

## Aboriginal Justice Issues and the 2008 Federal Election

*“Aboriginal people cannot flourish if they are treated as wards,  
incapable of controlling their own destiny.”*

*Report of the Royal Commission on Aboriginal Peoples, 1996*

Indigenous peoples derive strength from their long history of living on the land in sustainable communities. Their societies were built on the values of freedom, equality, and the worth and dignity of the individual. When European settlers arrived, Indigenous peoples generously offered their hospitality and teachings in kindness and respect. Later, the core values of freedom and equality formed the foundation of the peace and friendship treaties Indigenous peoples negotiated and finalized with Europeans.

Canada is among the world’s wealthiest countries, yet Indigenous people in Canada often live with developing world realities. According to the most recent statistics, Indigenous peoples in Canada continue to display all the symptoms of an oppressed and economically marginalized group. They are among the most impoverished. (The median income for Inuit adults was much lower than that for all Canadians: \$13,699 compared with \$22,120.) Their unemployment rates are double the rate of the non-Aboriginal population. They are among the unhealthiest. (Tuberculosis rates for First Nations populations on-reserve are 8–10 times higher than those for the Canadian population. The TB rate for Inuit is 14 times higher.) Their rates of incarceration are higher than those of other groups. Their education rates are low. Many of their homes are in need of repair. Many lack easy access to clean water. First Nations suicide rates, especially among youth, are among the world’s highest, five to six times higher than non-Aboriginal youth. There is a life expectancy gap of 15 years between Inuit and other Canadians (Indian and Northern Affairs Canada 2002). The average Canadian gets services from the federal, provincial, and municipal governments at an amount that is almost two-and-a-half times greater than that received by First Nations citizens. Canada itself, at the United Nations, described the socio-economic reality of Indigenous peoples as its most pressing human rights issue.

For many years now the federal government has done little to inspire confidence among Indigenous peoples in Canada that the federal government is serious about addressing the many social, economic and cultural ills that continue to challenge so many First Nation, Inuit, and Métis communities and individuals. Canada itself, at the United Nations, described the socio-economic reality of Indigenous peoples as its most pressing human rights issue.

Some Indigenous peoples and their supporters would argue that instead of working to resolve these pressing issues, the government of Canada’s response has not successfully moved beyond the 1996 Royal Commission on Aboriginal Peoples’ conclusion that policy directions continue to have the effect of “absorb[ing] Aboriginal people into Canadian society; thus eliminating them as distinct peoples...This is assimilation.” (RCAP report available on the Indian and Northern Affairs Canada site at [www.ainc-inac.gc.ca/ch/rcap/index\\_e.html](http://www.ainc-inac.gc.ca/ch/rcap/index_e.html), quotations used with permission).

Notwithstanding recent positive developments—including the government’s apology to former students of residential schools, and amendments to the *Canadian Human Rights Act* that removed exemptions preventing First Nations and individuals from filing complaints for matters relating to the *Indian Act*—Canada’s fundamental policies remain essentially unchanged from those described in the

1996 RCAP Report as having “undermined—and almost erased—Aboriginal cultures and identities.” The effect of Canada’s various policies is the constant erosion of Indigenous rights and autonomy. This is compounded by an inability on the government’s part to recognize rights that have been upheld by the courts. For example, while Canada’s highest court has recognized that the “Crown has a legal duty to consult and possible accommodate” (Supreme Court of Canada. *Haida and Taku River*, 2004) Indigenous peoples, the recent jailing of First Nations people in Ontario for peacefully opposing resource extraction on their traditional lands because they were not properly consulted is just one example of how government policies have not evolved to reflect legal developments and as a result continue to fail Indigenous peoples.

*Ask your candidate:* How will your party end assimilation policies, that, as the 1996 Royal Commission on Aboriginal Peoples put it, “have done great damage, leaving a legacy of brokenness affecting Aboriginal individuals, families and communities”? How will you prepare to work collaboratively with Indigenous peoples in Canada to ensure that their rights are protected and enforced?

## **Royal Commission on Aboriginal Peoples**

The 1996 *Report of the Royal Commission on Aboriginal Peoples* argued that improving the lives of Indigenous people in Canada requires restoring the political and economic power of Indigenous nations so that they are able to structure their own solutions; otherwise, the cycle of dependency and despair will never end.

The report argued that since the social and economic marginalization that plagues First Nation, Inuit, and Métis communities is due to the loss of their traditional territories, governments must recognize and implement Aboriginal title and rights and provide Indigenous peoples with control over lands and natural resources that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.

Canada must work with communities and organizations to empower Indigenous peoples, honour its treaties with First Nations, and enforce the constitutionally recognized rights that Indigenous peoples have to their lands and resources. By respecting Indigenous rights and by keeping its promise to share this country’s vast resource wealth, Canada will make it possible for Indigenous peoples to exercise their autonomy.

*Ask your candidate:* How does your party propose to provide Indigenous peoples with increased access to lands and resources, and to foster Indigenous economic self-reliance and political autonomy? Is your party prepared to conclude treaties with Indigenous peoples that are based on the recognition and enforcement of Indigenous title and rights?

## Canada's Extinguishment Policy

The Comprehensive Land Claims Policy applies to land rights negotiations involving traditional territories not already covered by treaties. It requires that Indigenous peoples extinguish their Aboriginal title to the land and relinquish the majority of their rights as a condition of settlement and in exchange for a specific set of "treaty rights." This policy has been repeatedly and harshly criticized both nationally and internationally as violating Indigenous peoples' human rights. For example, in 2005 the United Human Rights Committee asked Canada to "re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights."

Rather than respond seriously to this fundamental human rights issue, Canada has chosen instead to embark on an elaborate and embarrassing exercise in semantics. For example, in its report to the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) in 2006, Canada said it no longer requires the extinguishment of Indigenous rights in the negotiation and settlement of land treaties with Indigenous peoples. Canada reported that the "cede, release and surrender" approach, which requires the giving up all undefined Aboriginal rights in exchange for a negotiated set of defined Aboriginal rights in a treaty, had not been required in treaty negotiations since 1998.

Canada explained that it had replaced the extinguishment approach with "alternative techniques" that achieve certainty while maintaining Indigenous rights. These include a "modified rights model," in which Aboriginal rights are modified into those defined in the treaty rather than being released; and a "non-assertion model," under which, although Aboriginal rights are not released, the Aboriginal group must agree to assert and exercise only those rights defined in the treaty.

Not surprisingly, the United Nations did not accept Canada's argument that its "non-assertion policy," which forces Aboriginal peoples to agree to set aside and never assert their rights, is not tantamount to extinguishment. In its concluding observations, the Human Rights Committee noted with interest Canada's alternative policies, but remained concerned that these alternatives "may in practice amount to extinguishment of aboriginal rights."

*Ask your candidate:* How will your party address the human rights violations inherent in Canada's Comprehensive Land Claims Policy? Is your party prepared to revise this policy so that it recognizes and enforces Aboriginal Title and rights?

## UN Declaration on the Rights of Indigenous Peoples

On September 13, 2007, the UN General Assembly adopted the *Declaration on the Rights of Indigenous Peoples*, with 144 countries voting in favour, 11 abstaining, and 4 voting against, namely, Canada, the United States, Australia, and New Zealand. On April 8, 2008, Canada's House of Commons adopted a motion calling on the government to endorse and fully implement the standards of the *United Nations Declaration on the Rights of Indigenous Peoples*. The government continues to ignore the democratic will of Parliament and refuses to endorse this key international human rights instrument, the first to recognize Indigenous rights as human rights.

The government's reasons for not supporting the UN Declaration have been variously described by legal experts as erroneous, misleading, unsubstantiated, without merit, and simply untrue. As an

example, at the UN vote on the declaration, Canada argued that it was forced to oppose it because it did not balance individual and collective rights and because its adoption would threaten that the rights of non-Indigenous people in Canada. Canada also said that endorsing the declaration would undermine existing domestic treaties, but it has not been able to provide one example to support this.

The harm caused to the advancement of Indigenous peoples' human rights, both domestically and internationally, and to Canada's reputation as a leader in human rights, by this active and vocal opposition to the *UN Declaration on the Rights of Indigenous Peoples* is compounded by an extensive propaganda campaign that fuels discrimination against Indigenous peoples by presenting the protection and promotion of Indigenous peoples' rights as posing a threat to the rights of non-Indigenous peoples.

*Ask your candidate:* Having passed (or supported) the April 8, 2008, House of Commons motion, what are your party's plans for implementing the standards contained in the UN Declaration?

## Housing

In 2007, Miloon Kothari, the UN Special Rapporteur on Housing, conducted an official mission to Canada to learn about and report on how well Canada is meeting its international obligations with regard to the human right to adequate housing. Kothari criticized Canada for the deplorable state of Indigenous housing and said that Canada was not meeting its obligations under international law.

*Ask your candidate:* In response to the UN Special Rapporteur's report, is your party prepared to commit funding and resources to a national Indigenous housing strategy—both on-reserve and off-reserve—that is under the control of First Nations, Inuit, and Métis?

## Residential School Apology Meaningless Without Change in Government Policy

Canada's apology of June 11, 2008, was welcomed by many Indigenous people, especially former students of residential schools. But many others have expressed concern that it is meaningless if it is not accompanied by substantial and genuine changes in Canada's Indigenous policies. As an example, the government's refusal to endorse the *UN Declaration on the Rights of Indigenous Peoples*—which affirms many of the human rights that were violated in residential schools—casts a shadow on the government's call for reconciliation.

*Ask your candidate:* As a follow-up to the federal apology to the former students of the Indian Residential Schools, what are your party's plans for ensuring genuine healing and reconciliation?

## Education

Among Canadians, there is a general lack of awareness of Aboriginal peoples and their place in Canada's history. This makes it easier for the federal government to disguise its motives and to present issues and events such as its opposition to the *UN Declaration on the Rights of Indigenous Peoples* as genuine attempts to improve the lives of Indigenous peoples. The *Report of the Royal Commission on Aboriginal Peoples* stressed the importance of education in dispelling the many misconceptions and stereotypes that fuel hostility against Aboriginal peoples and suggested that it "involve both the sharing of information and a process of interaction, leading in time to a shared sense of advocacy and public support."

The government will not change its policies and practices unless it hears a strong message from all Canadians that the status quo is no longer acceptable. This call for change will not happen without education. Some have suggested that the real reason the royal commission report was shelved was because its five volumes contain information that will help people to understand why there are Kashechewans, Caledonias, and Okas, and what can be done to effect real change. The government has a responsibility to share the report with all Canadians.

*Ask your candidate:* How will your party enhance public awareness and understanding of Indigenous peoples' history, culture, and rights? Will your party dust off the *Report of the Royal Commission on Aboriginal Peoples* and make it accessible to all Canadians?

## The Truth and Reconciliation Commission

The Truth and Reconciliation Commission, a key component of the Indian Residential Schools Settlement Agreement, was officially launched by the federal government in June 2008 with the appointment of Ontario Court of Appeal Justice Harry LaForme as chair. The commission will acknowledge and document the experiences of former students and their families in a culturally appropriate and safe way. It will also promote public education to raise awareness and understanding of the Indian Residential Schools system, and encourage individual and collective reconciliation to enhance the relationship between Indigenous and non-Indigenous people.

The commission's five-year mandate provides the churches with an unprecedented opportunity to continue their valuable work in building right relationships through education and advocacy, which the Royal Commission on Aboriginal Peoples affirmed when it stated "of all non-governmental institutions in Canadian society, religious institutions have perhaps the greatest potential to foster awareness and understanding between Aboriginal and non-Aboriginal people."

The enhanced interest in Indigenous issues generated by the commission's activities and publicity will benefit the churches' Indigenous rights resources, programs, and initiatives. The churches will be able to contribute to the commission's education and relationship-building mandate by providing a nation-to-nation, human-rights based perspective on residential schools, their legacy, and the steps required for meaningful reconciliation. The churches also will be able to contribute by informing their networks about Truth and Reconciliation Commission activities, promoting relevant public events in churches

and the community, sharing information on how churches and communities are engaging in the commission and supporting individuals who are participating in the commission.

In 2007 Canadian churches commemorated the 20th anniversary of the 1987 “A New Covenant: Pastoral Statement on Aboriginal” rights by inviting “all our Christian communities to continue working ecumenically and collaboratively with Aboriginal peoples and Canadian society to build nation-to-nation relationships.” The Truth and Reconciliation Commission provides a historic moment to realize this vision.

*Ask your candidate:* What importance do you place on the Truth and Reconciliation process? What activities are you prepared to initiate in order to engage constituents in this riding in the Truth and Reconciliation process?