

Splitting INAC: Coercive Fiscal Federalism in the Disguise of 'Reconciliation'

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IN LATE AUGUST 2018, the Trudeau government dusted off the 1996 final *Report of the Royal Commission on Aboriginal Peoples* (RCAP) and cracked the spine of Volume Two at the place of one of the more obscure recommendations produced from that five-year effort. Of the 440 recommendations, Trudeau settled on splitting Indigenous and Northern Affairs Canada (INAC) into two separate departments.

Borrowing from a specific RCAP recommendation, but recasting it in the rhetoric of 'reconciliation,' the Trudeau government isolated two long-standing functions of INAC. Despite the close connection between them, the INAC policy function would be administratively severed from INAC programs and services, emerging as Crown-Indigenous Relations and Northern Affairs Canada (CIRNA) in the former, and the Department of Indigenous Services Canada (DISC) in the latter.

The INAC split appears innocuous from this view and its acceptance is facilitated by the oratory floridity of 'nation-to-nation partnership.'

But splitting INAC is more about the unfulfilled neoliberal dreams of the 1990s Liberal government than it is about reconciliation.

That is to say, what the Chrétien Liberals of the 1990s did to the provinces and territories, with the help of his Finance Minister Paul Martin, is now similarly set for First Nations: a reorganization of intergovernmental relations through fiscal federalism.

GOOD NEWS FOR THOSE WHO LOVE BAD NEWS

At first glance, the proposal for splitting INAC into two ministries held some appeal for First Nations' ambitions for self-determination. The initial rationale, according to the newly-minted Minister of CIRNA, Carolyn Bennett, was announced at the *Special Chiefs Assembly of the Assembly of First Nations* in December 2017: "Canada must get out of the business of delivering programs to Indigenous people."¹ The new Deputy Minister of DISC, Jean-Francois Tremblay, later reiterated this sentiment, noting that, "This department should disappear over time."²

On the surface, these remarks seem to hold promise. Many First Nations have long-advocated for the transfer of control over Indigenous services and programming delivered in their communities and nations. Perhaps no better example of this exists than Indigenous

education. Consider the 1972 policy paper by the National Indian Brotherhood (NIB), *Indian Control of Indian Education*. There, the NIB asserted that, “Any transfer of jurisdiction for Indian education can only be from the Federal Government to Indian Bands.”³ Devolving control over services and programs to First Nations appears to be consistent with Indigenous demands and desires for self-government. But in the past three decades of Canadian fiscal federalism, devolution of programming and services has often been more burdensome than beneficial.

FEDERAL DOWNLOADING AND THE WITHERING OF INAC

Branded and bandied about as a Crown gesture of ‘reconciliation’—an “updated structure that is much more in keeping with the true nature of reconciliation,” as Prime Minister Trudeau remarked—splitting INAC advances neoliberal visions from the Liberal government of the 1990s.⁴

Paul Martin’s 1995 Budget is famous for deep program cuts and downloading of programming responsibilities to the provinces and territories. On the heels of a “Program Review”—an intensive bureaucratic exercise of expenditure analysis that began in the winter of 1994—Finance Minister Paul Martin announced early in his budget speech that the federal government was “reforming the system of transfers to the provinces, putting it on a basis that is more in line with the actual responsibilities of the two levels of government.”⁵

By the end of the budget cycle, it was clear that what Martin meant by highlighting differences in federal and provincial jurisdiction was getting out of the business of delivering programs and services.

For First Nations, off-loading responsibility for “Indians” onto provinces is an old and persistent strategy.

Though “Indians and the lands reserved for Indians” falls under section 91(24) of the Constitution Act, 1867—the federal head of power—the devolution and downloading of Indigenous programming and services and attendant fiscal obligations, began almost immediately after the historic treaties were signed that paved the way for settlement. Pre-confederation assimilation efforts sought to eliminate “Indians” and transform them into British subjects, and as such, excluded from Crown treaty liabilities.

More recently, in the 1969 White Paper, a total transfer of jurisdiction from the federal government was proposed, stating: “The Government proposes to negotiate with the provinces and conclude agreements under which Indian people would participate in and be served by the full programs of the provincial and local systems … the provinces ultimately assuming the same responsibility for services to Indian residents as they do for services to others.”⁶

Back then, Indigenous people saw this proposal for what it was: shirking Crown responsibilities. In *Citizens Plus* (aka, the “Red Paper”), the Indian Chiefs of Alberta pointed out that services and programs were treaty obligations, benefits to the Indigenous people “in exchange for the lands, which the Indian people surrendered.”⁷

The federal government had assumed responsibility to deliver programs and services. This federal responsibility entailed all fiscal considerations—revenue and expenditures—required to meet this obligation. Without the financial support, a transfer of this obligation to First Nations would throw communities into deep debt and disarray.

'COERCIVE FEDERALISM' IN CROWN-INDIGENOUS RELATIONS

When authorities, programs and services are devolved to First Nation governments today, the Crown maintains policy dominance through 'meet or beat' stipulations.

Speaking to the Crown dominance over programs and services devolved to the Nisga'a, then-Minister of Indian Affairs Jane Stewart remarked that, "there is another category of legislation on province-like jurisdictions such as education and health that the Nisga'a will take jurisdiction for. Let me be clear that when that occurs, the Nisga'a must meet or beat provincial legislation, meet or beat. There is nothing to worry about. People will understand it. It will be clear."⁸

Splitting INAC only to advance federal downloading to First Nations restructures Crown-Indigenous relations in the image of familiar intergovernmental relations, but with adverse incentives for ongoing Crown control and abuse.

"Coercive federalism," termed by political scientist Daniel Elazar, ensues from intergovernmental relations where the federal government is the dominant policymaker and can exercise its policy will over lower-level governmental 'partners'.⁹

Nowhere does coercive federalism flourish more than when federal pre-emptory policy dominance is paired with funding relations. And this is exactly the sort of arrangement envisioned as the federal government moves to both eliminate DISC and develop a "New Fiscal Relationship" framework with First Nations, Métis, and Inuit.¹⁰ This outcome is not inevitable, but lessons from the 1990s and the less-than-amicable history between the Crown and Indigenous peoples, give reason for pause and consideration.

For as long as one can tell, the relationship between the Crown and Indigenous governments has always been one of Crown coercion. And, if recent trends are any indication, the new 'nation-to-nation' relationship will certainly entail Crown policy dominance over First Nations.

ENDNOTES

¹ Carolyn Bennett. "Speech of Minister Carolyn Bennett during the Assembly of First Nations Special Chiefs Assembly," December 6, 2017.

² Aboriginal Peoples Television Network, National News. "New Indigenous Services ministry aiming to improve health, quality of life," January 23, 2018.

³ National Indian Brotherhood/Assembly of First Nations. "Indian Control of Indian Education," 1972, page 5.

⁴ James Munson. "Indigenous and Northern Affairs splitting into two departments," iPolitics, August 27, 2018.

⁵ Paul Martin. *Budget Speech*, February 27, 1995, page 7.

⁶ Jean Chrétien. "Statement of the Government of Canada on Indian Policy (The White Paper, 1969)", Ottawa, 1969.

⁷ Indian Chiefs of Alberta. "Citizens Plus" ["The Red Paper"], aboriginal policy studies, Volume 1, No. 2, 2011, pages 188-281.

⁸ Jane Stewart. "Open Parliament Canada," June 3, 1999.

⁹ See, for example, John Kincaid, "The Rise of Social Welfare and Onward March of Coercive Federalism. In *Networked Governance: The Future of Intergovernmental Management*", edited by Jack W. Meek and Kurt Thurmaier, Los Angeles: Sage, 2012, pages 8-33.

¹⁰ Indigenous Services Canada. "A New Fiscal Relationship," January 25, 2018