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NATIONAL DAY OF TRUTH AND RECONCILIATION WELL-INTENTIONED BUT HOLLOW

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Canada's first National Day of Truth and Reconciliation fell far short of expectations. The continuing pandemic did not help, nor did the unevenness of the holiday/commemoration across the country. As expected, most Canadians who had a day off used it as personal time. Only a small number took the opportunity to engage with Indigenous peoples or to contemplate either the residential school experience or the long history of ineffective government policy. But the day should not pass without challenging the country to recalibrate its relationship with Indigenous peoples. What Canadians can agree on is that our national Indigenous policy has been a catastrophic failure and that the costs and consequences of this poor practice have fallen disproportionately on Indigenous peoples.

Canada has a long-standing practice of punting Indigenous policy failures to the next government or future generations. The costs of failure in government policy fall disproportionately on Indigenous peoples, who are forced to live with the consequences of inaction or bad decisions. That there are more Indigenous children in various forms of government care than there were in the residential schools is just the most obvious sign of the abject failure of Canadian Indigenous policy. For generations, the federal government pushed off criticism, falling back on financial exigencies to justify limited investments and poor services. On-reserve houses are dolled out to communities like Halloween candy at a miser's house. Boil water advisories become "top" priorities not when they persist for decades but when the media jumps on the subject. Poor roads are commonplace, as is the shortage of nurses, high teacher turnover and inadequate social services.

Thanks to the work of Cindy Blackstock, the McGill academic and Indigenous rights advocate and the Executive Director of the First Nations Child and Family Caring Society, and her growing army of supporters, Canada now has a minimum price set for breakdowns in government support. On September 29, the Federal Court refused to revisit the decision of the Canadian Human Rights Commission to award \$40,000 – the maximum

allowed by the CHRC – to each child and adult affected by severe and well-documented lapses in federal social service support. The government fought hard against the ruling, which could add up to several billion dollars in compensation. The Indigenous crises emerged out of well-known realities: residential schools, social difficulties in families and communities, extreme poverty in many Indigenous settlements, overcrowded housing, inadequate social service officers and counsellors, and a deep pattern of state intervention in the lives of Indigenous peoples.

Indigenous people spoke up about the shortcomings of government social services, just as they criticized the residential schools, the Indian Act, the Department of Indian Affairs bureaucracy, and many other aspects of Indigenous policy over the years. The government did not respond, and the non-Indigenous population made the improvement of Indigenous services a low priority. In the 1960s, Indigenous people took to the courts to demand better responses. And in painful and expensive step after step, they won greater recognition both of their rights and of the failure of government policy over many decades.

This country has never done an adequate accounting of two essential elements. The first is the full cost to Indigenous peoples by the systematic shortcomings of government action. There is a tendency to focus on critical symptoms, like the Inquiry into Missing and Murdered Indigenous Women and Girls, rather than on the broad and underlying causes and consequences. Imagine the accumulated costs of generations of enforced poverty and welfare dependency, the cultural losses associated with the suppression of language and tradition, the destruction of traditional skills, the undermining of Indigenous knowledge and the marginalization of First Nations, Métis and Inuit people within Canada. Add to these challenges associated intensely personal acts of racial discrimination and the more subtle but equally harmful processes of systemic discrimination. These are, collectively, the direct costs to Indigenous peoples from the actions of the dominant society and their governments. The second accounting exer-

cise, sure to get more attention, is the cost in real money of compensating Indigenous peoples for past misdeeds and poor policy. Forget the majority of the federal government's budget for Indigenous affairs. Most of this money goes for services available to other Canadians. All Canadians get health care; Ottawa pays for First Nations and Inuit costs. Ditto for social services, fire protection, basic infrastructure, local governance. Only a portion of the budget for Indigenous Services Canada and Crown-Indigenous Relations is above and beyond the cost of providing such core support, albeit at a lower and less effective level than that provided to other Canadians.

Let's talk hard money paid in recent years to Indigenous people in Canada. The Truth and Reconciliation Commission has articulated the collective cost of the residential school movement on Indigenous peoples; the almost \$5 billion in direct compensation to former students fell far short of addressing the full cost to Indigenous communities across the country. The Human Rights Commission ruling will, unless challenged in court yet again, add several billions to that list.

Add the numerous hundred million settlements of Indigenous land claims, specific claims, and compensation for failures in government policies. In 2021, the Clearwater First Nations settled a long-outstanding claim for recognition of the "cows and plows" provision of Treaty 8, signed in 1899. The final settlement provided the First Nation with \$122.3 million, with each of the First Nations' 2,600 members receiving a one-time payout of \$44,000. Consider, as well, the downstream costs of agreements arising out of legal decisions. The Marshall decision on East Coast fishing and treaty rights has had a positive impact on the Indigenous economy but resulted in government expenditures of hundreds of millions of dollars.

This is far from the end of it. Legal challenges against the government over the alienation of Indigenous lands in southern Ontario could bring costs in the hundreds of billions of dollars. First Nations in the prairie provinces have unresolved grievances about the allocation of natural resources and associated revenue to the provincial governments in the Natural

Resources Transfer Act of 1930. Dozens of First Nations land claims in British Columbia remain to be included, as are hundreds of specific claims. First Nations in Ontario are challenging the annuity payments in Ontario, which they argue do not honour the commitments made in the treaty process to sharing prosperity.

The demands for compensation are not close to being finished. Wait until the legitimate claims against the problems experienced in the provincial and territorial education systems, systematic problems in public health care, grotesque failures in the policing, judicial and prison systems are converted from grievances to legal challenges and, in many instances, court decisions in favour of Indigenous peoples. Note, here, that the standard for these settlements and payments is not what Indigenous peoples desire and insist upon, but rather what the courts and/or public governments agree is appropriate. In other words, the payments to Indigenous communities and governments reflect Canadian law and Canadian policy. They do not necessarily reflect the Indigenous peoples' view of what compensation should be. The arrangements arise from lengthy and costly negotiations that often drain money and employees' time from other urgent community needs. In the absence of a better means of resolving these conflicts, however, Indigenous groups have no other option.

Resolving historical grievances is a difficult process, balancing collective and individual rights and compensation. In some instances, this is avoidable. Individual students suffered abuse in the residential schools; direct payments were an essential, albeit partial, means of compensation. But personal payments do not address multi-generational and community-wide impacts.

Furthermore, court and tribunal decisions can be extremely blunt instruments. The Human Rights Commission appropriately called out the Government of Canada for failing to provide adequate services for children and families; the gaps in support and assistance were widely known, and the delays in expanding services were unconscionable. The Federal Court has now ruled that personal compensation to children and some family members is appropriate, even though

the cost could be exorbitant.

The expenditure of these funds will help the recipients, if only temporarily. But it leaves unresolved the broader question of how to address the inadequate services, as judged against the support provided to non-Indigenous Canadians. Providing appropriate professional staff and paying for required facilities and assistance will cost many more hundreds of millions per year in much-needed additional expense.

The proverbial chickens have come to roost. First, the federal government established programs that cause incalculable damage to Indigenous peoples, communities and societies. Second, faced with mounting evidence of the social and personal cost of these measures, the government moved too slowly and in too limited a manner to address the consequences of these ill-designed and poorly delivered programs.

Canada faces a simple choice in the coming months and years. We can continue to resist the legitimate rights of Indigenous people to a radical transition in the existing governance systems, spending millions fighting Indigenous peoples, communities and organizations in court and even more on the inevitable compensation awards and imposed requirements to address historical injustices. Alternatively, the federal government and its citizens could launch an historic reconfiguration of the country that focuses on ensuring national standards in program delivery for all peoples and communities.

By listening to Indigenous leaders and people, Canada has an opportunity to launch a world-leading effort in sustainable reconciliation – one that accelerates Indigenous self-government, provides adequate services, makes revolutionary investments, rebuilds Indigenous communities, economies and societies, and entrenches the new relationship in a comprehensive treaty or pact. To do any less than this is to leave Indigenous peoples with the human costs of poor government policy.

The transition from symbolism to action will be more difficult than Canadians imagine. Nice words, promises and symbolic gestures are easy. Real action, particularly where it involves personal engagement and commitment, is much more challenging. Consider two developments that

reveal the potential and the barriers to genuine reconciliation.

In Victoria, BC, a non-profit called Reciprocity Trusts is inviting property owners to make a voluntary payment to Indigenous controlled funds for use by Indigenous peoples to address community needs. This is entirely consistent with true reconciliation. Will it work? Time will tell. Property owners have to come on board and continue their payments – estimated at several hundred dollars a year for a private home. Most importantly, Indigenous groups have to participate in what is, in the first instance, an uncertain enterprise. Whatever the outcome, the effort is worthwhile.

The second is more painful to contemplate. Having declared that September 30, 2021, would be Canada's first National Day of Truth Reconciliation, the Prime Minister of Canada opted to spend the day in private contemplation of the waves off Tofino, British Columbia. That the Prime Minister deserves the occasional vacation is beyond question. That Justin Trudeau decided to ignore his call to national engagement with Indigenous peoples cast a pall over the first holiday devoted exclusively to reconciliation.

The Prime Minister, who devoted much political rhetoric to the importance of reconciliation, has turned a day of reflection into a private vacation, making a mockery of something designed to be truly meaningful. It is easy to understand why Indigenous peoples, including the several hundreds who gathered on Parliament Hill, have difficulty taking non-Indigenous Canadians at their word.

The National Day of Truth and Reconciliation represents a national acceptance of collective responsibility for the suffering and losses of Indigenous peoples. To truly honour the residential school studies and Canada's collective responsibility for the past, let's make it a turning point in national history. Let Canada's first National Day of Truth and Reconciliation be the end of a long pattern of well-intentioned but hollow gestures; let it be, instead, the first day of meaningful and dramatic action that will make reconciliation real and sustainable.