

BACKGROUNDER

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Canada's Indigenous Policy

**THE FAILING BUFFALO JUMP POLICY?
OR A NEW IDEA THAT COULD WORK RIGHT NOW**

Sheilla Jones

Introduction

“Buffalo Jump 2.0 has all the same baggage of the old policy...”

The Indigenous policy, being advanced by the Canadian government in a suite of legislation in the fall of 2018, is supposed to mark a new turn in the relationship between the Crown and Indigenous people. It appears, however, that the new policy is merely a tweaking of the failed “Buffalo Jump” policy that has been in place since 1985. Buffalo Jump 2.0 has all the same baggage of the old policy and adds significantly more spending on Indigenous issues, with the expectation that somehow, someday, it will eventually improve the lives of Indigenous people.

The Canadian prime minister and cabinet have the authority to alter Indigenous policy right now to achieve immediate, measurable and positive changes in the lives of Indigenous people by empowering them to make choices for themselves. Arguably, the simplest mechanism for empowerment—modernized treaty annuity payments to all Status First Nations people—will directly impact national issues such as the Missing and Murdered Indigenous Women and Girls Inquiry, the Truth and Reconciliation Commission’s Calls to Action, and the Canadian Human Rights Tribunal ruling on discriminatory funding for FN children’s services. It would have the profound effect of immediately lifting almost all FN families out of poverty and dependency. But most importantly, it would empower ordinary FN people—for the first time since settlement—to finally be able to speak for themselves and to decide how they want to live and the governance structures that best serve themselves, their families and their communities.

Historical Overview

“**...with the recognition of Aboriginal rights in the Canadian Constitution in 1982, it was no longer possible for the federal government to unilaterally nullify Aboriginal rights...**”

For more than 30 years, Canada's Indigenous policy has been driven by the “Buffalo Jump” policy. The day after the Conservative government of Prime Minister Brian Mulroney was sworn into office in the fall of 1984,¹ the PM ordered his deputy PM Eric Nielsen to begin a hush-hush task force review of “Indian and native programs”.² By 1983-84, the total of all federal spending on native programs was an estimated \$2.4B,³ a significant jump from the roughly \$131.7M⁴ from 1966-67 when Indian Affairs became a stand-alone federal department. The task force considered that “neither the deplorable social and economic circumstances for native people, nor the rapid escalation of costs associated with native programs, are acceptable.”⁵ The secretive process excluded First Nations people, just as in 1969 when the Liberal government of Pierre Trudeau introduced the now-infamous White Paper,⁶ with its surprise plan to abolish the *Indian Act* and the Indian Affairs department, devolve responsibilities for services on reserves to band governments and the provinces, convert reserves to private property, and to terminate treaties and Indian status.

The Nielsen task force produced a secret, 61-page memo of the review, mockingly labelled by bureaucrats as “The Buffalo Jump of the 1980s”,⁷ which reiterated many of the same goals as the Trudeau White Paper. However, with the recognition of Aboriginal rights in the Canadian Constitution in 1982, it was no longer possible for the federal government to unilaterally nullify Aboriginal rights; band governments needed to be persuaded to surrender them voluntarily. The means of persuasion under the “Buffalo Jump” policy was financial. The Indian Affairs department would use its considerable power over band funding and programs to squeeze First Nations governments financially. Over time, the suffering of their people would drive band governments into taking the jump and accepting ethnic, municipal-style “self-government”, while signing away their peoples’ rights—in exchange for five-year block funding and freedom from the *Indian Act*. The Buffalo Jump memo was leaked to the media, causing a firestorm of criticism. The Mulroney government backed off from eliminating the Indian Affairs department and the *Indian Act*, but quietly proceeded with the rest of the termination policy.

The results of the Buffalo Jump policy were well-articulated in 2012 by former BC regional chief for the Assembly of First Nations, Jody Wilson-Raybould:

“Far too many of our people are poor, dispossessed of their lands, uneducated, dependent upon state services and generally unhealthy.... Sadly, for a lot of our citizens there is still a sense of hopelessness. This sense of hopelessness

can be overwhelming at times and is evidence of a far greater pathology that many of our citizens need to overcome—namely apathy, alienation, dependency and powerlessness....”⁸

The damage to FN communities did, eventually, drive some band governments to engage in negotiating “self-government” as set out under the Buffalo Jump policy, financed by loans from Indigenous Affairs. By 2013, however, many found themselves trapped in a termination process they could not escape because of their debt to IA, leading to calls from some Indigenous activists for all FN to suspend negotiations and for the federal government to suspend all First Nations legislation in Parliament.⁹ Those calls were ignored.

Current Issues

“Buffalo Jump 2.0 is essentially the same failed approach to Indigenous issues...”

The current Liberal government is proposing a new relationship between the Crown and Canada's Indigenous people. It is, however, looking very much like a continuation of the Buffalo Jump policy, with a few modifications. Buffalo Jump 2.0 has the same objectives as the Mulroney iteration—to persuade First Nations band governments to accept “self-government” in the form of municipal status, but this time, the pot has been sweetened with the promise of ten years of block funding instead of just five. The requirement to sign away Aboriginal rights to escape the *Indian Act* is, at the time of this writing, still part of the plan.

The speed at which the policy changes and legislative changes are being made is causing alarm among FN leaders.¹⁰ Some Indigenous leaders have boycotted the process,¹¹ and other FN leaders have condemned it as a clear attempt “to suppress Indigenous self-determination within Canadian Confederation.”¹²

Indigenous people and their communities face many of the same troubling challenges as they did thirty years ago. While some issues have improved somewhat (e.g., high school graduation rates,¹³ longevity¹⁴), others have worsened considerably (e.g., number of children in care,¹⁵ rates of youth incarceration¹⁶). This has been the Buffalo Jump policy in action. Buffalo Jump 2.0 is essentially the same failed approach to Indigenous issues, but with billions of dollars of new federal spending¹⁷ and less accountability.¹⁸

What is missing from the discussion are the voices of ordinary First Nations people, the very people who have to live with whatever terms are agreed to at the negotiating tables under changes to federal legislation. What kind of governance structures and policies do ordinary FN people want? There is, at present, no way to find out. The national chief of the Assembly of First Nations is not elected by the people to speak for them. None of the bureaucrats deciding programs and policy for the birth-to-death services for Canada's Indigenous people have been elected to represent their interests, either. Ordinary FN people have no political voice at the federal level; too many suffer from the hopelessness, apathy and despair that is the predictable result of systemic powerlessness.

The means of individual empowerment already exists through the payment of annuities to every man, woman and child in bands that signed onto the historic treaties signed between First Nations and the Crown. It has a precedent. The Parliament of Canada approved the increase in annuities based on increased value of treaty lands in 1878-79, and the land-value basis of treaty payments was affirmed by the Supreme Court of Canada in 1895. However, because ordinary Indigenous people have been systemically silenced, the sole individual

right in the treaties—the annuity that was supposed to be a means of economic independence for individuals and families—remains at \$4.00 or \$5.00 per year, per person. The Crown failed to live up to the intent of the annuity as a means of sharing the prosperity of the land as the country grew.

What would happen if the annuity were to be modernized to better reflect the link to land values? The Treaty Annuity Working Group (TAWG), following a national workshop on modernizing annuities in 2003,¹⁹ reported on the implications and consequences of a modernized treaty annuity, if it were to be increased to \$5,000 per person, extended to all Status FN people (Registered Indians), and payable on a monthly basis directly to individuals and/or their guardians outside the control of Indigenous Affairs and band governments. Former members of TAWG met again informally in the summer of 2018²⁰ to discuss the implications in the context of Indigenous issues today. They concluded, as in 2003, that the impact of such a move would be immediate, measurable and profound.

Poverty, dependency and powerlessness

The largest immediate impact for Indigenous individuals, families and communities would be the escape of almost all First Nations people living on reserves from welfare dependency. While a payment of \$420 per month (\$5,000 divided by 12) may not seem like much money, it is similar to amounts paid in pilot programs for a guaranteed annual income in California and Illinois; \$250 CDN a month in Scotland and \$227 CDN a month in Holland.²¹

A guaranteed annual income is intended to replace welfare programs. While a modernized annuity would do that as well, that is not its purpose. The annuity was historically intended to provide livelihood support for families by linking its value to the land ceded in treaties and is a mechanism for sharing the prosperity of the country with First Nations people.

Empowerment of individuals, families and communities

Families in First Nations communities are often entirely dependent on the band government for social assistance, housing, employment, etc. A modernized annuity provides a degree of economic independence for individuals and families that acts to rebalance the power dynamic between the collective and the individual.

With the stable support of a modernized annuity, families will have:

- Resources to choose for themselves how and where to live that are in the best interests of their families and their communities.
- Resources to “vote with their feet” by moving to a community with better leadership and opportunities, as their ancestors did in pre-settlement times.
- Sufficient economic independence to be able to challenge the dominance of band governments and demand accountability from them.

- The ability of First Nations people to form political organizations at the community and national level that are legitimate voices for the people and are accountable to them rather than to Indigenous Affairs bureaucrats.
- Families become a positive economic asset in FN communities, and bring that with them if they choose to move to a different community.
- Financial equity that helps make Indigenous families into attractive clients for mortgages, business start-up loans, etc.
- Building stronger families through eliminating social assistance dependency and its accompanying destructive effects in First Nations communities. (The proposed monthly payment is considerably more than what is currently paid for on-reserve welfare.) In urban centres, especially on the Prairies, nearly half of Indigenous children would be promptly lifted out of poverty.²²

National implications

A modernized treaty annuity would have immediate implications for a wide range of economic and social issues currently facing Canadian society:

- Addressing the mandate of the Missing and Murdered Indigenous Women (MMIW) inquiry “to report on the systemic causes of all forms of violence against Indigenous women and girls”,²³ and to see them “restored to their rightful power and place”.²⁴ Because their annuity payments go with them, wherever they go, women and girls are empowered to escape abusive and exploitative relationships and have the resources to do so.²⁵
- Responding to two *Calls to Action from the Truth and Reconciliation Report*.²⁶
- Addressing the issue of inequitable support for First Nations children as identified by the Canadian Human Rights Tribunal in 2016²⁷ by providing the necessary economic support through annuities to allow more children to remain in the care of their families. A family of five, for instance, would have an annual annuity income of about \$25,000 to support the needs and wishes of the family, outside the direct control of the band government.
- Providing a tangible link between the benefits of resource development and the well-being and prosperity of First Nations people and their communities.
- Addressing the criticism of the federal government by two-thirds of Canadians who feel that the amount of attention and funding for Canada’s Indigenous peoples has mostly been ineffective,²⁸ by acting on a simple but effective policy change that can produce immediate and measurable positive results for Indigenous people.
- Taking action on a long-standing political embarrassment for Canada over international accusations of persistent violations of the rights of Indigenous people²⁹ by honouring treaty rights, respectfully sharing the land and resources, and empowering people to speak for themselves and to decide for themselves how they want to live.

From the time of Prime Minister John A. Macdonald, the federal government has treated First Nations people as wards of the state deemed incapable of making informed choices for themselves. Policy has been imposed, from the top down. It is possible, albeit highly unlikely, that ordinary First Nations people would support the Buffalo Jump 2.0 policy, if given the opportunity to make informed political choices for themselves. The fact that ordinary FN people in Canada continue to be politically voiceless and powerless should once again raise calls for the suspension of “self-government” negotiations and a pause in federal legislation affecting Indigenous rights until the people can speak for themselves. More of the same imposed colonial policy is not the answer.

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Sheilla got a lively introduction to Indigenous politics while writing Canada's first book on Métis politics, *Rotten to the Core: The politics of the Manitoba Métis Federation* (101060, an imprint of J. Gordon Shillingford Publishing, Winnipeg, 1995). In 1998-2000, Sheilla served as researcher for Jean Allard's *Big Bear's Treaty: The Road to Freedom*, published in 2002 in the policy journal *Inroads*.

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With a keen interest in quantum physics and cosmology, Sheilla pursued a graduate degree in theoretical physics (University of Alberta, 2004). She is the author of *The Quantum Ten: A story of passion, tragedy, ambition and science* (Thomas Allen Publishers, Toronto; Oxford University Press, New York, 2008) and co-author of *Bankrupting Physics: How today's top scientists are gambling away their credibility* (Palgrave Macmillan, New York, 2013).



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