

THREE YEARS ON: *What Has Happened to the Report of the Royal Commission on Aboriginal Peoples?*

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To observe that royal commissions are created by Canadian governments out of mixed motives is to state the obvious. One need only to recall the events of Oka and the failure of the Meech Lake Accord to conclude that one reason the Mulroney government created the Royal Commission on Aboriginal Peoples was to contain a rising tide of hostility among Aboriginal peoples against their place within Canadian society.

But one must also recognize the degree of frustration and puzzlement that prevailed among thoughtful politicians and officials about how to effectively come to grips with Aboriginal aspirations within the perceived political and fiscal reality faced by Canadian governments.

There is a tradition within Canadian polity that when matters assume a large and complex dimension, spanning the mandates of many government ministries and implicating policy well beyond the life of any one government, the best minds available are brought together to go into these issues in depth, with the time and resources to do so. Hence royal commissions have examined many of the major issues that define the Canadian reality.

Herein, however, lies the paradox that haunts such efforts and causes a high degree of skepticism about these instruments of policy development. Royal commissions are created to examine the fundamental nature of a problem, to go to the roots, so to speak. When they do, they then present the government of the day with an agenda for change that most governments have not the intellectual stamina or political resolve to implement. Hence the public perception that equates the report of a commission with a document that “gathers dust” on some government shelf.

Such was the case with the commissions on bilingualism and biculturalism and Canada’s economic future. It took major political upheavals well beyond the time frame of those commissions to move governments towards the implementation of their recommendations.

The Commission’s Vision

When the Royal Commission on Aboriginal Peoples report was tabled, Geoffrey Simpson, one of the *Globe and Mail’s* principal columnists, concluded that the Commission, because of

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the nature of its recommendations, had probably made accommodation between Canada's Aboriginal peoples and the descendants of its settlers much more difficult.

And he may have been right because the Commission set out a vision that challenged the "soft assimilation" model as much as it repudiated the use of state power to eliminate Aboriginal peoples as distinct societies.

It decried the assumed if unspoken outcome that most Canadians want, that Aboriginal peoples, through education and economic progress, "become like us"; that their societies become part of the Canadian cultural mosaic without the awkwardness of exercising any real political or economic power. The Commission recognized that this indeed might be the future but stated that Canada would miss an historic opportunity to confirm a unique aspect of our identity and to pattern new types of political relationships for a world beset by conflicts between diverse peoples living within the same nation state.

The Commission's conclusions were perhaps startling for the media and the general public who had given these issues little thought. The basic premises around which its recommendations were based can be summarized as follows.

Its final report set before the governments and people of Canada a comprehensive strategy over 20 years to restore social, economic and political health to Aboriginal peoples — and rebuild their relationship with all Canadians.

It entails the pursuit of two mutually reinforcing paths to change — a rebalancing of political authority and economic resources; and a reinforcing effort to restore health and effectiveness to individuals, families, communities and nations.

Its vision saw Canada in the 21st century as a country within which 60 to 80 Aboriginal nations, of which the Nisga'a nation and its treaty is an example, would exercise jurisdiction and law-making authority over a range of instruments of governance on a renegotiated and in most cases expanded land base. Aboriginal people would be members of their nations and citizens of Canada, as are the Nisga'a.

The Government of Canada's treaty obligations would be to Aboriginal nations rather than to individuals, with those nations deciding how best to spend the resources so allocated.

Aboriginal governments would be responsible to raise much of their own revenues and spend them according to the priorities established

through their own institutions. Fiscal arrangements would operate between these governments and the federal government, much as they do now with the provinces, to ensure a broad measure of equality of services available to all Canadians.

Canadians would live in an era of new political partnerships, where, on Aboriginal territory, laws and institutions would reflect Aboriginal culture and values, where such differences would no longer be perceived as a threat, and where the injustices of the past no longer define peoples' life-chances in the future.

Recognizing Aboriginal nations

In their joint address to the country at the launch of the Commission's report, its co-chairs, Georges Erasmus and the Honourable René Dussault said the following:

The roots of injustice lie in history and it is there where the key to the regeneration of Aboriginal society and a new and better relationship with the rest of Canada can be found.

Aboriginal peoples were nations before the first European settlers arrived. They were nations, and recognized as such, in the Royal Proclamation of 1763 which confirmed and codified the relationship with Aboriginal peoples. They were nations, and recognized as such, when they signed treaties to share their land and resources.

And they remain nations today — in their coherence, their distinctiveness and their understanding of themselves and the world. There was no conquest, no giving up of rights. What there was, was a partnership, expressed in law, embedded in our history.

The systematic, sustained denial of this reality — manifested through the violation of agreements, the suppression of cultures and institutions, the refusal to live up to legal obligations — is the core of the problem.

Settler governments, imbued with the certainty of an imperial age, sought dominion over this land and believed it was their duty to remake Aboriginal peoples and societies in their own image, thereby, conveniently, removing opposition to that dominion.

We cannot escape the fact that we have built a great liberal democracy in part through the dispossession of

Aboriginal people and the imposition of our cultural norms.

Successive Canadian governments tried — often intentionally, sometimes in ignorance — to absorb Aboriginal people as individuals into the body of Canadian society, thus seeking to eliminate distinctive Aboriginal societies. Such policies, pursued over the decades, undermined — and almost erased — Aboriginal cultures and personal identities. But they did not succeed. Aboriginal peoples remain proudly different.

The fact is that in crucial dimensions, Aboriginal cultures, values and world-views were — and remain — fundamentally different from the organizing principles of mainstream North American society. Yet Aboriginal peoples have been denied the right to fashion their societies and institutions in ways that are consistent with these values....

In order to break free of the structure of dependence which has bred so much deprivation and dependency, Aboriginal people must have the opportunity and resources to exercise responsibility themselves, to re-establish themselves as peoples, to build institutions consistent with their values.

They should engage in this process at whatever speed they wish. That is their right — and it is the only approach that will work.

Political Authority and An Economic Base

When the co-chairs of the Royal Commission on Aboriginal Peoples first met with Ron Irwin, the then Minister of Indian Affairs, he encouraged them to remember that they were writing from the perspective of the next 50 years. Perhaps he had a double meaning in mind: their work had to deal with fundamental truths that would be recognized as valid at any point in the future and/or it would take 50 years to see its conclusions implemented.

The Commission itself concluded that it would take 20 years to implement all its recommendations and that, even after that passage of time, the socio-economic gap between Aboriginal peoples and other Canadians would only be half closed.

But within that time frame it projected that economic development, fueled by a larger land base, greater access to natural resources and

maturing Aboriginal systems of governance, education and justice, would see Aboriginal peoples making a net financial contribution to Canadian society. It was confident that sufficient momentum would have been generated that the rest of the socio-economic gap would disappear relatively swiftly thereafter.

However, if that were to happen, commissioners concluded that the most important aspect of their recommendations were those that led to the acquisition of effective political authority and an adequate economic base by Aboriginal peoples. With those twin elements in place, they were confident that Aboriginal people would construct and implement their own means of solving the many social, economic and cultural dilemmas that pervade their societies.

But it is precisely in this area that there has been limited progress in implementing the Commission's recommendations by current Canadian governments.

The federal government has brought the public government of Nunavut into being and passed legislation authorizing the nation government of the Nisga'a, both initiatives having been begun under earlier administrations. It talks much about "partnership" and "building capacity" but its follow-through actions tend to be at a "pilot-project" level, focusing much on process and little on final results that are nationally significant.

It embarked on a joint process with the Assembly of First Nations to design an independent Aboriginal lands tribunal that would hasten the process by which Aboriginal nations could secure an adequate land and economic base. It then backed away from that undertaking out of fear that the financial implications arising from an independent tribunal's rulings would be too onerous.

This Liberal government under the leadership of Jean Chrétien is not one for visionary commitments or bold policy changes. Yet, on the other hand, in education, health, governance, land acquisition and economic development, initiatives are underway, band by band, nation by nation that reflect much of the essential thinking in the Commission's report.

When one reviews the record of the federal government's interaction with Aboriginal peoples in the last couple of years, the marks of the Commission's recommendations are clearly apparent in kind if not on the scale the Commission believed was necessary. What is missing, in

addition to questions of scale, is the public leadership that would educate Canadians as to why these changes are needed and how all Canadians will benefit from them.

Prerequisites for Economic Progress

Let's consider more closely the area of economic development which is the professional interest of most of the readers of this publication. What does it take for self-reliance to take the place of poverty and dependence? What conclusions and recommendations for action did the Commission bring forward?

In summary, it found that seven factors were important:

- **political sovereignty:** the degree to which a people or nation has real control over decision-making and the use of its resources;
- **institutions of governance:** when these are stable and effective and are seen by the people to be legitimate, they encourage a productive environment;
- **land and resources:** minerals, water, timber, fish, fertile land, wildlife, oil and gas;
- **development of human capital:** skills and expertise acquired through education and experience to grow, harvest or make products that others need and manage the production, financing and marketing of these products;
- **financial capital:** the ability to obtain investment from own resources, from private partners, from governments;
- **market opportunity:** products or services at a price and quality that local, regional or global markets are willing to pay;
- **a supportive culture:** as this is restored and people rebuild a sense of community, self-reliance and sharing become the accepted way of life once again.

Why did the Commission place such weight on matters of governance and land as the foundation for an effective economic strategy?

The commissioners became persuaded in the course of their work that solutions in any one area of their mandate required significant change in other areas. The relationship of economic progress to matters of governance and a land base is a clear example of this interdependence. To quote from the opening paragraphs of the report's chapter on economic development:

If they are to be successful, strategies for change must be rooted in an

understanding of the forces that created economic marginalization in the first place. Certain conditions essential for economic development were ignored over time. These need to be re-established: the economic provisions in the historical treaties; the freedom for Aboriginal people to manage their own economies; and a fair share of the land and resource base that sustained Aboriginal economies in the past.

To ignore these fundamentals and pretend that economic development can be achieved within the limits of the status quo simply by training entrepreneurs or improving their access to capital is to maintain the cycle of disadvantage of the past two centuries.

Governance Central to Development

With respect to governance, the Commission had many case studies to draw upon. Work done at the Harvard Project on American Indian Economic Development examined economic and social conditions on Native American reservations that had discarded governance institutions imposed by the federal Bureau of Indian Affairs in favour of institutions that reflected their own culture and traditions. These were compared with conditions on reservations which retained the Bureau-designed institutions.

The evidence was clear that the former communities had made greater strides towards economic self-reliance and social stability. Institutions that conform to a people's culture benefit from authenticity and ownership. The ability to attract outside investors, a critical component for the economic progress of many communities, requires translating governance norms into processes that were transparent to outside investors. But any community to be attractive to investors needs social stability, decision-making processes open to its citizens and institutions that carry the respect of its people.

The Commission recommended that Aboriginal governments exercise exclusive jurisdiction on their territory over matters that have a direct bearing on the identity and well-being of their people, such as health, education, land management, economic development.

They should enter agreements with federal and provincial governments in those areas that impact on neighbouring communities such as environmental regulation or aspects of criminal law, and recognize federal jurisdiction in matters

of transcendent concern ranging from monetary, trade and foreign policy to cross-border smuggling.

Land and Resources

Access to land and resources are fundamental building blocks without which any promises of self-government or prospects for self-reliance are just so many words.

Aboriginal communities today have less than one-third the land base accorded them by the written terms of the historic treaties. The exclusive lands that Aboriginal peoples were promised have become one-half of 1 per cent of the land south of the 60th parallel.

The courts have established that Aboriginal peoples have a legal right to an expanded land and resource base and a share in the management of some part of what is now Crown or public land. In short, there is a legal basis for the doctrine of continuing Aboriginal title.

However, in the Commission's view, the issue goes beyond historic and legal rights. The negotiation of an adequate land and resource base is the central prerequisite for cultural renewal, economic self-reliance and self-determination for Aboriginal peoples.

Land and resources and the means to generate wealth from them, are necessary to finance governments through an Aboriginal tax base. They are essential to achieving adequate levels of employment and economic self-reliance. They are required to provide a home for Aboriginal people. In public policy terms, it is much preferred that people have the wherewithal to generate the incomes needed for individuals and their institutions than that they been dependent upon income transfers from other governments.

The Commission recommended that federal policy and all treaty-related processes that deal with land and resources embrace certain clear principles. The first is that Aboriginal title is a real interest in land and one that endows the people who inhabited that land with rights which are substantial.

Secondly, the Crown has an obligation to reconcile the rights of other citizens with Aboriginal title. In other words, Aboriginal title is not something that is addressed when all other interests have been satisfied but has a priority claim.

Thirdly, the extinguishment of Aboriginal rights should not be sought in exchange for other rights contained in an agreement. It is

entirely possible for an agreement to specify the appropriate interpretation of Aboriginal land rights for that agreement and provide all parties with the opportunity to adjust an agreement at agreed times to incorporate potential changes in the definition of those rights as well as the overall balance of the agreement.

The principles to determine land size need to be negotiated but, in common sense, the Commission held that these should reflect what is needed to create a basis for self-reliance and the opportunity to pursue the relevant life-style of the people concerned. Hence the land base of the Innu in Labrador will likely look quite different from that of the Salish people in the lower BC mainland.

The Commission recommended that an independent Aboriginal Lands and Treaties Tribunal be created with jurisdiction to supervise the negotiation and implementation of modern treaties and be empowered to impose a solution in the event of a breach of the duty to bargain.

While the acquisition of governing authority and a land base were held essential to an effective economic strategy, it was recognized that these would take time to achieve. Other ingredients were also vital and could be pursued simultaneously.

Management Strengthens Self-reliance

Of these, the most important was to acquire the skills and experience to build and manage companies that can operate in regional, national and global markets and generate the income and wealth the nation requires.

Building enterprises, whether these are owned by individuals or the community, is the means of creating self-reliance and participating in the broader economy beyond the nation's territory. Motivating young people to complete their education is vital to transforming the economic future of their communities. Giving them strong cultural foundations to which is added proficiency in technical and professional skills will make economic development the servant of the community rather than the other way around.

Investment Equity: A Stake in the Future

All businesses need equity capital invested by the owners. Without that, banks and other finan-

cial institutions will not extend loan financing. Having sufficient funds to purchase land and equipment, hire trained staff, develop markets and operate the enterprise until sufficient sales provide funds for on-going operations is essential.

Lack of capital is a major constraint Aboriginal communities face in expanding their economic base. Widespread poverty has severely limited capital accumulation in the hands of individuals; the Indian Act limits the use of on-reserve property as a means of raising capital; the isolation of communities limits their access to funding sources. These barriers are being slowly overcome but more needs to be done to finance business opportunities.

Cooperation for Employment

If an substantial increase in employment is to be achieved, a wide spread effort to give Aboriginal people on-the-job experience is essential. In those parts of the country where Aboriginal people are a significant portion of the population, the Commission recommended that close collaboration be established between large private and public employers, training institutions and Aboriginal organizations.

Armed with forecasts of jobs, employers would work with institutions to develop appropriate courses, participate with Aboriginal organizations in the selection of candidates for these courses and then place successful candidates in their companies or agencies for a year's job experience before allowing them to compete for that job on a permanent basis.

Governments help fund the overall collaborative process. More effective use of employment equity programs as well as a strengthening of Aboriginal employment service organizations will also help Aboriginal people break into opportunities in urban areas.

Transforming Social Assistance

Finally, a fundamentally new approach to social assistance is needed. Where the market economy does not produce enough jobs for self-reliance, people need income supplements. It is beneficial to assist people to remain in their chosen communities and lifestyle, even at lower income levels, rather than to force them to migrate to the margins of urban centres.

In return, recipients of social assistance could provide the community with needed goods and services such as help for elders, day-care assistance, building and maintenance of community facilities, restoring the natural habitat, etc. Communities should be able to design their own income supplement programs that require productive work from able-bodied individuals, supplement the earnings of those who spend significant time on the land, or require participation in training programs to provide life and employment skills.

The Pattern of Change

But effective governance, an adequate land base and productive economic activity is about much more than generating income and economic self-reliance. It is about dignity and being able to exercise choices. It is about laying to rest the demons of dependence. It is about ensuring that your culture thrives and enriches the life of your children. It is about human growth through the exercise of responsibility, for yourself, your family, your community.

One needs only to observe the pattern of change that takes place among those communities which have wrested these gains from the dominant society around them. A few of many examples:

- the recent response of Aboriginal leadership in the Northwest Territories to the renewed prospect of a pipeline crossing their lands from the Arctic: a determination to exercise a substantial equity interest and to ensure that employment and environmental practices resulted in lasting benefits for their people;
- the role that the Meadow Lakes Tribal Council plays in the economy of northwestern Saskatchewan with its major stake in the forest industry: generating jobs for their people and their non-Aboriginal neighbours and initiating new forms of community involvement to ensure that harvesting respects traditional practices and values;
- the change in relations between the city and people of Campbell River in British Columbia and the Campbell River First Nation since the latter became a major participant in the economic development of the city: mistrust and antagonism from both sides have been replaced by active cooperation and appreciation of the other's contribution.

The Government's Response

The Government of Canada's principal response to the Royal Commission was its policy framework, *Gathering Strength — Canada's Aboriginal Action Plan* and its *Statement of Reconciliation* in which it acknowledged the grievous impact of past government policy in the dispossession of Aboriginal peoples' land, institutions and culture and apologized for the misuse of state power involved. In conjunction with this apology it established a \$350 million fund to finance initiatives contributing to the healing of individuals and communities damaged by one of the principle instruments of that dispossession, the residential schools.

Gathering Strength set out four themes under which the federal government proposed to act:

- renewing the partnerships
- strengthening Aboriginal governance
- developing a new fiscal relationship, and
- supporting strong communities, people and economies

A wide range of activity is being pursued under this framework. For example:

- an exhaustive examination of all aspects of future Aboriginal governance and fiscal relations in Saskatchewan in conjunction with the Federation of Saskatchewan First Nations;
- a national gathering of First Nations' representatives to engage in policy development leading to the transfer of crucial governance functions such as elections, membership, land, environment and natural resource management out of the *Indian Act* to the jurisdiction of Aboriginal governments;
- an agreement in principle with the Innu Nation in Labrador, the successful conclusion of Treaty Land Entitlement negotiations in Manitoba under which close to a half a million hectares of land will be transfer to 19 First Nations;
- the establishment of a self-government commission for the Inuit territory on Nunavik in northern Quebec
- \$750,000 for the Athabasca Tribal Council to enable it to participate significantly in the Athabasca oil sands expansion;
- a quadrupling to \$200 million of Indian Affairs' program funding for economic development over two years;
- the allocation of \$12 million for the preservation and development of Aboriginal languages;

- over \$15 million to demonstration projects across Canada to model alternatives to welfare on reserve in the context of Income Security Reform.

One can question the adequacy of this response in the light of the challenges facing Aboriginal peoples. As stated above, the scale of this response is considerably short of what the Commission called for, but the direction it is taking corresponds to many of the Commission's conclusions and recommendations.

There are glaring examples of failure to move with the decisiveness and generosity required to restore ancient grievances, such as the fisheries debacle on the east coast or the desperation in British Columbia at the lack of substantial progress through the BC Treaty Commission.

There is the spectacle of thousands of court cases for abuses suffered in the residential schools. The large monetary awards to injured individuals, while merited, will do little to assuage the collective loss while causing grief and anger among those who, in an ironic twist of history, may stand to lose their sacred places through the bankruptcy forced on their churches.

There are the increasing number of confrontations as Aboriginal people stand up for their rights while large numbers of the rest of the population lose patience with what they see as "special pleading" and the platform of the main federal opposition party proposes "equality for all Canadians" and the elimination of Aboriginal rights.

The Rationale for a "Radical" Approach

It is essential for this federal government to state clearly in public what it has been willing to implement in practice, so that Canadians understand the justice inherent in an Aboriginal order of government, an adequate land base and an honoured place for Aboriginal cultures and peoples as central to Canadian identity in the 21st century.

It is fitting to quote again from one of the co-chairs of the Commission. René Dussault was speaking to a meeting of chiefs from the Assembly of First Nations on February 24th, three months after the submission of the Commission's report. He said:

Some people have called the Commission's report bold and radical. I acknowledge that our report is not motherhood and goes to the fundamentals and I certainly do not apologize for that. It is built on premises which all Canadians can understand.

These are:

- 1) The Aboriginal way of organizing community and defining the individual's place in it—in other words, Aboriginal culture and identity—is markedly different from mainstream approaches. It remains valid and has lessons to teach the mainstream. Its loss, whether through forced assimilation or marketplace erosion, is worthy of resistance.
- 2) Where a significant majority of the population adheres to Aboriginal ways, these values should be reflected in institutions of governance and public processes such as education and justice if social cohesion and progress are to result.
- 3) The creation and direction of such institutions cannot be undertaken by distant bureaucracies. Responsibility cannot be effectively exercised without authority. And public institutions that are unable to raise their own revenues operate without an essential component of accountability.
- 4) A viable economic base is essential to finance self-government and provide communities the levers to improve their economic and social conditions. Such a base comprises both human skills and land and natural resources. But without the latter, without ownership of resources, Aboriginal nations will have neither the capital nor the negotiating leverage to participate effectively in the global economy.
- 5) These gains are justifiable on grounds of historical right, moral legitimacy, and

effective public policy. They represent an effective rebalancing of political and economic power. All Canadians will be better off if we together can achieve them.

What will it take to move governments to active cooperation in reaching these goals? You are much more experienced in this than I am. But I would suggest that you do three things.

First, speak out frequently and unitedly about your determination to rebalance political and economic power in this country. And do not allow others to divide you over the details. When you achieve the governing authority and the resources you need, there will be plenty of opportunity to debate practical details about implementation.

Second, start right now to build the capacity that will enable you to exercise as much jurisdiction as possible. You will want cooperative relationships with other governments. Indeed, that will be essential. But this should not prevent you from doing the hard work necessary to effectively exercise your right to self-government.

Thirdly, govern now in a manner that is consistent with your culture and values and that will bring healing to your people. Your culture has much to teach mainstream society. The more Canadians see you implement your values in the way you administer justice or organize your education or pursue economic self-reliance and environmental stewardship, the more rapidly will they be won over to supporting your rights to self-government and an adequate land base.

You can be certain that thousands of other Canadians, like myself, will do all we can to support you in rebuilding Aboriginal nations in Canada. And thousands more will add their support as they come to understand the justice of your journey and how your economic empowerment will benefit Canadian society as a whole.