**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

January 14th, 2019

Brian Giesbrecht is a retired Manitoba provincial court judge (appointed in 1976, Associate Chief Judge from 1991 and Acting Chief Judge in 1993), a Senior Fellow with the Frontier Center for Public Policy, and a freelance writer for various publications.

**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

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As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

January 14th, 2019

Brian Giesbrecht is a retired Manitoba provincial court judge (appointed in 1976, Associate Chief Judge from 1991 and Acting Chief Judge in 1993), a Senior Fellow with the Frontier Center for Public Policy, and a freelance writer for various publications.

**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
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The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

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**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
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Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
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Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

January 14th, 2019

Brian Giesbrecht is a retired Manitoba provincial court judge (appointed in 1976, Associate Chief Judge from 1991 and Acting Chief Judge in 1993), a Senior Fellow with the Frontier Center for Public Policy, and a freelance writer for various publications.

**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
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Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

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**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
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Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
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Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
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As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

January 14th, 2019

Brian Giesbrecht is a retired Manitoba provincial court judge (appointed in 1976, Associate Chief Judge from 1991 and Acting Chief Judge in 1993), a Senior Fellow with the Frontier Center for Public Policy, and a freelance writer for various publications.

**--------------------------------------------------------------------------------------------------------------------------4. Link** to a February 2nd, 2019 Sudbury Star Guest Column by Peter Best

**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
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The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
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Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

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**A Plea to End Canadian Apartheid**

“Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes from far away I love him all the same. I am telling you what our love and kindness is.”

– Saulteaux leader O-ta-ha-o-man, speaking during the Treaty 4 negotiations at Fort Qu’Appelle (in the future province of Saskatchewan), September 12, 1874

Those of us who fondly remember The Beatles know Peter Best as “the fifth Beatle”. He was the soon-forgotten drummer who played for the “Fab Four” in the group’s earliest days. Unfortunately for Best, he was replaced by the now legendary Ringo Starr before the group made it big.
But there’s another Peter Best. I don’t know if he’s musical, but I do know he’s written a new book. It’s a flawed book, but an important one. Like the other Peter Best, this one is unknown – but that ought to change. Best joins a small but select group of authors who take issue with the prevailing wisdom that the system of racial segregation Canada has created for the tiny fraction of Canadians who are of Indigenous descent should not only be preserved but expanded. The best known of these authors is Tom Flanagan. His First Nations? Second Thoughts remains the most important book on the topic. Others such as Gordon Gibson, the late Mel Smith, C2C Journal contributor Robert MacBain, and Frances Widdowson, with her Disrobing the Aboriginal Industry, have also taken on the segregationist canon. (As an occasional writer on the subject, I count myself a minor member of that group as well.)
From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
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From our standpoint, the most important book by an Indigenous leader on this issue is William Wuttunee’s Ruffled Feathers. Best spills a lot of ink discussing Wuttunee – for good reason. For, if the modern Indigenous grievance, entitlement, and segregation movement began with Harold Cardinal’s The Unjust Society (a rejoinder to Prime Minister Pierre Trudeau’s 1969 White Paper on Indian Policy, which had called for phasing out raced-based native rights in favour of integration with society at large), the modern resistance to it began with Bill Wuttunee’s book, published in 1971. Best’s There is No Difference is in that tradition, but Best is publishing in an environment in which such views are more marginalized than ever before. That’s because of the undeniable success of the legions of activists, academics, lawyers, native politicians and other denizens of the so-called “Indian Industry”, who over many decades have worked diligently through the courts and political theatrics like the Berger Inquiry, the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission (TRC), the Murdered and Missing Indigenous Women and Girls Inquiry (MMIW), and countless lesser exercises (such as the 60s’ Scoop) to distort history, stoke guilt and gain power.
Wuttunee’s importance cannot be overstated and Best, 71, who grew up in Espanola, Ontario and for decades has practised law in nearby Sudbury, details why this is so. A Cree from the Red Pheasant reserve near North Battleford, Saskatchewan, Wuttunee was the first status Indian lawyer in Western Canada and he played a central role in establishing key Indigenous organizations. Unlike Cardinal and many contemporaries, however, Wuttunee firmly believed in integration. He was convinced Indigenous people could hold onto their cultural identities while succeeding in the Canadian mainstream. He fiercely denounced the many chiefs who insisted that expanded and rewritten treaties were the answer to Indigenous people’s problems. Wuttunee boldly stated the truth as he saw it – that treaties were essentially one-time land surrenders with modest compensation. As he put it: “Apart from the $5 a year, money for ammunition and twine and the schools, there really isn’t much to the treaties.” It’s not hard to see why most of the chiefs wanted nothing to do with Wuttunee and worked hard to isolate and discredit him as an “apple” – red on the outside, white inside. They won, and Ruffled Feathers was largely forgotten.

Best and others who criticize the “nation-to-nation” path Canada has been following for decades believe that Wuttunee, who died in 2015 at 87, had it right. One can speculate about what Canada would look like today if the White Paper and Wuttunee’s ideas had been followed. It is a massive and bitter irony that since they met their demise, and federal policy started transferring ever-more money and power to the chiefs in the name of self-government, many reserves have only become more dependent and dysfunctional. Too often today, reserves represent the worst of all worlds: opaque and unaccountable government, chronic economic dependency, terrible public services, and high levels of crime, addiction, and suicide. They are places, as Best quotes 19th century novelist George Eliot, where “the morning brings no hope…seeing only future scenes of home sorrow.”
In a further irony, Wuttunee came from the same reserve as Colten Boushie – the young man who was shot and killed in August 2016 by farmer Gerald Stanley. Stanley’s trial on murder charges (he was acquitted by a jury) revealed the Red Pheasant Reserve to be blighted by poverty, crime and corruption. The fact that three generations earlier this reserve produced a man like Bill Wuttunee illustrates the deterioration of many rural Indigenous communities since then.
The egalitarian dream we had, and lost
Had they met, Best and Wuttunee would have had much to talk about. Best opens his book by invoking the words and ideas of Martin Luther King, Nelson Mandela, Mahatma Gandhi and the 19th century Canadian prairie Saulteaux chief O-ta-ha-o-man (whose lyrical words provided the book’s title) to advance the proposition that what unites people in their common humanity is far more important than what divides us by nation, culture or race. Best harkens back to his small-town baby boomer childhood, describing a time when Canadians from countless nations were coming together and defining themselves not by ethnicity, tribe or religion – which had been thoroughly discredited by the horrors of two world wars – but through their common citizenship in a country that was collectively striving for greater equality under the law.
Best remembers a clear separation between the Indigenous and non-Indigenous people of his northern Ontario youth. Still, he and most of those he knew believed that, “Notwithstanding that old bigotries and prejudices were still very much evident in society then, they were slowly but steadily lessening in effect and melting away. Our better angels were winning and would triumph in this puzzling area of relations between Indian and non-Indian Canadians. Then Indians too, we assumed, would end up being equal members of the Canadian family. It was only a matter of time and of staying the course…. But our assumptions have turned out to be wrong.”
Best lays much of the blame for today’s divisions on the bane of identity politics and the legal and political institutionalization of the “nation-to-nation” approach. It is based on the belief that each of Canada’s more than 600 reserve-based Indian bands is, in fact, a “nation” equal to the nation of Canada and, as such, is entitled to deal with Canada as an equal nation.
As noted by journalist and historian MacBain in his book Their Home and Native Land, the term “First Nation” was coined around 1980 by Sol Sanderson, former president of the Federation of Saskatchewan Indians. Sanderson intended the term to refer to the major Indigenous linguistic groupings, such as the Iroquois, Cree, Ojibway, Blackfoot and Algonquin, not to each and every reserve. But the chiefs and their enablers appropriated the term, and it soon became part of Indigenous orthodoxy, providing justification and momentum for demanding ever-greater entitlements, funding and political powers.
Today, as Best points out, the fact that chiefs representing most Indians in Canada voluntarily surrendered the lands they once occupied to the Crown a century or more ago in return for reserves and modest ongoing compensation is either forgotten or outright denied. The Indigenous rights movement has effectively resurrected the treaty process and turned it into negotiations without end. Best argues, through a careful reading of the 1850-1876 period of treaty-making, that this is a complete reversal of the intent and understanding of the signatories – on both sides. “The historical record shows that the overall theme of the treaties,” he writes, “was extinguishment of Indians’ rights and control over the lands surrendered, with no residual obligation on the Crown to continue to ‘share’ the surrendered lands and resources on them.”

The distortion of the purpose and meaning of the treaties is a critical piece of the puzzle, for this was central to burying the dream of integration and advancing the nation-to-nation agenda. The historical record strongly suggests that everyone involved in the original treaty signings expected that Indians would merge with the mainstream once they mastered farming and other social, economic and technological characteristics of the colonizing culture. Accordingly, Best argues, “the reserve system would only be temporary, would only be in place until the schools and the agricultural allotments and implements did their work, resulting eventually in Indian-Canadians becoming assimilated, integrated and self-sustaining.” Over time, however, the race-based entitlements originally granted to reserve residents have effectively been cemented into place, the major bonding agents being segregation advocates, craven politicians, and especially the activist judicial interpreters of Section 35 of the 1982 Constitution Act.
Only about 750,000 Canadians of aboriginal descent have full Indigenous “status”, and fewer than half of them live on reserves. But the reserves sustain the rationale for racial segregation and entitlement. They provide unremitting evidence of poverty, exclusion and human tragedy, and thus endless justification for seeking more power, control and money from Ottawa. Despite the chronic failure of this policy approach, it is impervious to reform. Best quotes a candid admission from a federal civil servant he met at an aboriginal law conference: “For the past 40 years we have been plowing money into programs. We have no evidence that it’s working.”
The “nation-to-nation” dogma received a huge boost in the 1982 Constitution Act. Although the premiers who reluctantly agreed to Section 35 hoped the courts would be restrained in interpreting its commitment to upholding existing aboriginal rights, they have instead been radically expansive, with the Supreme Court of Canada leading the way. The 2004 Haida Nation v. British Columbia decision was among the most consequential. It created a duty to “consult and accommodate” which has had enormous impacts on industrial and resource development.
Even more damaging, in my view, was the Court’s 2014 ruling in Tsilhcot’in Nation v. British Columbia. It exposed all of British Columbia and any other part of Canada not covered by a formal treaty to claims to “aboriginal title”. This undermined the legal certainty of ownership and control of all privately-owned real estate as well as Crown leases throughout these vast areas of Canada. Pipelines, mining, forestry, oil and gas, tourism, fishing and agriculture are now subject to a “duty to consult and accommodate” virtually everywhere, or risk litigation by Indigenous groups, often in alliance with environmental obstructionists. Much of There is No Difference examines – often in excruciating detail – evidence of the devastating impacts these and other rulings have had on investment and development throughout the country.
Eternal paternalism
Best is also very critical of the way the doctrine of “the honour of the Crown” is being interpreted in the modern era. He explains how this fundamental principle governing relations between the governments of Canada and Indigenous peoples arose out of the relationship of inequality, vulnerability and dependency prevailing when the treaties were signed and for a long time afterwards, and how it rested on perpetual trust reposed in the Crowns. In the anachronistic language of the treaties, the “Great Mother” (Queen Victoria) was obliged to care for her “children” (the Indians).
As the relationship evolved, governments sometimes betrayed the trust they were given. Best believes the doctrine should be re-interpreted in that light – but within reasonable limits. Indian bands have grown far less vulnerable, having gained constitutional status virtually equivalent to that of the federal and provincial governments. They have legal power to control developments within and beyond their immediate jurisdictions and to demand lucrative benefits as a condition of approving them. They simply no longer need the Crown’s protection, Best contends, and Canada should now meet its “honour of the Crown” obligations by treating Indigenous people not like children but like all other citizens. His logic seems irrefutable.
I want to be clear that neither Best nor I impute impure motives to the justices of the Supreme Court. Formulating the duty-to-consult doctrine, for instance, was a good-faith attempt to reasonably accommodate Indigenous communities. But in practice it has become a de facto weapon of extortion. Best describes how reserves have used bogus claims to “sacred ground” and “traditional territories” to extract what he calls “Danegeld” (i.e., payments made under duress to purchase temporary peace) from private and public developers of natural resources and other projects. He slams the craven response of governments, such as Ontario under former premier Kathleen Wynne, who refused to defend legally granted mining leases, and thus Crown sovereignty itself, in several instances. The chapters detailing these Indigenous- and government-sabotaged projects make chilling reading for anyone who believes the first responsibility of the state is to uphold the rule of law.
No single aspect of the history of Canadian aboriginal policy has been more damaging to Indigenous communities than the Indian residential schools system. But it is equally true that no single aspect of that history has been turned into such a one-sided and divisive narrative. Best takes particular exception to Chief Justice Beverley McLachlin publicly denouncing residential schools as “cultural genocide”. He insists that as damaging as the effects of the bungled education policy were for thousands of native children, they are incomparable with the willful extermination of millions of victims in actual genocides, such as the Holocaust and the Holodomor.
The Supreme Court on bloodlines.
Best is most scathing in his discussion of the 2016 Daniels v. Canada case, wherein the Supreme Court ruled that Canada’s nearly 600,000 Metis and 232,000 non-status Indians were henceforth officially “Indians” under federal jurisdiction. (Both groups were already recognized in the Constitution, as are the 65,000 Canadian Inuit.) In his view the decision was a reckless and unjustifiable abomination that vastly increased the number of potential claimants to the same race-based rights and entitlements as status Indians. “The Daniels decision highlights one of the great contradictions of our age,” Best writes with passion and dismay. “The author of the decision, Justice Rosalie Abella, is a Holocaust descendant. That event was the horrific but logical end-result of the irrational, perverse and racist blood/race myths that permeated Europe at the time, epitomized by the Nuremburg Laws. Similarly, but with the best of intentions, Daniels defines legal rights based on considerations of ‘mixed ancestry’ and ‘Native hereditary basis’…There’s even an uncritical reference to ‘Indian blood,’ as if it was a biological fact, when in fact it is scientifically nonsensical.”
Best counters another myth propagated by the Indian Industry (a term he attributes to noted Indigenous writer and businessman Calvin Helin in his book Dances With Dependency), the rhetorical fiction that Indigenous peoples have been in Canada since “time immemorial.” Best uses author John McPhee’s analogy from his great meditation on geologic time, Basin and Range, wherein the Earth’s entire 4.5-billion-year physical history is represented by the distance from a man’s shoulder to the end of his fingertips. Best notes that humanity’s entire history, dating back 200,000-300,000 years, would be represented by the man’s fingertips, and the 12,000-year-old Neolithic era of modern civilization would be represented by the fingertips’ outside epithelial cells. Best’s point is that no one has been in Canada since “time immemorial” and the distance between the time Indigenous and non-Indigenous peoples arrived in North America from Asia and Europe amounts to a historical blink of an eye.
As strong as Best’s policy, legal and scientific arguments are, his strongest ground is moral, where he insists with intensity, sincerity and eloquence that Canada should strive for the ideal that the great humanists of history like Nelson Mandela worked so hard to achieve – true equality for everyone.
In apartheid South Africa, citizens carried “status cards” denoting them as “white”, “black” or “coloured”. Mandela campaigned for many years from inside his jail cell against this loathsome practice along with the other racist constructs of apartheid. Recognizing the truth in what he was saying, the world responded. Status cards and the entire rotten regime surrounding them eventually came tumbling down.
Government of Canada Status Indian Card.
Mandela was in honourable, indeed exalted company, among visionaries who devoted much of their lives and staked their political careers on the proposition that all people must be recognized and treated as equal. Abraham Lincoln, Mahatma Gandhi and Martin Luther King, three examples cited by Best, believed that a nation composed of citizens with different sets of rights based on race (or religion or culture) was a recipe for division and civil unrest. And yet we not only still have status cards in Canada, our entrenched political, legal and intellectual elites, including Indigenous leaders, insist we should keep them forever.
Who benefits from apartheid
Best believes Canadian apartheid persists because it delivers power and money to its protectors. Certainly it provides those rewards to a privileged Indigenous ruling class, a small and often nepotistic minority on many reserves, but it extends to the much larger group that Widdowson, echoing Calvin Helin, calls “the Aboriginal Industry”. Lawyers, consultants, activists, bureaucrats and entire university departments are addicted to its riches. Many, perhaps most of the people with a vested interest in the Industry are not Aboriginal. But they prosper at the pleasure of the chiefs, and are the principal targets of Best’s sometimes excessive anger: “They profess to be good leaders. But good leaders put the interests of their people ahead of their own and encourage truthful talk. These leaders…put their own interests first, the desperate needs of their people a distant second, and disgracefully charge that people who disagree with their selfish and failed solutions and views are racist or indifferent to the situation.”
Best’s diagnosis is true as far as it goes, but I think the causes are broader. Identity politics, quasi-tribal self-segregation and the politics of claimed oppression and victimization are powerful and, sadly, growing trends in the U.S., Canada and other Western countries. Could Canada’s Indigenous relations have escaped these currents unscathed, even with perfect decision-making back in the late 1960s?
It didn’t take long for Best to incur the wrath of the Aboriginal Industry for speaking his truth. An essay he published in 2015 provoked a complaint to the Law Society of Upper Canada that branded Best a racist for daring to question Indigenous orthodoxy. Nothing in There Is No Difference or any of his writing that I’ve seen merits this charge. His emotion sometimes overwhelms his reason, but his core arguments are essentially the same as those of Bill Wuttunee, Pierre Trudeau and his then-Indian Affairs Minister Jean Chrétien in the 1969 White Paper. In 2015, however, Best’s career was threatened and his life thrown into turmoil. The Law Society complaint was dismissed only after hanging over his head for 15 months. The fact that a heartfelt argument for one set of laws for everyone could unleash such an Orwellian nightmare demonstrates how deeply entrenched Canada’s cult of identity politics has become – and how difficult it will be to escape it.
There Is No Difference is a flawed book but an incredibly brave one. It is long and exhaustively researched, but at times undisciplined and inaccurate. The book is certainly too passionate in places – even to the point of ranting. MacBain, among other sympathizers, has lamented that the book would have benefitted from a thorough, professional edit, but he concurs with Best’s two main assertions, that race-based policies are always wrong and a series of court rulings including Haida Nation have triggered a potentially disastrous diminution of Crown sovereignty.
Some readers will question or be uncomfortable with Best’s exclusive use of “Indian” instead of the more politically correct “native”, “Aboriginal” or “Indigenous”. He explains, however, that “Indian” is more precise, being defined in Section 35 of the Constitution Act, the Indian Act and in Supreme Court rulings, some of which have been referred to above. Some Indigenous authors, including Harold Johnson in Firewater, also use the term, as do uncounted numbers of ordinary Indigenous Canadians (and Americans). Also, as Best says, using the term “Indian” instead of today’s politically-charged substitutes brightly illuminates the fundamentally – albeit unintentionally – racist status quo we have in Canada, wherein one group of citizens is treated differently from the rest because of the accident of their birth.
I am tempted to criticize Best for glossing over the massive damage wrought by alcohol abuse in First Nations communities. Though it has complicated historical causes, it is unquestionably a major problem that predates reserves – let alone residential schools. It manifests itself today in intractable issues like the chronic Indigenous child welfare problem (which the Aboriginal Industry and its media apologists typically blame on government underfunding and/or white oppression). Alcohol and drug abuse complicate any approach to resolving chronic Indigenous problems. This issue requires one or more book-length treatments of its own, so perhaps Best shouldn’t be faulted for omitting it.

On its main points, There is No Difference is eminently sound. No author has so fully explored the harm and unfairness resulting from Haida Nation and subsequent cases, and provincial and federal governments’ compounding of the Supreme Court’s single greatest mistake. The court simply made up the “duty to consult and accommodate” and, as vividly demonstrated in the Trans Mountain pipeline imbroglio, this concocted legal doctrine is severely damaging Canada’s economy and dividing our people. We are growing ever farther away from reconciliation – and truth.
The integrity of land and resource ownership and the Crown’s very sovereignty – everywhere throughout the country and not merely on reserves – are under threat. As Best points out, if Haida Nation had been in force in 1867, the Canadian Pacific Railway could not have been built, and most of the subsequent resource development infrastructure that elevated this country to among the world’s most prosperous nations would have been impossible. Instead, Canada’s history would be that of a poor nation crippled by never-ending conflict and litigation. As Best says about the Tsilhcot’in decision, “If the Crown never had title to the lands it grants patents for, then the whole chain of title to those lands, down to the present owners, comes under serious question.”
Best’s prescription is ambitious, possibly to the point of being politically unattainable. Achieving complete legal equality, he writes, will require amending the Constitution, repealing the Indian Act, privatizing land ownership on the reserves and ending most other race-based rights and entitlements. The mere listing of these minimally necessary steps illustrates the enormity of the task. That Best thinks it’s still worth trying illustrates the depth of his commitment. His short-term goal of making this whole topic an acceptable part of our national conversation is, one hopes, more immediately attainable, and There Is No Difference is an important step in that direction.
For, as toughly worded as much of There is No Difference may be, Best is at heart an old-fashioned moralist/idealist if not a romantic. His long-term goal is “for us all to overcome our history and for our first peoples to join our increasingly racially indifferent 21st century Canadian family on the basis of full equality of rights and responsibilities.” Far from being a bigot or hater, Best evinces great compassion for native people as members of the Canadian family. His book is a cry from the heart for a better future in which Canada is governed by one set of laws for everyone. I truly believe that millions of Canadians believe this is a future worth pursuing, however much the current public atmosphere may have marginalized our voices.

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Brian Giesbrecht is a retired Manitoba provincial court judge (appointed in 1976, Associate Chief Judge from 1991 and Acting Chief Judge in 1993), a Senior Fellow with the Frontier Center for Public Policy, and a freelance writer for various publications.

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