

Improving Primary and Secondary Education on Reserves in Canada¹

The dismal data

Education is the passport to full participation in Canadian society. Far too many Aboriginal people in Canada are not obtaining this passport.

According to a recent study by the Caledon Institute of Social Policy [Mendelson 2006], as of the 2001 Census 16 percent of Canadians aged 20 to 24 had not completed high school; but among Aboriginal young adults in that age group, 43 percent did not have a high school certificate. Sixteen percent is unacceptable for Canada: 43 percent is nothing short of disaster. These Aboriginal young adults, who were aged 20 to 24 in 2001, went to high school in the 1990s and primary school in the 1980s, so these dismal statistics are not a consequence of discredited education policies from the distant past. The school system is failing Aboriginal people in Canada right now.

An astonishing 58 percent of young adults aged 20 to 24 living on reserves did not complete high school in 2001. This paper discusses policy proposals for improving primary and secondary education on reserves, but this is not to ignore the reality that the education system is also failing Aboriginal people who live outside of reserves. In

cities, more than 35 percent of Aboriginal young adults also failed to complete high school – still more than double the rate of the total population. While Aboriginal educational outcomes in the cities of eastern and central Canada are not too bad, the same cannot be said for the Prairies. In Winnipeg and Regina at least 48 and 44 percent, respectively, of the Aboriginal population did not have a high school certificate.

What are the reasons for this failure?

Until recently, schools for Aboriginal students were little more than tools for assimilation, whose primary objective was to erase Aboriginal cultures and languages, and certainly not to set high expectations for academic achievement. The Royal Commission on Aboriginal Peoples' research showed that "a single pattern dominated the education of Aboriginal people, whatever their territorial and cultural origins. Formal education was, without apology, assimilationist. The primary purpose of formal education was to indoctrinate Aboriginal people into a Christian, European world view, thereby 'civilizing' them" [Report of the Royal Commission on Aboriginal Peoples 1996: 2-3].

The worst abuse occurred in the residential schools, but an assimilationist curriculum still dominated schools well into the 1960s and 1970s. Aboriginal communities resisted these schools, fighting to keep their children out of their grasp. The resulting deep mistrust of schools will not be entirely eliminated until the Aboriginal community can be confident that its students' cultural and linguistic heritage is being respected and deepened in its schools.

For many Aboriginal families this is only the second, third or fourth generation to be offered anything more than the most rudimentary education in classrooms. Many elders living today had no classroom education at all. Of course, an effective education system was in place for thousands of years, long before colonization. Complex and detailed knowledge was successfully passed down from generation to generation, without which survival would not have been possible, but the mechanisms of education were experiential and oral rather than classroom based. The cultural change to formal classroom teaching is immense and requires huge adaptation in the nature of family life and daily living.

Financing is another major issue. Many non-Aboriginal Canadians have a mistaken perception of huge amounts of money being spent on reserves, and assume that schools on reserves are generously funded compared to non-reserve based schools. This is incorrect. The federal government undertakes to fund schools for reserve residents at the same level as comparable provincial schools, but as the Auditor General has pointed out in her 2000 report and again in her 2004 follow-up report "the Department does not know whether funding to First Nations is sufficient to meet the education standards it has set..." [Auditor General 2004: 1].

Finding out whether education funding is actually at a comparable level to provincial funding is not a simple task. Two detailed, independent

regional studies were obtained and have been reviewed for the analysis presented here – from BC [Postl 2005] and Saskatchewan [QED 2004]. These reports are not easily summarized. Generally, the BC study concluded that BC First Nations education was not funded to provincial levels. The Saskatchewan study found that provincial funding for most, but not all, First Nations schools was higher than provincial funding; however the Saskatchewan study did not include high cost (special needs) students who have been one of the main sources of controversy. Neither study included the vital educational and administrative support structure which is provided to provincial schools through school boards and departments of education. So the study results remain at best ambiguous.

In practice, Ottawa's education funding has been kept to a ceiling of 2 percent a year since 1996. An analysis of the enrolment increases on reserve shows that education funding would have had to increase by 3 percent a year from 1996 to 2003 to remain stable in terms of real (inflation-adjusted) expenditure per student. Moreover, since 1996, some provinces (for example, Ontario) have implemented significantly higher than inflation level increases in provincial funding. Therefore, even if federal education funding started out on par with that of the provinces in 1996, when the 2 percent escalation ceiling was imposed, it does not remain on par today, and has fallen in real terms.

In any case, the funding criterion – a comparison to provincial funding – used by Ottawa (and thus assessed by the Auditor) may not be an acceptable criterion. Both the BC and Saskatchewan studies argued that provincial funding formulae could not readily be applied to the circumstances of First Nations schools and made comparisons not only difficult, but possibly inappropriate. A better criterion, although admittedly harder to measure, is whether funding is sufficient to permit an equivalent quality of education for students on reserve. Overall the preponderance of evidence is that education funding for Aboriginal students

on reserve is not currently adequate to meet government-stated standards of equivalent funding to the province, let alone adequate to provide for an equivalent quality of education.

The importance of high school graduation

Despite these and many other challenges, educational results for Aboriginal students are not entirely negative. Aboriginal students successfully completed community college at almost the same rate as the total population. And among those few Aboriginal students who did complete high school, fully 75 percent went on to graduate from a trade school, community college or university – about the same proportion as high school graduates from the total population. This is true regardless of gender or place of residence: Aboriginal high school graduates – whether male, or female, from reserves or from cities – have about the same probability of completing some form of postsecondary education as non-Aboriginal high school students.

Yet, even among high school graduates, university degrees were rare for Aboriginal students – only 15 percent compared to 35 percent of all high school graduates in 2001. Canada needs many more Aboriginal students attaining university degrees. Every Aboriginal student who manages to get into a postsecondary institution is a precious human resource for their community and for Canada as a whole, so more can and should be done to help Aboriginal students succeed in colleges and universities. However, it is not likely that the success rate of Aboriginal students able to get into postsecondary institutions will increase much above that of the general population. Therefore meaningful increases in Aboriginal postsecondary graduates, including universities, will only be possible when the number of Aboriginal students who complete high school and have the option to go on to postsecondary education increases.

Who is responsible for on reserve education today?

In 2002-03 there were approximately 120,000 students living on reserve enrolled in kindergarten, primary or secondary school. About 60 percent of these students attended more than 500 First Nations-managed schools on reserve. Most of the others went to public schools off reserve, but with their tuition paid indirectly through the Band or directly by Ottawa. A small number of students (about 3 percent) attended federally-run or private schools. Among elementary school students, 72 percent went to a school situated on reserve, falling to 50 percent for high school students [Indian and Northern Affairs Canada 2004].

While all but a few schools on reserve are now *de facto* managed by First Nations, the legal status of most First Nation schools is not clear. The extraordinarily paternalistic sections 114 through 122 of the *Indian Act* remain in place; they do not permit a First Nation to be responsible for its own schools. Rather, the *Indian Act* gives the government of Canada the right only to “enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with (a) the government of a province; (b) the Commissioner of Yukon; (c) the Commissioner of the Northwest Territories; (c.1) the Commissioner of Nunavut; (d) a public or separate school board; and (e) a religious or charitable organization.”

Despite the absence of a legal framework, since about the mid-1970s the federal government has been devolving management of education for students resident on reserve to First Nations. However the federal government has seen the devolution process as almost solely financial: hand over money to First Nations for the operation of schools, but do little or nothing to ensure that an adequate system of education is in place.

According to Ottawa, First Nations are supposed to get support for their schools from the provinces (and territories) and local school boards. But most provinces do not accept responsibility for education on reserve, provide little or no services, and are ill-equipped to play this role. Nor do First Nations accept that the provinces have this role. There is no constitutional or legal basis for such a provincial role. In fact, the reality is just the reverse: the assignment of educational responsibilities on reserve to provinces appears contrary to Ottawa's Constitutional obligation (which gives the federal government responsibility for "Indians, and Lands reserved for the Indians") and to Ottawa's obligations under many of the Treaties.² In any case, whatever the reason, the reality is that local school boards and provincial departments of education do not and will not fulfill the role of supervisor and 'education department' for reserves.

The practical result has been a stand-alone village school model of education – a model that was outdated in the rest of Canada before the Second World War. Missing from First Nations education is curriculum development; teacher training; development of principals, supervisors and other education leaders; testing and quality assurance; legal accountability to students and their families; and, in general, the whole support structure that makes a modern school work.

No one really knows what the respective educational roles and responsibilities are supposed to be for First Nations, the federal government, provinces and local school boards. In some provinces, *ad hoc* arrangements have evolved to varying degrees of satisfaction in an effort to fill this vacuum, usually through regional First Nations organizations and regional INAC officials. Many have been successful and creative – to pick one example, the BC First Nations Education Steering Committee, discussed further below – while others have been less successful. But all have evolved without a basis in law, without a clear

mandate and often without reliable sources of financing.

The need to clarify roles and responsibilities in education was a core recommendation in the Auditor General's reviews of First Nations education [2000, 2004]. This recommendation was reiterated by the House of Commons Public Accounts committee [2005]. But responding to the Auditor's and the Public Accounts Committee recommendations is, as with the question of funding levels, not easy.

A First Nations Education Act

To clarify roles and responsibilities, it will be necessary to provide a new legal basis for federal support of First Nations education. Ottawa should consider a *First Nations Education Act* that will set out its fiduciary responsibilities and recognize the right of First Nations to run their own school system. The *First Nations Education Act* would enable the federal government to enter into agreements with First Nations, and set out a modern regulatory framework for both Ottawa and First Nations, including the statutory basis for educational funding (e.g., sufficient to provide a comparable quality of education at comparable levels of taxation), responsibilities of governments and First Nations, and other critical issues. At the same time, provinces and territories would be asked to pass parallel enabling legislation that would recognize and enable the agreed upon roles and responsibilities.

Recognition under the proposed *First Nations Education Act* should mandate schools on reserves to come under the authority of a consolidated First Nations school board, appropriate to that reserve and the region. Consolidated school boards, combining several First Nations schools, are necessary so that the boards would be large enough to provide supervision and

support roles for their schools, to raise academic expectations, to develop curriculum and to ensure quality education for all reserve schools. In other words, consolidated First Nations school boards are a vital part of developing a First Nations education *system* to replace the village school model. These school boards would everywhere be First Nations-controlled organizations whose sole purpose is the education of their children. First Nations school boards would be distinct from the political structure whose task it is to govern reserves. However, the precise form of these school boards would differ from region to region, reflecting First Nations particular evolution and situation in each region.

Establishing consolidated school boards will take time and effort over several years. The process will need to be undertaken one step at a time as various aggregations of reserves organize their boards. The creation of consolidated school boards in rural Canada was often contentious; no doubt the creation of consolidated First Nations boards will also be challenging and not necessarily universally welcomed. Nevertheless, the boards must be built on the voluntary effort of First Nations. Success cannot be imposed from above. Coercive measures would be viewed as continuing the process of forced cultural assimilation and would be fiercely resisted. Imposed solutions would likely make the problem worse, not better, by further alienating the Aboriginal community from the school system. Governments can provide both financial incentives and administrative encouragement; they cannot accomplish this change unilaterally.

At the same time, larger regional First Nations organizations need to be created (or in some instances, recognized) to provide the equivalent of the support role which is played by provincial departments of education in the general school system. To minimize cost and overlap of responsibilities, the precise 'fit' with provincial education departments will need to be negotiated

by First Nations. Each of the regional organizations would need to be adapted to the specific circumstances in that region.

Progress already underway

Accomplishing all this will be a big and difficult job, but there have already been some hopeful beginnings. The modern treaties, such as the Nisga'a Treaty, provide for First Nations administration of education and replace the education sections of the *Indian Act*. The James Bay Cree school board provides education services for much of northern Quebec. In Nova Scotia, ten Mi'kmaq First Nations, Ottawa and the provincial government established Mi'kmaw Kina'matnewey to provide various educational services to the participating First Nations [McCarthy 2001]. In 1999 the federal government passed the *Mi'kmaq Education Act*, repealing sections 114 through 122 of the *Indian Act* for participating Mi'kmaq First Nations, allowing Ottawa to enter into an agreement with these First Nations to run their own schools, in law as well as in fact. The provincial government also passed parallel enabling legislation. There have been subsequent criticisms of the *Mi'kmaq Education Act* regarding the level of preparation, funding and other issues, but at least the precedent of removal from the *Indian Act* was established.

An especially promising development was the July 2006 agreement by Ottawa, the BC government and BC First Nations Education Steering Committee to establish the BC First Nations Education Authority. The BC First Nations Education Authority will function in many ways as a school board, providing teacher and school certification and setting standards for curriculum and examinations for participating First Nations. The BC First Nations Education Authority is a good example of the evolution of structures for First Nations that may not look exactly like existing non-First Nations school

boards, but which are adapted to the actual needs of First Nations in a region.

Under the July 2006 agreement, Ottawa has undertaken to bring forward legislation that will enable it to enter into education agreements and repeal section 114 through 122 of the *Indian Act* for participating First Nations, as well as setting out the roles and responsibilities of the First Nations Education Authority. The government of BC has undertaken to pass parallel provincial enabling legislation. If a *First Nations Education Act* were passed, it would provide the requisite legal basis for the BC First Nations Education Authority and make a special one-off law unnecessary, while establishing a framework for more groups of First Nations to come under the new *Act*. In many ways the BC agreement may provide a model for the whole country and the *First Nations Education Act*.

Of course, a *First Nations Education Act* in itself will not improve on-reserve education. What a new law can do is provide a foundation for a reformed system of governance, financing, accountability and assignment of roles and responsibilities for on-reserve schools. A new *Act* can provide a focal point around which the components of a First Nations education system can be created. There are many difficult policy issues that will need to be sorted out in the process of creating these new structures. For example, what will be the relationship of consolidated First Nations boards to the existing school districts within which many First Nations boards will be situated? Will First Nations expect to build new on-reserve schools, especially for higher grades, and remove their students from existing placements in off-reserve schools? Would the creation of additional on-reserve schools force the closure of some rural schools, which might be left with insufficient students to operate economically? These and many other issues will need to be addressed as part of the process of implementing new First Nations school boards.

Conclusion

Given the obvious urgency of the education challenge, as discussed in the first part of this paper, it may be disappointing to see a recommendation about governance which will obviously take several years to implement. But there is no panacea that will improve education on reserves over night. ‘Big-bang’ solutions such as handing reserve schools over to the provinces will not work, and instead will result in decades of chaos, making the situation much worse. First, provincial control of education on reserves would be militantly opposed by First Nations, and would reverse all the progress made in overcoming the legacy of assimilationist policy. Second, the provinces would not accept the job, and even if some did, they would spend the next ten years arguing with Ottawa over money before doing anything. Third, such delegation is probably illegal and unconstitutional. Finally, what makes anyone think the provinces would do a better job anyway?

Tackling education on reserves is a case of the tortoise and the hare. This may be an especially appropriate bicultural metaphor because, I am told, in the Anishnaabe tradition the tortoise represents the teacher and the concept of careful, systematic teaching, reflecting the aptitudes and abilities of each learner. What is needed now is careful, rigorous, steady development of an improved school system with a clear fixed resolve to reach our goals over the next decade. Ideally, the policy path chosen should reflect a consensus of all players – all the political parties, First Nations, provinces and educators – so we can be confident it will be maintained over time. A *First Nations Education Act* may provide the basis for such a consensus. Sweeping panaceas that aim to resolve all problems immediately will not work, but this is not to suggest anything other than extreme urgency. The tortoise has to start walking right away.

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Endnotes

1. In writing this paper, I benefited from the comments of many readers of earlier drafts. I gratefully acknowledge this assistance and insight, and, in some cases, commentators will find their words reflected in the paper. I remain fully and solely responsible for all of the content.

2. Section 91(24) of the Constitution Act states that: "the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated... Indians, and Lands reserved for the Indians." Despite this seemingly clear language, there is a convoluted legal argument circulating in Ottawa since about the mid-1980s or earlier that absolves the federal government of this responsibility, on the purported grounds that the federal Constitutional responsibility for 'Indians, and Lands reserved for the Indians' is merely residual. According to this argument, the provinces are required to provide services without regard to race, so if the federal government stopped funding education for students resident on reserve, the provinces would have to do so. Therefore, it is claimed, the federal government is under no obligation to provide such support to First Nations education and does so only on a discretionary basis. This argument has never been tested in the courts. Nevertheless, remains influential in Ottawa. To this non-expert observer, it seems highly unlikely that this reasoning would persuade the courts to allow Ottawa to evade a responsibility it has assumed for about a century and a half, and which is a clearly stated area of federal responsibility in the Constitution (not to speak of Treaties).

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