



APARTHEID

Canada's Ugly Secret



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About the Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a federally incorporated, non-profit and non-partisan, advocacy organization dedicated to lower taxes, less waste and accountable government. The CTF was founded in Saskatchewan in 1990 when the Association of Saskatchewan Taxpayers and the Resolution One Association of Alberta joined forces to create a national taxpayers organization. Today, the CTF has over 61,000 supporters nation-wide.

The CTF maintains a federal office in Ottawa and offices in the five provincial capitals of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. In addition, the CTF has a Centre for Aboriginal Policy Change in Calgary dedicated to monitor, research and provide alternatives to current aboriginal policy and court decisions. Provincial offices and the Centre conduct research and advocacy activities specific to their provinces or issues in addition to acting as regional organizers of Canada-wide initiatives.

CTF offices field hundreds of media interviews each month, hold press conferences and issue regular news releases, commentaries and publications to advocate the common interest of taxpayers. The CTF's flagship publication, *The Taxpayer* magazine, is published six times a year. An issues and action update called *TaxAction* is produced each month. CTF offices also send out weekly *Let's Talk Taxes* commentaries to more than 800 media outlets and personalities nationally.

CTF representatives speak at functions, make presentations to government, meet with politicians, and organize petition drives, events and campaigns to mobilize citizens to effect public policy change.

All CTF staff and board directors are prohibited from holding a membership in any political party. The CTF is independent of any institutional affiliations. Contributions to the CTF are not tax deductible.

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About the Centre for Aboriginal Policy Change

The Centre for Aboriginal Policy Change (the Centre), was founded in 2002, under the auspices of the CTF to provide a permanent and professional taxpayer and democratic advocacy presence to monitor, research and offer alternatives to current aboriginal policy and analyze the impacts of court decisions under the guiding principles of support for individual property rights, equality, self-sufficiency, and democratic and financial accountability.

The Centre's five-fold mandate is:

1. Demand Accountability for Money Spent: Billions of tax dollars are spent by governments each year - with little accountability - in a seemingly futile attempt to help improve conditions for Canada's aboriginal people;
2. Thoroughly Examine Proposed New Treaties: New treaties being signed along the lines of the Nisga'a template will cost taxpayers untold billions of dollars. In addition, existing treaties are being reopened. Land ownership and resources in Canada are increasingly becoming a Pandora's Box;
3. Support the Equality of Individuals: Commercial fishing, hunting, paying tax and voting are increasingly being assigned on the basis of racial ancestry;
4. Track Government Policies and Court Developments: Aboriginal-related legislation and court decisions with significant long-term ramifications are coming down virtually every day; and
5. Offer Positive Alternatives: Efforts to watchdog and critique are of little value without providing positive, proactive alternatives to the status quo.

In addition to fulfilling its mandate, the Centre will publish a minimum of one position paper each year, make presentations to government committees and legislative hearings, and be available for media comment.

Aboriginal issues are a growing area of public policy. Billions of tax dollars are spent each year of which little seems to be properly accounted for or find its way to people it is intended to help. The implication of treaties, in particular, will change the landscape of Canada for all time. The Centre is dedicated solely to examining current aboriginal policy and court decisions from the perspective of those - Indian and non-Indian - who will pay the bill: the taxpayers.

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EXECUTIVE SUMMARY

For more than 100 years the Indian Act has segregated Indians from Canadian society. By targeting one segment of Canadian society, the Act isolates Indians from other Canadian citizens by placing them on reserves; thus the system limits their ability to fully participate in the economy.

This paper outlines the history of the Indian reserve system and shows that increased government spending and incentives have not improved the conditions of Indian reserves in Canada. In addition, the paper outlines the inequality current legislation and policy has created. For Indian communities to compete successfully within the Canadian economic mainstream, the Indian reserve system in Canada must be phased out.

The most imperative ingredient for native communities to have long-term economic viability is individual private property rights. The key to generating wealth and prosperity is easily identifiable individual property that can be leveraged for loans and wealth creation. Most Canadians can borrow against their own private property and thus capital is obtained to invest in new business ventures.

Unfortunately, the land which comprises a reserve is owned by the Crown and is controlled collectively by the native band council, not by individuals. This treatment of native Canadians under the Indian Act is unequal and is the reason why many people in native communities live in poverty.

The communal arrangement imposed by the Indian Act produces problems for native entrepreneurs. Business owners typically raise capital by providing their home or other real property as collateral. But since on-reserve native Canadians do not own their property in fee simple, it is extremely difficult to sell, mortgage or otherwise use the land as a source of debt financing. Therefore, the wealth of the land is under-utilized.

There are individuals who choose to hold property in a communal manner. For example, Hutterites choose to hold property in a communal manner. But, this is their choice, not an imposition.

Clearly, treating one group of Canadians differently is wrong both morally and intellectually. For the last 50 years the world has seen human rights legislation passed in a number of countries. All of this legislation has equality of rights and responsibility at its core. Nevertheless, Canada continues to move down the

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path of segregation and balkanization. If not reversed, this trend toward division, will only serve to weaken our cultural, political and economic fabric.

The following three recommendations are explained in the paper:

Recommendation 1:

The Canadian government must abolish the Indian reserve system. Thus allowing individual native Canadians the freedom to choose how and where they wish to live.

Recommendation 2:

The tax exemption now provided for Indians living and working on reserves is a provision of the Indian Act, not the Canadian Constitution. The Indian Act is like any other piece of legislation, capable of being amended and/or abolished at any time. Taxation at all levels (municipal, provincial, federal) should be phased in for Indians over a period of ten years.

Recommendation 3:

If native communities are to become economically self-sustaining, the reserve land which is now held by the Crown should be transferred to individual natives living on-reserve. It will be up to natives themselves to decide if they want to transfer the land into a communal arrangement or allow for the property to be owned and managed individually.

Recommendation 4:

As a step toward the elimination of the Indian Reserve system, no new reserves, or “urban reserves” should be established.

The Canadian Taxpayers Federation believes Canadians – all Canadians are fundamentally alike. Therefore, all legislation and government policy must be based on fairness and equality – not race. As former Prime Minister Trudeau once stated, “The time is now to decide whether the Indians will be a race apart in Canada or whether [they] will be Canadians of full status.” In other words, the time for equality is now.

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1.0 INTRODUCTION

Canadians rightfully spoke out against apartheid in South Africa, but are strangely silent when it comes to Canada’s own system of segregation. As South Africa abolished apartheid; Canada’s system of segregation grew and remains alive and well. This paper examines the Indian reserve system and illustrates the need to abolish this failed and perverse system of segregation within Canada.

Many Canadians do not realize the first Indian reserves were established in the 1600’s by French religious orders. The desire of the French Crown was to Christianize the Indians and introduce the Indians to a sedentary lifestyle. These first Indian reserves in Quebec were established without treaties or agreements but done so by a French executive act. This practice was later followed by the British in both Quebec and Atlantic Canada.

Shortly after Confederation, the government of Canada enacted legislation to grant the federal government control and management of the lands and property of the Indians in Canada.¹ This legislation followed the requirements set down by the Royal Proclamation of 1763 and banned the disposition of Indian reserves without a surrender by the band to the Crown.

The Indian Act was first introduced in 1876. The Act maintained, and still does today, protection of Indian reserves. The Department of Indian and Northern Affairs Canada (INAC) assumes the lead on behalf of the federal government in exercising Canada’s jurisdiction under section 91(24) of the Canadian Constitution. This section states that the federal Parliament is given the power to legislate specifically for “Indians and lands reserved for the Indians.”

Until the late 1950s, the federal government’s paternalism was all-encompassing – it funded, delivered and administered all aboriginal programs and services. By the 1970s the department’s philosophy shifted toward devolving administration and governance to Indian band councils. As a result, the department morphed into a more traditional styled bureaucracy enforcing a set of regulations to govern the conduct of band affairs and allocating government funding.

What this system did, and still does, is assume that Indians are incompetent children who can not make decisions for themselves. Even the treaties that were signed deem Indians as a group and as individuals, to be unfit to make decisions for themselves.

Indian bands however, received considerable administrative autonomy by the 1980s and were able to deliver federally-funded services without government

oversight or audit. Regrettably, accountability is still lacking in 2004. It was foolish of the federal government to think that keeping the system the same and simply replacing one bureaucracy in Ottawa with another on the reserve was going to make people’s lives better. Yet that is the path Ottawa continues to travel.

Under the current system, the delivery of programs is in the hands of the Chiefs and councils. Since there is no separation between politics and administration on reserves – and there is no requirement to do so – everything on a reserve that is in any way related to band administration is politicized. This scenario provides the Chief and council with a tremendous amount of power and control over the community members.

This power has often been abused. Many Canadians are familiar with media accounts of corruption and mismanagement of reserve funds. For example, as per band financial documents, leaders of the Alexander Indian Band of Alberta authorized at least \$108,868 in cheques to dozens of voters on the eve of the September 12, 2002 election. Six members of the Alexander Indian Band swore affidavits in Federal Court saying they were paid on the understanding they would vote for incumbent candidates for Chief and band council. Three of them received \$150 or \$200, according to the band administration’s general cheque ledger.²

As reported by James Parker of the *Saskatoon StarPhoenix*, nepotism is also a problem on reserves. “It’s true most reserves are poor, with virtually all wealth flowing through the band office. That means there’s plenty at stake at election time. And because reserves are usually populated by four or five extended families, factionalism based on family is a constant problem.”³

Take the Poundmaker reserve near North Battleford, Saskatchewan. There, Chief Ted Antoine and his brother, band councillor Duane Antoine, have received numerous contracts in addition to their salaries, travel expenses and honoraria.

In the last fiscal year, Ted Antoine was paid \$8,000 from the band’s gaming program, \$5,500 for a water treatment contract, \$2,500 from an environmental program, \$59,341 in administrative contracts and \$14,525 in major capital contracts, according to the band’s audit. In addition, he also received a \$39,000 tax-free salary and \$23,587 in travel expenses.

Duane Antoine received a \$75,000 grading contract, a \$19,900 major capital contract and \$7,835 in “assistance and reimbursements,” in addition to \$31,000 in salary and \$20,894 for expenses. Other councillors also received contracts.⁴

The federal government currently spends approximately \$7.5 billion annually on Indian affairs. According to reports from the Auditor General of Canada, 80 percent of the money is transferred directly to Indian band councils to disperse the money within their communities as they so chose. Under the Indian Act there is no requirement for Indian governments to reveal their financial records to their members, let alone to the federal Auditor General or to taxpayers. Clearly, this loophole must be closed. Good governance, accountability and transparency are minimal requirements for native communities to thrive.

Why does the federal government not put an end to this system which clearly has little or no accountability? In a bizarre twist of fate, the “Indian Industry” needs the reserve system – with all its faults – to justify its existence.

The “Indian Industry” is composed of a multitude of consultants, program analysts, researchers, administrators and managers who swell the ranks of the bureaucracy. In addition, Indian lobby groups are funded by the federal government to lobby for more money and special rights for Indian communities. These are working individuals with families and households to support. If the federal government through Indian Affairs abolished the reserve system and Indian Act, the entire “Indian Industry” complete with all who work in it, would cease to be employed. In other words, the impoverished Indians living in Third World conditions are essential to the existence the “Indian Industry”.

The presence of the “Indian Industry” becomes more apparent when discussing the incentives the Canadian government and Indian governments have placed on individual Indians to remain on reserves.

2.0 INCENTIVES TO REMAIN ON RESERVES

As a result of their small size, often remote locations and the requirements of the Indian Act, reserve governments depend heavily on fiscal transfers from the federal government. Furthermore, the federal government restricts most of Indian Affairs’ programs to on-reserve Indians, many natives live in virtual isolation in reserve communities which have no real economic base and, in a number of instances, a disintegrating social fabric. No matter how uneconomic the community, the federal government has seen it as a duty to sustain them.

There are more than 2,300 reserves that cover approximately 7.5 million acres. These reserves were set aside for the use and benefit of status Indians. The vast majority of these lands are administered under the Indian Act. The extent of reserve lands is continuously expanding as a result of: Treaty land entitlement settlements and specific claim settlements.

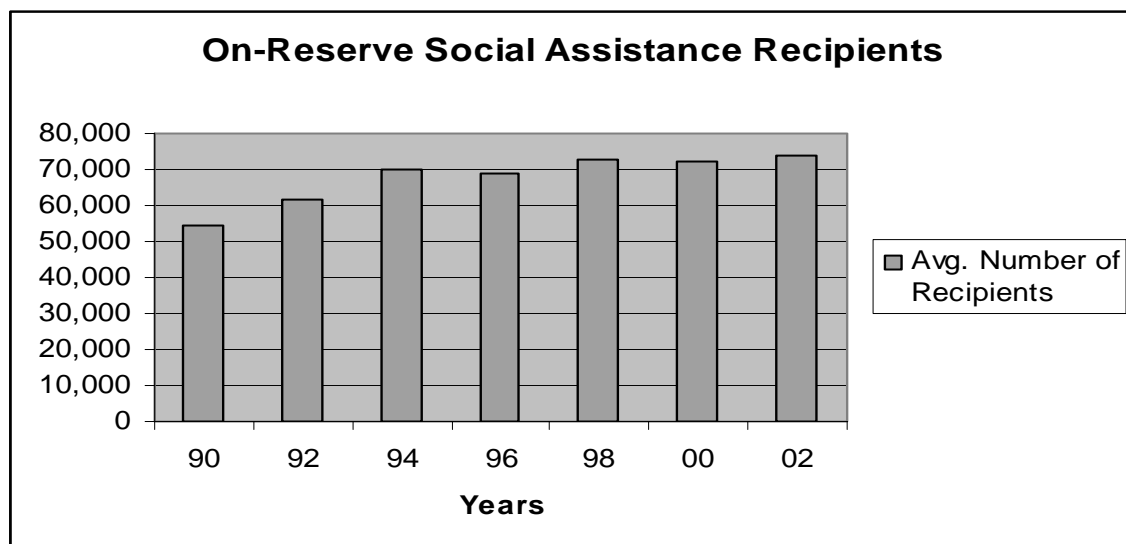
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The populations of Indian reserves are small. Of 629 Indian bands, 75 per cent consist of less than 1,000 registered Indians. Band sizes range from two members to over 21,000. The average band population on-reserve is 641. The small population base of reserves makes economic self-sufficiency nearly impossible to achieve.

Up until the 1950s, some Indian bands were economically self-sustaining. The communities ultimately survived by hunting, fishing or trapping and some families were successful farmers.

It wasn’t until Indians were granted the right to vote in Canadian elections in 1959 that welfare dependence became an issue for Indian communities. Although welfare didn’t cause these social and economic problems, it has perpetuated them. The failure of Canada’s Indian policy to lift Indians out of the Third World conditions illustrates the paradox of the welfare state: welfare creates disincentives to work, erects barriers to achieving self-sufficiency, and breeds an attitude of entitlement that erodes a willingness to seek economic advancement.⁵

On-Reserve Social Assistance Recipients



Source: 1990-2002 Social Assistance, Information Management Branch, Indian and Northern Affairs Canada

In addition, due to the often remote location of reserves, social assistance rates are as high as 90 per cent on some reserves in contrast to less than 50 per cent for Indians in most urban centres. This has led to a growing tendency for Indians to leave the reserve and move to urban centres.

Government intervention and central planning is likely the cause of the economic hardship faced in Indian communities. As Menno Boldt explains:

“Why are Indians today in a state of dependence?... Successive Canadian governments brought about this result by interfering with the normal evolution of the Indian economy. If the Indian economy had been allowed to follow the normal course of economies, the decline of their traditional means of subsistence would have been compensated for with other forms of self-sufficiency. In a land of opportunity alternative forms of subsistence, such as farming, ranching, industry, would gradually have supplanted traditional Indian means of hunting, fishing, and gathering. But the Canadian government erected barriers to such an evolutionary process.”⁶

As noted earlier, the federal government spends approximately \$7.5 billion annually on Indian affairs. From 1990 to 2002, the amount of federal funding increased over 100 per cent. The Department of Indian Affairs was the only federal department in the 1990s that did not see its budget cut.

The federal services provided to Indian reserve communities include: education, social support, law enforcement, Indian government support, social maintenance, construction and maintenance of houses, schools, roads, bridges, sewers and other community facilities, management of lands, oil and gas management and development, resources development, management of trust funds, community economic development, commercial development and Indian taxation services.

The process of providing a plethora of programs and services to reserve communities at someone else’s expense – Canadian taxpayers – has produced a perverse incentive for Indians to remain on reserves. Nonetheless, Indians are beginning to vote with their feet, by moving off reserve. In so doing, they are declaring the reserve system is broken.

Until the 1960s, most status Indians lived on reserves. Improved health care and reduced infant mortality rates grew populations. However, living conditions on most reserves declined due to overcrowding and social breakdown induced by a growing welfare dependency.

Regrettably, a family that leaves the reserve is likely to end up on welfare, because Indians moving from a reserve to a city have to make a far sharper cultural adjustment than do many immigrants coming to Canada, and can arrive in the city “as confused as any refugee.”⁷

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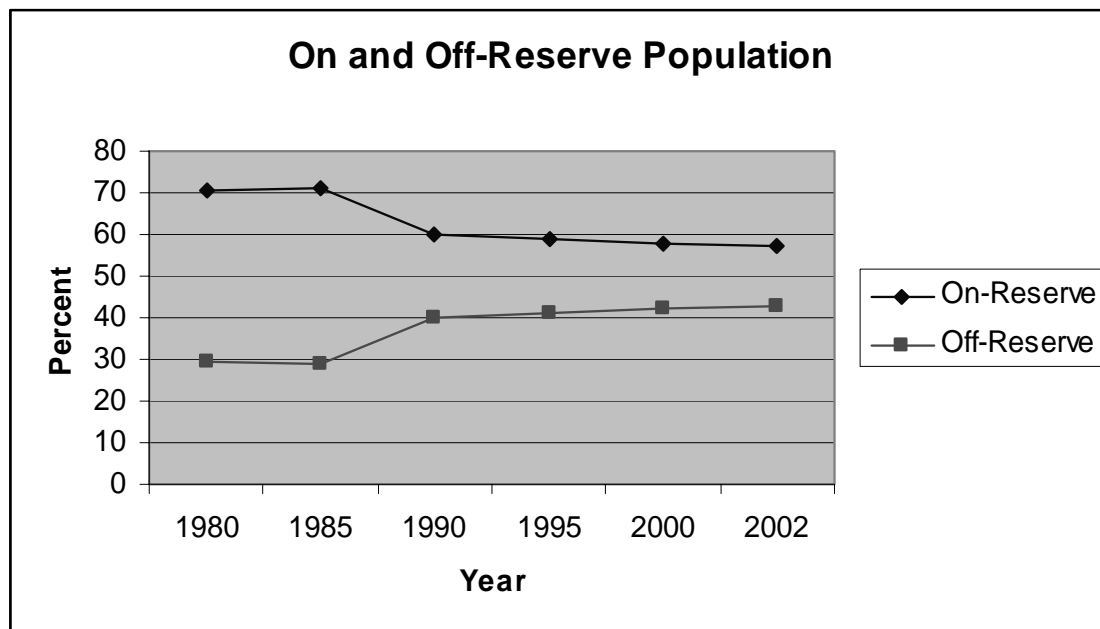
As authors Pauline Comeau and Aldo Santin detail, a refugee receives far more programs and services than a fellow citizen from an Indian reserve:

“These federally sponsored exiles land on Canadian soil and walk directly into a year-long, all-expenses-paid adjustment program coordinated by the federal Department of Employment and Immigration. When the newcomer steps off the airplane, a team of federal employees (including an interpreter) is waiting to help with the luggage, customs and security clearances. The team then takes the nervous visitor to a settlement house, which will become home for several weeks. This welcoming committee immediately assesses and satisfies clothing needs at taxpayers’ expense, and completes all the necessary paperwork for social insurance numbers, health care, etc... The committee offers detailed guidance on how to survive on government subsidies. By the sixth month, the newcomer has begun daily English lessons at one of the local colleges. Then job hunting and training begin. According to one department official, 90 percent of refugees spend an average of one year under the wing of the federal government before they find jobs.”⁸

Indians who leave the reserve find nothing like the refugee. In fact, because of the communal nature of the reserve system, an individual or family who chooses to leave the reserve often does so with only the shirt on their back.

According to the Department of Indian Affairs, the proportion of on-reserve registered Indians decreased from 71 per cent in 1980 to 57 per cent in 2002.⁹

Figure 1: On and Off- Reserve Populations



Source: 1980-2002 Indian Register, INAC, Registered Indian Population by Sex and Residence, 2002

Clearly, when the federal government finally realizes the Indian reserve system has failed, and begins an implementation plan leading to abolition of the reserve system; the government must consider in its plan the skills and abilities of individual Indians to become independent.

But rather than begin the process of ending the reserve system, the government's response - as indicated through their actions - has been to increase funding and incentives for Indians to remain on reserves.

Some of the additional government spending and programs may have improved living conditions on reserves. However, since native band councils receive native-specific funding in addition to receiving the benefits of roads, universities and hospitals that other levels of government finance, then natives should live longer and be healthier than non-natives.

Despite gains in life expectancy, a gap of approximately 6.3 years remained between the Registered Indian and Canadian populations in 2000. That same year, the rates of suicide of Registered Indian youth (ages 15 to 24) were eight times higher than the national rate for females and five times higher for males. In 2000, the birth rate of Registered Indians was twice the Canadian average with 27 births per 1,000 people compared to 13 for Canada as a whole. Tragically, infant mortality rates that year were twice as high for Registered Indians when compared to the Canadian average.

The Samson Cree Reserve in Alberta provides a tragic example of why more money may be a curse rather than a blessing.

Samson Reserve near Edmonton sits on one of the largest oil and gas fields in the country; it accounts for 75 percent of total oil and gas production on Canada’s reserves. In 1996, band revenue was nearly \$100 million, about half of it coming from the federal and provincial governments.¹⁰ Since the reserve system is based on a communal system, reserve resources are to be shared among the band members. The Samson Reserve has approximately 5,000 members. Unfortunately, sharing doesn’t readily occur on the Samson Reserve. Nearly 80 percent of the residents are on welfare, and unemployment is approximately 85 percent.

On the other side, there is a small group of band leaders and connected insiders that control the reserve’s affairs and finances. Some collect tax-free compensation packages that place them in the top few percent of income earners. These leaders travel to Geneva, London, Paris, Turin, Tokyo and countless other places. They attend events across Canada and the United States. They hold meetings in Las Vegas.¹¹

Because the ruling elite on the reserve control all aspects of reserve life, they can punish and they can reward. And at election time, they can use the reserve’s money to buy support. In 1998, the Samson Band had a budget of \$100,000 to cover the costs of band members seeking favours and money in return for electoral support. An audit revealed, however, that the chief and council handed out \$1.29 million in election goodies.¹²

The problems on Samson Cree Reserve demonstrate that large infusions of money will not correct the problems inherent in the system. Even if the Canadian government was to double the money going to reserves, the social problems would likely remain the same or worsen.¹³

What has transpired on reserves since their creation is that the poorest and most powerless bear on their shoulders the weight of the entire Indian Affairs bureaucracy, Indian political organizations and the army of consultants they both employ. Their problems cannot be fixed because their very neediness is absolutely essential to sustaining the whole system. There is no escape.¹⁴

The Canadian Taxpayers Federation believes there is an escape. The escape lies in the federal government’s willingness to abolish the reserve system.

Recommendation 1:

The Canadian government must abolish the Indian reserve system. Thus allowing individual native Canadians the freedom to choose how and where they wish to live.

3.0 TAXATION

Despite enjoying the rights and benefits afforded to every Canadian, Indians have been given the advantage of virtual immunity from all taxes, federal, provincial and municipal.

The tax exemption provided for natives living and working on reserves is another example of an incentive for Indians to remain on reserves. This provision contained within the Indian Act, and is a fundamental component of the reserve system. Neither the Indian Act nor the reserve system are part of the Canadian Constitution, meaning, both can be amended and/or abolished at any time.

Off-reserve natives are already subject to the same taxation systems and rates as other Canadians. Currently, under Section 87 of the Indian Act, natives living and working on reserves are exempt from paying tax. Specifically:

Section 87 (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,

- (a) the interest of an Indian or a band in reserve lands or surrendered lands; and
- (b) the personal property of an Indian or a band situated on a reserve.

(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1) (a) or (b) or is otherwise subject to taxation in respect of any such property.

(3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1) (a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, chapter E-9 of the

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Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.¹⁵

It is important to note, that the taxation exemption first appeared in legislation in 1850 and has been carried forward in successive versions of the Indian Act. But what exactly does this mean?

In 1994, Revenue Canada – now known as Canada Customs and Revenue Agency – issued guidelines for the Indian Act exemptions:

- When at least 90 per cent of the duties of an employment are performed on a reserve, all of the income of an Indian from that employment will usually be exempt from income tax;
- When the employer is resident on a reserve, and the Indian lives on a reserve, all of the income of an Indian from an employment will usually be exempt from income tax; and
- When more than 50 per cent of the duties of an employment are performed on a reserve and the employer is resident on a reserve, or the Indian lives on a reserve, all of the income of an Indian from employment will usually be exempt from income tax.

Not only does the Indian Act tax exemption cover income tax it also covers sales taxes at both the provincial and federal levels. Indians may also be exempt from other taxes levied on income such as CPP premiums, Workplace Safety and Insurance Board premiums and provincial health taxes. Indians are also exempt from paying tobacco tax, hotel tax, and gasoline tax when the products are purchased on reserve.

What is truly ironic, although Indians who purchase goods on reserves are not required to pay GST, they are eligible for the GST rebated credit paid quarterly by government to modest-income Canadians. This same ironic twist is also available on provincial sales tax – if applicable – and on the Child Tax Benefit even though their income is tax exempt.

Employment insurance premiums are not taxes and are not exempt under section 87 of the Indian Act. Accordingly, tax-exempt salaries or wages paid to an Indian employee are subject to EI premiums. EI benefits received by an Indian are not taxable if the benefits relate to employment that was exempt under section 87.¹⁶

Income from employment or self-employment that is exempt from tax under section 87 of the Indian Act is also exempt from Canada pension plan contributions. That said, an employee can elect to participate in the CPP.

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Employment Insurance benefits, Canada Pension Plan payments, Quebec Pension Plan payments, registered pension plan benefits, retiring allowances, and wage-loss replacement plan benefits are treated in the same way as the employment income that gave rise to the particular income. Meaning, if the employment income is exempt from income tax under section 87 of the Indian Act, the employment-related income will also be exempt.

In addition, Indian bands are placed by the Indian Act and by the Constitution beyond the reach of provincial and municipal real property, school and health taxes. Although Indian reserves enjoy the benefits of local police and fire protection, municipal water and sewer services, bands cannot be compelled to pay taxes to local governments.

As it is now, a competitive advantage for Indian individuals and businesses are emerging. Take for example, a native owned mall situated on reserve land. One half of the Park Royal Shopping Centre in West Vancouver is situated on Squamish Reserve land. The other half, or north side of the mall, is situated on municipal land. The native employees who work in the south side of the mall are not subject to payroll tax. The employer can pay native employees less money and provide the native employees with the same after-tax income as non-native employees.

This has led to a tax system that taxes workers based on race rather than on income. To illustrate this principle the following three hypothetical scenarios have been provided:

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Scenario I

The TD Financial Group located in the south side of Park Royal Shopping Centre in West Vancouver, British Columbia has employed two loans officers. Each are paid the identical wage of \$36,000 annually. One employee is a Squamish Reserve member and resident, the other employee is non-Indian and lives in North Vancouver. The following table shows the difference in annual take home pay after basic payroll taxes have been deducted.

Salary and Taxes	Indian Employee	Non-Indian Employee
Annual Salary	\$36,000	\$36,000
Income Tax	0.00	5,768
CPP	0.00	1,782
EI	712	712
Total Take-Home	\$35,288	\$27,738

Scenario II

Cree-Way Gas Ltd. is owned and operated by the Muskeg Lake Cree Indian Band. The station is located on reserve land near Saskatoon, Saskatchewan. The gas bar and convenience store has created 20 jobs since 2001 and employs 8 full-time employees and 12 part-time employees.

Suppose the "gas jockeys" employed by Cree-Way Gas limited were comprised of both Muskeg Lake Cree Indian band members and non-Indians, each earning the same wage of \$18,000 per year.

Salary and Taxes	Indian Employee	Non-Indian Employee
Annual Salary	\$18,000	\$18,000
Income Tax	0.00	2,345
CPP	0.00	891
EI	356	356
Total Take-Home	\$17,644	\$14,408

Scenario III

Indian bands are like any other employer, they endeavour to hire the best and the brightest. Needless to say, this leads some Indian bands to hire non-Indians to work in the Indian band’s administration office.

Suppose the Six Nations Reserve located near Brantford, Ontario hired both Indian and non-Indian individuals to work as band administration officers. If they did the same work and were paid the same annual salary of \$56,000 the take home pay would be decidedly different – assuming of course that the Indian employee was both a Six Nations band member and resident.

Salary and Taxes	Indian Employee	Non-Indian Employee
Annual Salary	\$56,000	\$56,000
Income Tax	0.00	11,990
CPP	0.00	1,831
EI	772	772
Total Take-Home	\$55,228	\$41,407

The tax exemptions provided under the Indian Act also apply to Indian owned businesses operating on reserves. Reserve businesses are able to purchase their merchandise and supplies tax-free. As a result these businesses are able to provide goods and services at a lower cost than non-native businesses.

Once again the preferential treatment of tax exemptions provided to on-reserve natives has lead to abuse of the system. Fraud artists have been known to use the tax-free status of Indians to cheat provincial and federal governments out of millions of tax dollars.

In 2001, fraud artists used several Indians from the local Kamloops Indian Reserve in British Columbia to purchase vehicles at the North Kamloops Toyota. The car dealership sold the vehicles to the Indians tax free and had the vehicles delivered to the Kamloops Indian Reserve. The vehicles were then resold to numbered companies and eventually dumped in the United States.

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Since the vehicles were sold tax-free to the first buyers, meaning provincial, federal and luxury taxes totalling about 17 percent were not collected. The British Columbia provincial Finance Ministry presented North Kamloops Toyota with a tax assessment claiming it owed \$564,000 in taxes related to the sale of the vehicles.

Similar schemes in Ontario and Quebec were reported in the *Ottawa Citizen* in April 2001. In Quebec alone, authorities uncovered 70 cases representing a loss of tax revenue of more than \$25 million. The *Ottawa Citizen* reported the federal government believed similar frauds were happening “across the country.”

No surprise Justice Muldoon of the Federal Court declared the Indian Act a “racist” document that favours aboriginal people over the rest of society. He went further and said, “It makes financial dependents of those who pay no taxes as an eternal charge on those who are taxed to meet the expense of such dependency.” Along with treaties, he declared the Indian Act fosters the establishment of apartheid in Canada.¹⁷

The exemptions were provided to prevent Indians from losing their reserves through the imposition of liens and other levies upon their lands. The exemption to consumer taxes or income taxes could not have been the original intent of the exemptions, since the Indian Act predates the imposition of income tax throughout Canada in 1917.

The Canadian Taxpayers Federation has long advocated for lower taxes. Lower taxes should be provided to all Canadians based on income, not based on ethnicity. The tax-free status of reserves and on reserve businesses distorts the economy by giving an advantage to individuals living on the reserve and reserved based businesses.

Recommendation 2:

The tax exemption now provided for Indians living and working on reserves is a provision of the Indian Act, not the Canadian Constitution. The Indian Act is like any other piece of legislation, capable of being amended and/or abolished at any time. Taxation at all levels (municipal, provincial, federal) should be phased in for Indians over a period of ten years.

4.0 POSSESSION OF LANDS IN RESERVES

The Indian Act was first introduced in 1876. The Act maintains, and still does today, possession of Indian reserves. Specifically, section 18 of the Indian Act states:

Section 18 (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used for the use and benefit of the band.¹⁸

Therefore, the land which comprises a reserve is owned by the Crown and is controlled collectively by the Indian band council, not by individuals. This treatment of Indian people under the Indian Act is unfair and is the reason why many people in Indian communities live in poverty. It is true that Indians are not forced to live on reserves; however, the various incentives offered to Indians (discussed throughout this paper) provide an explanation why some Indians stay.

The various provisions of the Indian Act have hand-cuffed Indians which operate the reserves from developing the property in a viable way. Take for example:

- Reserve land cannot be sold;
- Bands can only lease reserve lands after approval has been granted by the federal government; and
- Reserve land is difficult to mortgage due to the fact a mortgagee cannot enforce their interest against the land in the event of a default.

It is section 89 within the Indian Act that protects Indian reserve land from seizure. Specifically, section 89 states:

Section 89 (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.¹⁹

The original intent of section 89 was to protect Indians from exploitation and from loss of land due to seizure. Nevertheless, in a modern world this section

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only serves to scare-off potential investors, and is based on a patronizing view of Indians as incompetent or incapable of participating in the economy as equals.

It is both patronizing and demeaning to Indians for the federal government to continue to hold title in its name to the Indian reserves in Canada. It is the community members that should have ownership and control of the reserve lands thus allowing the individual community members to ultimately decide whether their long-term interests are to be achieved through the collectivist ownership of land, or private ownership of land, or by the sale of reserve lands.

A 2003 Auditor General's report revealed there was a shortage of 8,500 houses on native reserves in 2001. It is hard to believe that a shortage in native housing could exist given the federal government has spent \$3.8 billion over the past decade on housing for 97,500 native households. If money isn't the problem, the system and the lack of ownership must be.

The Department of Indian Affairs and the Canada Mortgage and Housing Corporation (CMHC) transfer money directly to native band councils. From there it is up to the Chief and council to determine who gets a new house or repairs.

As the AG's report notes, there is a fundamental problem in this relationship. The three main players – Indian Affairs, CMHC and native bands – cannot agree on their roles and responsibilities. To make matters worse, according to Department of Indian Affairs internal audits, some native governments fail to account properly for existing responsibilities and funding.

One of the responsibilities of band councils, for example, is to ensure any new housing meets National Building Code standards. The AG's report notes that bands often have no competent way to ensure the new housing meets codes, which may explain the high percentage of houses in desperate need of repair.

Land on a native reserve is owned by the Crown and is controlled collectively by the native band council, not by individuals. As a result, Native Canadians living on reserves do not own their houses in fee simple. This leads to a lack of desire on the part of Native Canadians to maintain, repair or renovate their houses.

As stated earlier, the Indian Act provides for the right to exclusive use of Indian reserves, collectively by Indian governments and their members. Even with the communal arrangements of reservations there are some provisions within the Indian Act for a form of individual property on reserves. More important, these provisions do not take the form of fee simple ownership, they are: customary

rights, certificates of possession under the Indian Act and the land codes emerging under the First Nations Land Management Act.²⁰

4.1 Customary Rights

An example of customary rights or hereditary rights is when an Indian family or individual holds land as a form of customary private property. The band council allots parcels of reserve land to families and individuals based on the fact that they have lived on the land for a long time. These holdings may be passed on to heirs and subdivided among family members. Since it is a decision of the band council to grant customary rights or hereditary rights, it is the band’s responsibility to handle any disputes that may arise over ownership. The federal government does not recognize customary rights or hereditary rights. Therefore the land does not have legal recognition under the Indian Act. In addition, due to the lack of legal recognition of ownership associated with customary rights, these lands cannot be mortgaged or sold.

4.2 Certificates of Possession

Certificates of possession, outlined in the Indian Act, do not take the form of fee simple ownership. Yet, the land held under a certificate of possession can be subdivided, left to an heir or sold to another person having a right to reside on that reserve. Canadian courts will settle disputes and enforce the rights generated by these certificates. This land does have some economic value on the reserve but off the reserve it is difficult to obtain a mortgage.

Many Indian bands are utilizing certificates of possession and they can be used as a step toward securing individual private property for Indians. The current system works as follows. A holder of a certificate of possession transfers the certificate to the band as collateral. The band then signs a ministerial guarantee with CMHC in which it agrees to assume the mortgage in the event of a default. Once the mortgage is paid off, the certificate is transferred back to the individual. The process of paying for one’s house promotes pride of ownership which results in individuals maintaining, repairing and renovating their property, thus saving taxpayers millions of dollars.

4.3 First Nations Land Management Act

Many Indians view the land management provisions of the Indian Act as giving too much power and authority to federal government officials. The First Nations

Land Management Act of 1999 replaced the land management provisions in section 53 and 60 of the Indian Act. The new provisions allow bands to opt out of the land provisions of the Indian Act and draft their own land codes within the parameters of the Act. But the title to reserve land still belongs to the Crown. Consequently, “land owners” are not allowed to sell their land to off-reserve purchasers, and off-reserve mortgages are difficult to obtain.

The First Nations Land Management Act provides native band councils with sweeping powers to expropriate land for community works or other native purposes. The band council can give up to 30 days notice for expropriation. It's obliged to pay fair compensation which can only be disputed under rules set by the band council itself. There are many situations where local governments have interests in reserves such as right of ways or infrastructure such as sewers. The power of band council expropriation also extends to these interests.

Third parties, such as neighbouring municipalities, are given notification of band councils’ land codes and intended use of land, such as closing a roadway. However, third parties are not provided with any mechanism of consultation with band councils. Additionally, there is no opportunity for municipalities to participate in a dispute resolution mechanism with band councils should a dispute over a land use issue arise.

4.4 Private Property

Even with the limited forms of property ownership available to Indians, the communal arrangement imposed by the Indian Act produces problems for aboriginal entrepreneurs. Business owners typically raise capital by providing their home or other real property as collateral. But since on-reserve aboriginals do not own their property in fee simple, it cannot be sold, mortgaged or otherwise used as a source of debt financing.

The Peruvian economist Hernando de Soto argues that the collective ownership form of property regime promotes poverty. De Soto concludes that the key to generating wealth and prosperity is easily identifiable individual property rights that can be recognized and upheld by the courts. He writes, “the lack of legal property ... explains why citizens in developing and former communist nations cannot make profitable contracts with strangers, cannot get credit, insurance or utilities services: They have no property to lose.”²¹

In order for an individual, to have secure private property rights three things must be present. First, there must be an exclusive right to use one’s property. Second, there must be legal protection against invaders. Finally, the owner(s)

must have the right to freely transfer ownership of the property to another person or legal entity.

Most Canadians can borrow against their own private property, which is how capital is obtained to invest in new business ventures. Capital formation allows the expansion of the economy and accumulation of wealth. But without property as collateral, individuals on reserves have difficulty getting credit or doing deals with outside investors. Economic development on reserves depends on public money funnelled through the band leadership. The few businesses and jobs on reserves are largely under the influence of the Indian government, rather than a source of vitality and diversity for Indian society.

Hutterites are an example of a group of individuals choosing to hold property in a communal manner. That this matter should be up to communities themselves is fine, but there ought to be a negotiated requirement that at least such communities will vote on the private property provision.

Developing workable systems of private property rights on native reserves is required. This will empower individual Indians and facilitate market transactions necessary to attain widespread prosperity on native reserves. Private property rights that are stable and transferable are the foundation for wealth creation the world over and communally held property that produces wealth is the very rare exception, not the rule.

Anyone who doubts this need only look at the resource-rich countries in Africa or oil-rich native reserves such as Samson in Alberta, to see that an abundance of resources does not guarantee prosperity. The connection between identifiable individual property rights and prosperity is not accidental.

To end the merry-go-round of spending on housing for native reserves, workable systems of private property need to be established and maintained. Through the establishment of private property on reserves, pride and prosperity will be recognized.

Recommendation 3:

If native communities are to become economically self-sustaining, the reserve land which is now held by the Crown should be transferred to individual natives living on-reserve. It will be up to natives themselves to decide if they want to transfer the land into a communal arrangement or allow for the property to be owned and managed individually.

5.0 TREATY LAND ENTITLEMENTS AND “URBAN RESERVES”

Between 1871 and 1923, Canada concluded eleven Victorian Treaties, more commonly referred to as the “numbered” treaties, which cover the Prairie Provinces, most of Ontario, Northwest Territories and northeastern British Columbia. The purpose of these treaties was to open up the land for settlement, trade and agriculture. In addition, they sought to ensure peace and goodwill between Indians, settlers and the Crown.

As these treaties were signed, the government began to establish reserves. The size of the reserves were based on population figures. Unfortunately, some individuals were missed. Treaty Land Entitlements were created to negotiate shortfalls with native Canadians.

In 1976 the province of Saskatchewan agreed to do its best to provide unoccupied Crown land. Due to a shortage of unoccupied Crown land within the vicinity of most reserves, the province took the position that any Indian band not satisfied with its allocation of land in southern Saskatchewan would have to look to the federal government for a satisfactory settlement.

The governments opted to provide cash settlements instead. The affected Indian bands were then able to purchase land that they found suitable. Some of the land purchased was farm land; other property included urban and commercial property.

Once the land was purchased by the Indian band, the band could have the land registered as a reserve. By doing such; the land would then be subject to all the provisions of the Indian Act, including tax exemptions. The purchase of urban and commercial land has created what is referred to as “urban reserves.”

However, it is important to realize that an Indian reserve is still an Indian reserve regardless of where it is located or what the “new” label is.

An “urban reserve” is commercial land purchased by an Indian band in which the land then becomes designated as part of their reserve – regardless of where the land is located. Once urban reserve status has been achieved, the property is subject to all the provisions contained within the Indian Act, such as freedom from taxation.

The newly created reserves create two problems.

Unfair competition is the first. True, Indian bands negotiate (although they are not required) an agreement with municipalities to pay fees for services – such as sidewalk and road maintenance – in lieu of the regular property taxes. However, in addition to sidewalk and road maintenance property taxes pay for civic development projects, education, libraries, police, fire, and garbage collection to name but a few services, which the native bands would be exempt from paying.

Indians working on reserves do not pay income tax, so businesses can pay lower wages without the workers losing any take-home pay. Furthermore, a Indian-owned business would not have to pay taxes for goods and supplies delivered to their shop located on reserve land. Such as car dealerships to cite one example used earlier.

Indian-owned businesses, native workers and businesses operating in partnership with reserves have a clear and unreasonable advantage over the competition. This unfair competitive advantage may in fact cause existing businesses to become bankrupt.

Obviously, the tax breaks would help a native owned business operating on an urban reserve. But most of us realize there is no such thing as a free lunch, someone has to pay the bill.

In fact, the citizens of neighbouring jurisdictions and/or the province will have to pick up the tab for lost property tax revenue currently generated from the land which would compile the new reserve. And, let’s not forget the tax revenues lost due to tax breaks on labour and merchandise.

The second problem of reserves is once land is designated as Indian reserve land, it can no longer be disposed of without a majority band vote. Similar to other reserve land, it can only be transferred to the Crown. In the future, this restriction could be tough to swallow for a band investing in the fluid urban land market.

The tax exemption now provided for Indians living and working on reserves and native owned businesses operating on reserves are a provision contained within the Indian Act not the Canadian Constitution. It is time to phase out the freedom from taxation the Indian Act provides.

It is very important Indians enter the mainstream of Canada’s economy. Viable business ventures are one way to achieve this. In a free market system, all players must be on an equal footing. Unfair competitive advantages, such as tax breaks, disrupt the system by off-loading the tax burden to other citizens and businesses.

Recommendation 4:

As a step toward the elimination of the Indian Reserve system, no new reserves should be established.

6.0 CONCLUSION

As a result of the federal government’s decision to restrict most of Indian Affairs’ programs to on-reserve Indians, many Indians live in virtual isolation in reserve communities which have no real economic base and, in a number of instances, a disintegrating social fabric. No matter how uneconomic the community, the federal government has seen it as a duty to sustain them.

Currently, the federal government spends approximately \$7.5 billion annually for Indian Affairs. The federal services provided to reserve communities include: education, social support services, law enforcement, Indian government support, social maintenance, construction and maintenance of houses, schools, roads bridges, sewers and other community facilities, management of lands, oil and gas management and development, resources development, management of trust funds, community economic development, commercial development and Indian taxation services.

The process of providing a plethora of programs and services to reserve communities at someone else’s expense – Canadian taxpayers – has produced a perverse incentive for Indians to remain on reserves even with social assistance rates as high as 90 per cent on some reserves. Furthermore, all the land and resources which comprise the Indian reserve are held in trust by the Crown, and is merely managed by the Chief and council. Therefore, when an Indian decides to leave the reserve they often leave – almost literally with the clothes on their backs.

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That said, Indians are beginning to vote with their feet, and in doing so declaring that the reserve system is broken. According to the Department of Indian Affairs, the proportion of on-reserve registered Indians decreased from 71 per cent in 1980 to 57 per cent in 2002.

Indian reserve land is treated differently than other private property. This treatment of Indian people under the Indian Act is unfair and is the reason why many people in Indian communities live in poverty.

The most imperative ingredient for Indian communities to be prosperous is individual private property rights. The key to generating wealth and prosperity is easily identifiable individual property that can be leveraged for loans and wealth creation.

It is both patronizing and demeaning to Indians for the federal government to continue to hold the title of Indian reserves. It is the bands that should have ownership and control of the reserve lands thus allowing the bands to ultimately decide whether their long-term interests are to be achieved through the collectivist ownership of land, or private ownership of land.

Indian communities will only have the opportunity to become economically self-sustaining if the reserve land is transferred to the Indian bands and the reserve system is abolished. It is time the federal government provided Indians with a real opportunity to prosper.

7.0 ENDNOTES

¹ An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, S.C. 1868, c. 42, s.5.

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³ Parker, James. 2002. “Politics family affair on reserves.” Saskatoon StarPhoenix, February 2002

⁴ *Ibid*

⁵ *Our Home or Native Land*, Smith, Melvin H., QC, Stoddart 1996

⁶ *Surviving as Indians*, Boldt, Menno, 1993. University of Toronto Press.

⁷ *The First Canadians: A Profile of Canada’s Native People Today*, Comeau P. and A. Santin. 1990.

Toronto: Lorimer

⁸ *Ibid*

⁹ 1980-2002 Indian Register, INAC, Registered Indian Population by Sex and Residence, 2002

¹⁰ Remington, R. 2000. “Cree band seeks \$1.4B in lawsuit against Ottawa.” National Post. June, 2000.

¹¹ Cheney, P. 1999. “The money pit: an Indian band’s story.” The Global and Mail. April 1999.

¹² Cheney, P. 1998.” The Global and Mail. October 24, 1998.

¹³ *The Rebirth of Big Bear’s People – The Road to Freedom*, Allard, Jean R., 2002

¹⁴ *Ibid*

¹⁵ Indian Act, An Act respecting Indians, R.S.C 1985 to 2000

¹⁶ Canada Revenue Agency, Information for Status Indians. www.cra-adrc.gc.ca/aboriginals/status.-e.html

¹⁷ “Indian Act ‘racist,’ judge says,” The Globe and Mail, January 6, 1995, A3

¹⁸ Indian Act, An Act respecting Indians, R.S.C 1985 to 2000

¹⁹ *Ibid*

²⁰ *Fee simple*: is the most common type of ownership that allows the property owner to have almost unlimited control over property – most homes are held in fee simple. A property held in fee simple, unlike other types of ownership, can be included in a will for someone to inherit. Fee simple is also called an estate of inheritance or estate in fee.

²¹ *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, de Soto, Hernando, Basic Books 2000