

# Truth without reconciliation

The Harper government and Aboriginal peoples after the apology

James FitzGerald

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.... Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership.

— *Prime Minister Stephen Harper, June 11, 2008*

WHEN PRIME MINISTER Harper delivered the government's historic apology to the Aboriginal peoples who had been victimized by Canada's residential school program, some hoped it would make possible a new relationship between Canada and its First Nations.<sup>1</sup> These hopes were dashed by the following years of government inaction and policies that undermined the spirit and objectives of reconciliation. Over this time, the Harper government worked to extricate itself from as many responsibilities to Canada's Aboriginal peoples as it could.

This chapter explores just three examples of these efforts: the removal of funding for the successful Aboriginal Healing Foundation; the unwillingness to acknowledge a national on-reserve housing crisis epitomized by the October 2011 state of

emergency in the Northern Cree community of Attawapiskat; and several new laws designed to ensure the Aboriginal relationship to the federal government was not based on an equal partnership, as recommended in the 1996 Royal Commission and 2015 Truth and Reconciliation Commission report, but on continued dependence.

We can conclude from these examples that the period from 2008 to 2015 marks a decisive failure of the federal government to continue on the path of reconciliation and basic commitments to the physical security, economic development and overall well-being of Aboriginal peoples within Canada.

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## Residential schools and the Aboriginal Healing Foundation

Canada's history has been marked by practices of both physical and cultural genocide directed towards Aboriginal peoples. Physical genocide is the deliberate mass killing of a group of people because of their ethnicity. Cultural genocide is destruction of the practices, customs, and language that allow a given group to exist. The 2015 *Final Report of the Truth and Reconciliation Commission of Canada* identifies the culmination of these practices in the creation of the residential school system. The report identifies that physical and mental violence were key tools in this process and contributed to a substantial loss of life, and cycles of sexual and physical abuse within Aboriginal communities.<sup>2</sup>

From the 1830s to 1996, the federal government, with co-operation from various Christian churches, operated hundreds of residential schools across the country.<sup>3</sup> These schools were part of a conscious effort to assimilate generations of First Nations, Inuit and Métis peoples into Canadian society — a process described as “cultural genocide” by Justice Murray Sinclair.<sup>4</sup> Over the course of its operation, the residential school system took an estimated 150,000 children<sup>5</sup> from their homes and subjected them to mental, emotional, physical and sexual abuse by church officials.<sup>6</sup> There are an estimated 80,000 survivors of the program living in Canada,<sup>7</sup> many of whom testified to being separated from their siblings and forbidden from practicing their religions or speaking their respective languages.<sup>8</sup>

The intergenerational impacts of the residential schools program are apparent in the loss of culture, and transmission of sexual, physical and mental abuse problems within Aboriginal communities. This is of special importance to policy-makers. It is estimated that due to the intergenerational and inter-communal nature of the abuse, 373,350 Aboriginal people have experienced trauma resulting from the school program.<sup>9</sup> A number of lawsuits emerged in the 1990s in relation to the violence Aboriginal peoples had suffered, much of it eventually documented in the Royal Commission on Aboriginal Peoples (1996), which made 440 recommenda-

tions for fundamentally changing the relationship between Aboriginal and non-Aboriginal peoples in Canada.

Toward that end, in January 1998, the Chrétien government launched Canada's Aboriginal Action Plan, which included a \$350-million healing fund to be administered by the Aboriginal Healing Foundation (AHF).<sup>10</sup> The foundation began allocating money that spring to various community-based projects and organizations working to counter the intergenerational cycles of abuse that reverberated from the residential school system. At its peak in 2010, the AHF was supporting 134 Native-run healing centres.<sup>11</sup> In the 2005 federal budget, the Martin government committed \$40 million to the foundation, extending projects to March 31, 2007. That year, the AHF received an additional \$125 million from the Indian Residential School Settlement Agreement for former students. These funds extended the timeframe of the AHF to 2012.<sup>12</sup>

However, no further funding was allotted the AHF in subsequent federal budgets, despite a consultants' report in December 2009 showing the programs were producing results.<sup>13</sup> Since March 31, 2012, 11 healing centres have closed. By March 31, 2014, 134 projects had been concluded and, as of September 2014, the AHF has ceased all operations.<sup>14</sup>

Budget 2010 committed \$199 million to Health Canada for government-run programs in mental health and emotional support services for former residential school students and their families.<sup>15</sup> But this decision ignored the 2009 recommendations of Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada) that funding should be put back into the AHF due to differences between Health Canada's specialized programming and the foundation's targeted and more engaged role.<sup>16</sup>

Over its 16 years of operation, the AHF has funded 1,346 projects that facilitated the healing of an estimated 111,170 people.<sup>17</sup> The Harper government's disregard of the foundation's commendable track record, and the recommendations of public service experts, reflects a preference, during this period, for austerity over evidence-based policy. But there is more to it than that.

The Health Canada programming is unable to replicate the effectiveness of community-based engagement, and does not take into account the value of Indigenous cultural practices and the independence of AHS fund programs from ministerial priorities and government directives.<sup>18</sup> This is not surprising, as there was no harm or risk assessment done at the federal level before winding down programs with survivors. The AHF programming shifted discussions of healing away from monetary compensation toward a more holistic model of healing based on cultural practices working with western medical and psychological approaches. The shift in fund-

ing to Health Canada, more than a cost-cutting exercise, reflects a strategy on the part of the Harper government to take healing out of the control of First Nations.

Furthermore, the cessation of funds to the AHS is part of a larger approach by the federal government to influence treaty, funding and land claims negotiations in favour of federal objectives. The Harper government has made a decisive move toward piecemeal negotiations with individual First Nations rather than holistic accords. The use of results-based measurement to determine the effectiveness of band council governance and federally funded Aboriginal programs decisively controls the scope of these activities. The weakening of support services weakens the negotiating position of Aboriginal peoples, specifically around treaty and comprehensive claims negotiations. The desired goal is to foreclose Aboriginal treaty rights and claims to unceded lands via cash settlement as opposed to the granting or expansion of lands through treaty litigation.

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## Canada and the Aboriginal housing crisis

The Harper government's response to the on-reserve and off-reserve Aboriginal housing crisis reveals two different tactics directed at Aboriginal peoples. First, the federal government is attempting to assimilate Aboriginal peoples into Canada's structures of individual property rights, debt and credit-based accumulation by gradual reforms to on-reserve property ownership. Second, the accusation of fiscal mismanagement has been used to impose new oversight and restrictions onto First Nations band councils and chiefs while deflecting government responsibility. These two processes culminate in a policy environment that targets funding based on narrowly defined results while increasing federal scrutiny through third-party auditors. The narrative of corrupt chiefs also serves to delegitimize First Nations government.

The fallout from Attawapiskat produced a mixed environment for federal–Aboriginal relations and intensified divisions between Ottawa and numerous First Nations. The absence of a formal national solution to the on- and off-reserve housing crisis for Aboriginal peoples is indisputably connected with trends of poverty, chronic illness and increased rates of incarceration and victimization faced by Aboriginal men and women.<sup>19</sup>

The Assembly of First Nations estimates that there was a need for approximately 80,000 additional houses on reserve in 2005.<sup>20</sup> In the 2006 census, Statistics Canada reported a major increase from a decade earlier in the number of Aboriginal people living in substandard housing,<sup>21</sup> noting that in total 29% of Aboriginal

### Attawapiskat Housing Crisis

On October 28, 2011, Attawapiskat First Nation Chief Theresa Spence declared a state of emergency in regard to on-reserve housing conditions. On December 2, the federal government placed Attawapiskat under third-party management to review funding on housing, infrastructure and education from 2005–2011. Then on December 11, Chief Spence travelled to Ottawa to meet with the prime minister and the minister of Aboriginal affairs. Chief Spence met with the Liberals and New Democratic Party while Assembly of First Nations officials met with Prime Minister Harper. The third-party audit revealed a lack of documentation for \$104 million spent by Attawapiskat, at a cost to Canadian taxpayers of \$411,015.62. Infrastructure and housing remain in a state of crisis in Attawapiskat and on-reserve Aboriginal communities across Canada.

homes (and 45% of homes on reserve) needed major repair where the percentage was 7% in the rest of Canada.<sup>22</sup>

The crisis is not just confined to the number of stable homes on reserve, but to the lack of adequate sewage, power and heating infrastructure. In fact, the number of homes is a mugs game as it hides the number of homeless Aboriginals in urban settings, and those that live on reserves in unsafe or overcrowded dwellings. The state of emergency declared in Attawapiskat in the winter of 2011 (see box) revealed the sizable failures of the federal government to respond to the national housing crisis that encompasses much of Canada's northern territories and reserve communities.<sup>23</sup>

The Harper government developed numerous strategies to engage the problem, but all frame Aboriginal communities as dependents of federal funds rather than partners in Confederation. First, the government emphasized potential financial mismanagement of First Nations by placing band councils, like the one in Attawapiskat, under third-party management, putatively to ensure that federal dollars were not being misappropriated. (Federal Court Justice Michael Phelan later ruled this was unreasonable.)<sup>24</sup> The Harper government claimed that since 2006, \$90 million had been spent on Attawapiskat — a figure that merges funding for education, infrastructure and housing. This allowed the government to claim that if there was a housing crisis in the community, it was because Chief Theresa Spence, who many considered a hero for her hunger strike, had simply been misappropriating federal funds. By shifting the blame in this way, the government

could frame the public and media debate in terms of fiscal accountability rather than treaty rights to self-government.

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## Legislating dependence: Bills C-27, S-8 and S-2

The debate created by the Attawapiskat crisis eventually produced two pieces of legislation: Bill C-27, *the First Nations Financial Transparency Act*, and Bill S-8, *the Safe Drinking Water for First Nations Act*. Bill C-27 makes the allocation of federal funding to First Nations a matter of public record. Band councils must submit fiscal statements to Aboriginal Affairs and Northern Development Canada (AANDC) where these records are displayed on the department's website.<sup>25</sup> Not only does this make First Nations fiscal resource allocation hostage to heated and sometimes overtly racist public opinion, the legislation transforms what was a Nation-to-Nation discussion to one based exclusively on effective project management gauged as such by independent auditors.

As the title suggests, Bill S-8 makes public works projects in Aboriginal communities, in particular water and wastewater infrastructure, a government priority at the level of regulation, but in ways that impinge on First Nation jurisdiction. The bill creates new standards, but commits no further funding to building or upgrading water systems, which are in catastrophic shape across the country. A 2007–2009 assessment by AANDC found that of 807 water systems tested, 39% were declared high risk, 34% medium risk, and 27% low risk.<sup>26</sup> The same study found there were 108 communities under drinking water advisories, 105 under boil water advisories, and 12 under do not consume advisories. The 2013 federal budget allocated \$70 million over 10 years for the Building Canada Plan to address housing shortages in Canada's North, but this left many reserves out in the cold.<sup>27</sup> The measure also fails to address the treatment of health problems resulting from long-term exposure to environmental contaminants.

Further to these two bills, the Harper government has been attempting for a number of years to transform First Nations title on reserves to increase the ownership of private property. Bill S-2, *the Family Homes on Reserves and Matrimonial Interests or Rights Act*, tabled in 2013, expanded rights to title and succession around separation, loss or divorce. The act on its surface appears to ensure the protection of first nations women and familial succession rights. However, the rights also de-center the community as a source for regulating property, which feeds into a framework, supported by the Harper government, of individual over collective ownership, with the ultimate goal being private ownership of on-reserve housing.<sup>28</sup>

Private ownership policy works to inscribe private property relations within the framework of a reserve system. This legal shift from collective band council ownership to individual property rights allows First Nations homeowners to use their homes as collateral when seeking bank loans, mortgages and other credit-based financing (e.g., to start businesses or support themselves and their families). This process works in conjunction with the long-term leases used within band membership.

A key part of the proposed act, and the general policy process, is the ability of non-Aboriginals to own real estate and other forms of property on Aboriginal land. Individual ownership further binds First Nations peoples to the Canadian economy and deepens the penetration of resource extraction and labour force engagement. Debt financing as a development framework fails to take into account the cycles of poverty, abuse and economic instability faced by on-reserve populations. The privatization of reserve property avoids the sociological context while offloading federal responsibilities for development.

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## Conclusion

In the six years following the historic June 2008 apology to Aboriginal peoples, the Harper government has sought to use the Aboriginal housing and water crises to assert more control over First Nations band councils and chiefs, increase their dependence on Ottawa, and further integrate private property regimes into Aboriginal communities. The strategy conflicts with the recommendations of both the 1996 Royal Commission and 2015 Truth and Reconciliation Commission recommendations for reorienting federal–Aboriginal relations to correct persistent social, economic and political imbalances.

Instead, the government used the state of emergency declared around Attawapiskat from 2011 onward as an opportunity to shift this debate from one of national bureaucratic crisis — the unwillingness to take First Nations issues seriously — to one of financial mismanagement and corruption in First Nations. The passage of legislation like the *First Nations Financial Transparency Act* has further subjugated First Nations communities to the scrutiny of AANDC and the federal government. Likewise, Bill S–2 is another step in transforming the economics of First Nations communities by using debt, property ownership and mortgage tools to solve a national crisis that cannot improve unless the government is willing to work with First Nations as equals.

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