies or trading partners, their view of the treaties changed.

As the European population increased dramatically in the early 1800s, the "Indians" became an impediment to "progress." The written versions of the treaties became quite narrow, embellished with verbal promises that were just as legally binding.

"The Crown wanted to get them out of the way and acquire their land for European settlement," says Brad Morse, a professor of law at the University of Ottawa. "Oral promises were made and reasonably quickly forgotten by the Crown, because the Europeans focused on the written word."

In Nova Scotia, the lands of the Micmac people were simply taken over. Their population decimated by starvation and disease, they were "given" rocky and largely unproductive lands no one else wanted.

These were and remain the reserves, analogous to the South African "homelands." Today, some 2,300 reserves dot the country, with a total area half the size of Nova Scotia — less than 0.2 per cent of Canada's land mass.

The reserves have been the cornerstone of government policy since the 1830s. Generally, their purpose was two-fold: to "protect" aboriginal people by keeping them out of the way of white immigrants, and to prepare them for assimilation by the "superior" culture.

In Upper Canada, laws were passed forbidding settlers from encroaching or trespassing on reserve lands, and the sale of liquor to aboriginal people was banned.

In 1857, an "Act to encourage the gradual civilization of the Indians" was passed, heralding the government's "enfranchisement" policy. "Indians" judged to be educated, debt-free and of good moral character could be awarded 20 hectares of land on the reserve and the "rights accompanying it." The policy was designed to deplete further the land base of the reserves and encourage the concept of

private property and individual rights. But it failed miserably: only a handful of applicants came forward between 1857 and 1876. Just one was accepted.

This legislation was legitimate, says Brad Morse, because the Crown was directing the law against the colonists, and offering enfranchisement rather than imposing it.

As late as 1860, the First Nations still enjoyed de facto control over their population, land and money, as recognized by the treaties. Provincial and local governments were prohibited from interfering in their affairs (though they often abused the treaties by creating reserves). But the First Nations' world was about to turn upside down.

In keeping with their Victorian conviction that European culture was inherently superior, law makers had expected the aboriginal peoples to abandon their "decadent" customs, languages and religion and gratefully join the dominant society. When it didn't happen, they turned to the policy of "aggressive civilization."

With the passage of the first version of the Indian Act in 1869, the First Nations were suddenly considered subject to unilateral parliamentary control. No consultation or negotiation occurred, nor was it deemed necessary.

"Very clearly, it was legislation designed to assimilate Indian people," says Brad Morse. "In that sense, it's contrary to the right of aboriginal people to self-determination as recognized in American and international law."

## Schools of hate

The Act was an assimilationist toolchest, with the reserve as workshop, the department of Indian Affairs as mechanic. And the residential schools, which Protestant and Catholic missionaries started founding in the 1850s, were crucial to the department's strategy of "preparing the Indian for a higher civilization."

Young children were taken from their families, to return eight or 10 years later or not at all. School officials forbade them from speaking their own language or practising the traditional religion of their parents. They were taught to regard "Indians" as pagans and to revere anything European. While sexual and physical abuse at the schools has been getting some publicity recently, the emotional abuse was more pervasive.

"Residential schools taught self-hate. That is child abuse. Too many of our people got the message and passed it on," Grand Chief Dave Courchene told the Manitoba inquiry into the justice system.

Former students often discouraged their children from speaking their own language, convinced by the missionaries it was "dirty." Today, only the Cree, Ojibway and Inuktitut languages are considered likely to survive. The other 50 aboriginal languages spoken in Canada are in danger of dying out.

The schools reinforced the European doctrine that women were mere appendages of their husbands, and tore at the heart of aboriginal communities, where women traditionally play a prominent role.

In Iroquois society, for example, descent was traced through the maternal line, and senior matrons elected and deposed council elders. An Iroquois woman divorced her husband by throwing his possessions out of the house. The children stayed with her.

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